

STATE OF VERMONT
PUBLIC SERVICE BOARD

Workshop on Confidentiality Considerations)
Related to Pricing and Other Terms in Electric)
Power Purchase Agreements)

**CENTRAL VERMONT PUBLIC SERVICE CORPORATION'S
RESPONSE TO BOARD QUESTIONS RE:
CONFIDENTIALITY CONSIDERATIONS RELATED TO PRICING AND
OTHER TERMS IN ELECTRIC POWER PURCHASE AGREEMENTS**

INTRODUCTION

By Memorandum dated March 15, 2011, the Public Service Board (the "Board") invited interested stakeholders to submit comments on issues concerning the confidentiality considerations related to pricing and other terms in electric power purchase agreements. The memorandum contained a series of questions and requests for comments. This memorandum sets out the response and comments of Central Vermont Public Service Corporation ("CVPS," "Central Vermont" or the "Company") concerning the confidentiality considerations identified by the Board. This memorandum supplements the Company's participation in the Joint Utility Recommendation Regarding Confidentiality Considerations Related to Pricing and Other Terms in Electric Power Purchase Agreements being filed by CVPS and other Vermont utilities on even date herewith. This response is organized around the questions raised in the Memorandum which are set out in full herein.

SUMMARY

Central Vermont believes that the Board's practice in administering protective orders in connection with power contracts has been reasonable and has not impaired the ability of the

public to understand the basis for Board decisions. In order for an electric company to meet its customers' service requirements at least-cost, it is important that the company be able to effectively participate in the power marketplace. The Board's practice has attempted to strike a reasonable balance between the interest of electric utilities -- including their desire to effectively participate in the competitive wholesale power market -- and the interests of the public.

As a part of the Joint Recommendation, CVPS and other electric companies are proposing changes to the Board's practice to help improve the efficacy and efficiency of the administration of power contract related protective orders. CVPS stands ready to collaborate with the Board and stakeholders to consider enhancements to the Board's practice. While Central Vermont is sympathetic to the concerns raised by the Board, its analysis concludes that commercially sensitive, proprietary, trade-secret information is entitled to protection from public disclosure. Such protections should be in place so long as the basis for the confidentiality claim meets the definition of a trade secret. The interests of utility customers would be harmed should Vermont establish practices regarding the confidentiality of power contract information that is out of sync with prevailing market practices.

DISCUSSION

A. Confidential treatment of contract terms in tariff filing

- 1. Is it appropriate for the Board to protect contract pricing information in tariff filings from public disclosure?**

CVPS Response:

Yes, the Board should protect confidential pricing and other information submitted in support of tariff filings through the issuance of appropriate protective orders. The standards that should apply to the review of motions seeking protective orders filed in this context should be comparable to the standards applied in other contexts where confidential protected information

is required to be filed with the Board or is filed in support of matters before the Board.

- a. As a custodian of public records the Board has a duty to protect trade secrets from public inspection and copying.

The Public Service Board is a “public agency” subject to the Vermont Access to Public Records Act, 1 V.S.A. §§ 315-320 (the “Public Records Act” or “Act”). *See* 1 V.S.A. § 317(a)(defines “public agency” to include *inter alia* any board, agency, commission or authority of the state). Contract pricing information, once submitted to the Board – whether in the course of a rate proceeding or a Section 248 proceeding – would constitute “public records” or “public documents” under the Public Records Act. *See* 1 V.S.A § 317(b) (defines same as “any written or recorded information ... which is produced or acquired in the course of public agency business”). Section 316 of the Public Records Act permits any person to copy or inspect any public record or public document of a public agency, unless such records are exempt under one of the forty exemptions listed in Section 317(c) including the trade secrets exemption of Section 317(c)(9). *See* 1 V.S.A. §§ 316, 317(c).

Under the Public Records Act, the Board has an affirmative duty as a custodian of the public records to protect from copying or inspection any exempted public records including trade secrets. Id.; Investigation Into Treatment of Allegedly Confidential Information, Docket No. 6904, Order of 11/14/03 at 3 (although Public Service Board is a state agency and many of its records are open to public inspection, trade secrets are entitled to special protection under the exception to the Public Access to Records Law, 1 V.S.A. § 317(b)(9)); Springfield Terminal Railway Co. v. Agency of Transp., 174 Vt. 341, 345 (2002)(holding that competitive bid information provided to VTTrans by a rail freight operator constituted trade secrets under Section 317(c)(9) and could not be released by the agency). It is therefore both appropriate and

necessary for the Board to protect contract pricing information in tariff filings from public disclosure if such information constitutes trade secrets within the meaning of 1 V.S.A. § 317(c)(9).

- b. The Public Records Act definition of trade secrets should control the decision as to whether information deserves protection in Board proceedings.

1 V.S.A. § 317(c)(9) and V.R.C.P. 26(c)(7) differ in content and purpose. Section 317(c)(9) defines trade secrets exempt from disclosure under the Public Records Act as:

. . . trade secrets including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it.

The operative language relating to trade secrets in V.R.C.P. 26(c) provides:

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown . . . any Superior Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following . . . (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way

V.R.C.P. 26(c) grants the Board the power to issue a protective order regarding trade secret information sought in a Board proceeding. 1 V.S.A. § 317(c)(9) defines the type of intangible property that constitutes trade secrets that may not be disclosed once submitted in a Board proceeding and that may be the subject of a protective order. To the extent V.R.C.P. 26(c) can be interpreted to establish a substantive standard for what constitutes a trade secret, it should not control in Board proceedings. Rather, the definition set forth in 1 V.S.A. § 317(c)(9) should be deemed controlling in Board proceedings since such material becomes a “public record” solely

because it “is produced or acquired [by the Board] in the course of public agency business.” As a general matter, and unless the litigation involved an issue relating to public records, documents submitted in a superior court proceeding would not constitute “public records” because they would not have been produced or acquired in the course of public agency business. *See, e.g., supra* 1 V.S.A. § 317(b).

c. Power Contract Pricing Information Qualifies as a Trade Secret.

To qualify for the § 317(c) trade secrets exemption, “information must not be patented, must be known only to those individuals within a commercial concern, and must give the user or owner an opportunity to obtain a business advantage over competitors who do not know or use that information.” 1 V.S.A. § 317(c)(9)). The Board has previously applied Section 317 to give protection to contract pricing information in rate proceedings. *See* Tariff filing of Central Vermont Pub. Serv. Corp., Docket No. 5491, Order of 9/27/91 at 22 (“Vermont statutes expressly recognize that ‘trade secrets’ can be protected, and case law and civil rules require courts to apply this principle in contested cases”)(citing 3[sic] V.S.A. § 317, V.R.C.P. 26). In Tariff filing of Central Vermont, the Board issued a protective order in a rate proceeding to limit access to contract pricing and other commercial information provided in a Central Vermont study that evaluated the cost of Hydro-Quebec power as compared to other resources. *Id.* at 6 and 15. There, however, the protective order was issued for a duration that expired once contract negotiations with Hydro-Quebec were concluded. *Id.* at 15. The Board also assumed that Section 317’s protection only extended to limited circumstances, stating: “[S]uch protections should be limited to clearly defined cases where a specific need for confidentiality is demonstrated and a real prospect of harm is shown.” *Id.*

There are several reasons why this ruling is not controlling today. First, as discussed below, utilities in New England now compete for wholesale power resources in a competitive wholesale market; commercial financial terms in power contracts are competitively sensitive and not made publicly available. Second, the ruling pre-dates a controlling Vermont Supreme Court decision that holds that Section 317 protection is broad, not limited or dependent upon a strong showing of potential anticompetitive harm.

In Springfield Terminal Railway Co. v. Agency of Transp., 174 Vt. 341(2002), the Vermont Supreme Court affirmed that the Legislature intended to protect a very broad category of information as exempted trade secrets under 1 V.S.A. § 317(c)(9):

The plain meaning of the statutory language in § 317(c)(9) is clear, and accordingly, no further interpretation is required to determine the intent of the Legislature. For the purposes of § 317(c)(9), the Legislature chose to include within the rubric of exempted trade secrets any “compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it.” 1 V.S.A. § 317(c)(9). ... [T]he Legislature chose to broaden the scope of exempted documents by expressly defining trade secrets as “*including*, but not limited to” specific compilations of information. Id. (emphasis added). While we must strictly construe exceptions to the Public Records Act, the statutory language of § 317(c)(9) including “compilations of information” within the rubric of trade secrets compels this interpretation of the statute. See Trombley v. Bellows Falls Union High School, 160 Vt. 101, 106-07, 624 A.2d 857, 862 (1993). Therefore, the inclusive language of the statute is dispositive and we will not interpret the language defining “trade secrets” in a more limited sense. See In re Handy, 171 Vt. 336, 341, 764 A.2d 1226, 1233 (2000) (refusing to read statutory language in a more limited sense than its plain meaning).

From this unambiguous language, we must presume that § 317(c)(9) reflects a legislative desire to protect from public access some non-technical, competitively useful business information.

Id. at 346. The Court in Springfield found that under this liberal definition, information is a trade secret if it “is generally private corporate information that gives its possessor a commercial advantage over others.” Id. at 347. Applying this standard, the Court concluded that VTrans’

financial information including balance sheets, income statements, profit and loss statements, earning projections, and names of potential shippers, all constituted trade secrets that could give third parties an opportunity to determine the content of proposals and bids for the services that would give them a business advantage over their competitors who did not have knowledge of or access to that information. *Id.* at 348, *citing* Enterprise Leasing Co. v. Ehmke, 3 P.3d 1064, 1070 (Ariz.Ct. App. 1999) (recognizing that internal financial information provides economic value for its possessor and would allow a competitor to gain an advantage if that information were made available).

Other jurisdictions reach similar results. *See* Pepsico, Inc. v. Redmond, 54 F.3d 1262, 1265, 1267 (7th Cir. 1995)(Pepsico’s “pricing architecture” -- a marketing and pricing strategy developed by Pepsico to determine how it would price its products in the marketplace -- constituted protected trade secrets; “[t]rade secret law serves to protect ‘standards of commercial morality’ and ‘encourage invention and innovation’ while maintaining ‘the public interest in having free and open competition in the manufacture and sale of unpatented goods’”); Inter-Tel (Delaware), Inc. v. Fulton Comm’n Tel. Co., 2007 US.Dist. LEXIS 43219 (D. Ariz. June 13, 2007) (telecommunications provider’s contract prices found to constitute trade secrets in misappropriations case); Commodity Futures Trading Comm’n v. McGraw Hill Co., 507 F. Supp. 2d 45 (D.D.C. 2007) (formulas used by energy company to calculate the price index for natural gas constituted confidential trade secrets); Canadian Commercial Corp. v. Dept. of Air Force, 442 F. Supp. 2d 15 (D.D.C. 2006) (cost and pricing information in contractor bids constituted trade secrets); Support System Assoc. v. Tavolacci, 135 A.2d 704, 522 N.Y.S.2d 604(2d Dep’t. 1987) (confidential pricing information and management approach given trade secret protection); Metal & Salvage Ass’n v. Siegel, 121 A.2d 200, 503 N.Y.S.2d 26 (1st Dep’t.

1986) (commercial “deal files” with records of supplier solicitations, bids and invoices protectable as trade secrets).

In the public utilities context, the consequence of public disclosure of competitively sensitive power contract pricing information is not only potential anticompetitive harm to the regulated company but also higher costs for customers. This was one reason for a New York Supreme Court’s ruling denying a newspaper’s request under New York’s public records law for disclosure of a settlement agreement relating to an alleged breach of a power purchase agreement between Niagara Mohawk Power Corp. (“NIMO”) and the operator of a generating plant. *See Glens Falls Newspapers, Inc. v. Counties of Warren and Washington Indus. Dev. Agency*, 257 A.D.2d 948; 684 N.Y.S.2d 321 (N.Y. App. Div. 1999). There, the court concluded that:

...public disclosure of the details of the settlement agreement with WWIDA would be an obvious advantage to NIMO’s competitors by jeopardizing NIMO’s ability to negotiate effectively with other producers in order to obtain the lowest rates for its customers. Consequently, [the] Supreme Court properly concluded that public disclosure was unwarranted based upon detailing some of the competition NIMO is subject to and supporting the proposition that the release of the subject information would cause substantial injury to NIMO’s competitive position.

Id., 257 A.D.2d at 950.

In Montana, the Supreme Court found that personal property, due process and equal protection rights would be infringed by the compelled disclosure of confidential commercial information of a utility in a rate case proceeding. *See Mountain States Tel. v. Dep’t of Pub. Servo Reg.*, 194 Mont. 277, 634 P.2d 181 (1981). In that case, a regulated telecommunication provider had requested that the Montana Public Service Commission’s (“PSC”) issue a protective order to preserve the confidentiality of trade secret information requested in the course of discovery. The PSC and the district court on appeal had concluded, in effect, that because the telecommunications provider was a public utility, it was required to divulge to the PSC and to

the public all pertinent information upon which its application for rate increases was based, and that such compelled disclosure did not violate any state or federal constitutional rights of Mountain Bell. Id., 194 Mont. at 282. The Montana Supreme Court disagreed:

We have concluded that we agree with the District Court that trade secret information of the kind involved here is a species of property that is entitled to constitutional protection; but we have further concluded that the provisions of our state constitution and statutes, when applied to deny the protective order in this case, have the effect of violating, as applied, the equal protection clause of the Fourteenth Amendment of the federal constitution, and the due process clauses of the state and federal constitutions.

Id., 194 Mont. at 283.

The Court began by reasoning that it is obvious that a trade secret, which is used in one's business and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property that could be rendered valueless or of less value to its owner if disclosure of the information to the public and to one's competitors were compelled. Id. at 284. The Court then concluded that the compelled disclosure of a trade secret owned by a public utility where such information is necessary to the proper exercise of the duties of the PSC or the Consumer Counsel would not by itself constitute a "taking" or a deprivation under either the state or federal due process clauses. Id. at 285. Where the constitutional violation did arise, however, was the PSC's failure to provide protective treatment of trade secret information provided through the PSC proceeding:

The constitutional rub lies, as Mountain Bell contends, in the compelled disclosure of the information to all of the public-including Mountain Bell's nonregulated competitors - beyond the state agencies. The District Court and the PSC concluded that such compelled disclosure was required under the right to know and right to inspect constitutional and statutory provisions of Montana.

This is a classic case for the application of the "means end test" wherein the power of the state to interpose its authority on behalf of the public is balanced against the constitutional requirement of due process in the protection, in this case, of private property. Lawton v. Steele, 152 U.S. 133 (1894). *Courts are not required to follow one extreme or the other of colliding constitutional rights;*

judicial protection of the confidentiality of the trade secret information is proper where both the needs of the public and the protection of private property can equally be served. See F. C. C. v. Schreiber, 381 U.S. 279 (1965). We find it possible to protect fully the ownership of the trade secret information and at the same time, supply fully the need of the state agencies for the information required in the exercise of their duties. We find that an order can be fashioned in such manner that the state public agencies can perform their duties with the fullest available information and at the same time disclose to the public all information required to enable citizens to determine the propriety of governmental actions affecting them. As the court stated in Pennzoil Co. v. Federal Power Commission, 534 F.2d 627 (5th Cir. 1976): Implicit in Schreiber is the proposition that the balancing of the public and private interests might compel secrecy, 381 U.S. at 96.

Id. at 285-86 (emphasis added).

Similarly, in New York Tel. Co. v. Pub. Servo Comm'n of New York, 56 N.Y.2d 213; 436 N.E.2d 1281; 451 N.Y.S.2d 679 (N.Y. Ct. App. 1982), the Court of Appeals of New York reversed the New York PSC's decision in a rate proceeding, refusing to grant a permanent protective order to protect the confidentiality of New York Telephone Company's "Migration Study" that contained detailed projections of the transfer of the company's customers to new, more sophisticated systems, as well as specifics of the company's future price plans, schedules of new product introduction, and sales tactics, all of which New York Telephone contended was confidential commercial information that would be valuable to the utility's competitors. Id., 436 N.E.2d at 1281. The New York PSC, and a lower court on appeal, had denied the request for protective treatment, asserting that New York's public records law "requires that testimony and records in a rate-fixing case be public records." Id. at 1282. The Court of Appeals disagreed, stating:

We hold a different view and give no such limiting effect to the statutory provision, failing to find in it any proscription against protection from general public disclosure by appropriate order of the Commission of information put in evidence at hearings held by it which falls within the category of trade secrets. *The importance of trade secret protection and the resultant public benefit are well recognized (e.g., Kewanee Oil Co. v Bicorn Corp., 416 U.S. 470,481-82).*

Numerous decisions in this and other jurisdictions demonstrate the variety of protective means that have been fashioned to maintain the confidentiality of trade secret information that is the subject of litigation.

Id. (emphasis added). The court thus remanded the matter back to the PSC to evaluate the information sought to be protected. Id. at 1281.

An electric utility's power contract pricing information is generally private commercial information that gives the company a commercial advantage over its competitors and counterparties that participate in the wholesale power markets. It constitutes trade secrets that must be protected from public disclosure in all Public Service Board proceedings including tariff investigations.

While the trade secrets classification provides one possible basis for protecting power contract pricing information, other jurisdictions have identified additional reasons for protecting this information. *See* Public Utilities Commission of the State of California, Order Instituting Rulemaking to Implement Senate Bill No. 1488 Relating to Confidentiality of Information, Decision 06-06-066, dated June 29, 2006 (recognizing that statutorily defined "market sensitive" procurement information in the wholesale power markets is entitled to confidential treatment even if it does not qualify as trade secrets, and establishing a standard three-year duration for protection); New Hampshire Public Utilities Commission, Public Service Company of New Hampshire, Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC, Order on Motion for Confidentiality and Motions to Compel, DE 10-195, dated Nov. 24, 2010 (requiring PSNH to make pricing and product terms available in aggregated or summary form without revealing any specific supplier or facility information; no duration specified for protective order); Maine Public Utilities Commission, Re: Competitive Electricity Providers Annual Reports for the Year 2009 Price, Revenue and Customer Information, Docket No. 2010-68, Order of June 22, 2010

(providing broad protective treatment of utility sales and cost data); Indiana Utility Regulatory Commission, In the Matter of Petition of Duke Energy Indiana, Cause No. 43715, Order of June 23, 2010 (protecting certain power contract terms as trade secrets entitled to confidential treatment); Florida Public Service Commission, In re: Joint Petition to Determine Need for Gainesville Renewable Energy Center in Alachua County by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC, Docket No. 090451-EM, Order of May 17, 2010 (treating as confidential, pursuant to statute, certain proprietary confidential information for a duration of 18 months). These cases are discussed more fully beginning on page 38 of this memorandum.

- d. The regional power market has been transformed into a competitive wholesale marketplace.

Power markets have changed dramatically as a result of the Federal Energy Regulatory Commission's ("FERC") Standard Market Design ("SMD"), under which the FERC has established a comprehensive framework for competitive wholesale electricity markets. *See* 102 FERC ¶ 61,112 (2003).¹ Vermont utilities buy and sell wholesale power in the competitive ISO-NE power markets. Like any other competitive market for goods, an electric utility's power prices and pricing information are commercially sensitive and would give "its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it." *See* 1 V.S.A. § 317(c)(9). With the exception of information that is required to be filed with the FERC by jurisdictional electric utilities, power contract prices and other financial terms contained in most electric utility power contracts with third parties constitute private corporate information that is not patented, is known only to those individuals within the company and its

¹ ISO-NE, established in 1997, oversees competitive wholesale markets for buying and selling electricity within the ISO-NE's six-state New England region. The FERC approved ISO-NE's SMD on January 31, 2003. *See* 100 FERC ¶ 61,138 (2002).

counterparties, and is usually subject to strict non-disclosure requirements due to their commercial value and commercial advantage that other market participants could gain if they had access to such information.

The FERC requires jurisdictional utilities to file detailed information regarding wholesale power purchase in Electronic Quarterly Reports (“EQRs”) and FERC Form-1 Reports (“Form-1”). The EQRs contain information regarding power sales for prior periods, including identities of the purchaser, contract dates, product name and quantity and rate. However, the EQR and Form-1 do not contain forward-looking information. Instead, they provide backward-looking detail on a quarterly basis for physically-settled transactions only and do not disclose prices for products other than energy and capacity, pricing algorithms or reference prices or indices. Also, the rule governing EQR and Form-1 filings (referenced in this memorandum at page 29), does not require that power contracts actually be submitted to the FERC. In addition, counterparties that sell power to CVPS report similar information on those sales. These publically available reports may be somewhat helpful to parties seeking fuller disclosure about power contracts, though forward-looking information remains confidential.

Likewise, with the exception of the electronic scheduling of power transactions, there are no ISO-NE filing requirements relating to power contracts other than to qualify capacity imported from another control area. From time to time, the ISO Market Monitor may request detailed information relating to power purchase transactions. This information is treated as confidential, non-public information pursuant to Section 3.1(h) of the ISO-NE Information Policy. *See* ISO New England Inc. Transmission, Markets and Services Tariff, Attachment D, § 3.1(h) (8/30/10). Section 3.1(h) defines as “Strategic Information” any information that is subject to ISO’s confidentiality requirements, to include “any information, except Public

Information, that would affect a Governance Participant's bid or offer strategy in the New England electric markets". A copy of the ISO-NE Information Policy is attached and a more thorough description of ISO-NE practices is included in this memorandum at page 32.

As a consequence of these changes, Vermont electric utilities must participate within the competitive regional power market to provide cost-effective service to customers. The success of the utility at effectively hedging open portfolio positions -- the whole point behind buying and selling power in the long-term market place -- directly affects its success in meeting customer needs at favorable prices. When administering protective orders, the Board should fashion policies that enable utilities to effectively meet the needs of their customers and do not create barriers to effective participation in the competitive wholesale marketplace.

e. The Board Has the Powers of a Court to Issue Protective Orders to Protect Trade Secrets.

The Board is a quasi-judicial body, and its judicial documents and deliberations are protected like those of a court. *See* Investigation Into Treatment of Allegedly Confidential Information, Docket No. 6904, Order of 11/24/03 at 3-4 (*citing* 30 V.S.A. § 9 and 1 V.S.A. § 312(e)). As an agency possessing the powers of a court of law with respect to matters within its jurisdiction, *see* 30 V.S.A. § 9, it is also appropriate and necessary for the Board to issue protective orders in proceedings in which exempted trade secrets become part of the public record through submission in discovery or prefiled or record evidence. The Vermont Rules of Civil Procedure ("V.R.C.P.") apply in proceedings before the Board. *See* Board Rule 2.214. V.R.C.P. 26(c)(7) authorizes the Board to issue protective orders relating to the discovery of "trade secret or other confidential research, development, or commercial information commercial information." V.R.C.P. 26(c); *see* Tariff filing of Green Mountain Power Corp., Docket No.

5983, Order of 11/26/97 at 2. Although denominated as a discovery rule of procedure, the Board has used protective orders to protect evidence relating to power contract pricing, credit terms and other “sensitive commercial information.” See Amended Petition of UPC Vermont Wind, LLC (now known as Vermont Wind, LLC), for a Certificate of Public Good, Pursuant to 30 V.S.A. § 248, Authorizing the Construction and Operation of a 40 MW Wind Electric Generation Facility, Docket No 7156, Order of 3/27/09 at 1-2; Petition of Central Vermont Public Service Corporation for a Certificate of Public Good Approving the Purchase of Electricity Pursuant to a Power Purchase Agreement Granite Reliable Power, LLC, Docket No. 7589, Order of 3/30/10. The Board has expressly found that the trade secrets exemption under the Act is a basis for granting protective treatment. See Investigation Into Treatment of Allegedly Confidential Information, Docket No. 6904, Order of 11/24/03 at 3–4 (noting that § 317(c)(9) is grounds for confidential treatment).

It should be noted that protective orders issued by the Board in a proceeding certainly apply to the parties in the case, but would not apply to non-parties who have no standing in the case. Thus, to the extent that a member of the public who is not a party in a docket requests the right to obtain trade secret information submitted in the docket, the limitation on the right of access would be founded in the Board’s obligations under the Public Records Act and not pursuant to a protective order applicable only to parties to a proceeding.

2. What, if anything, has changed that would justify keeping confidential any information in tariff filings that has traditionally been public?

CVPS Response:

In the past, electric power markets were fully rate-regulated and many contracts were based on the seller’s cost-of-service. This market was restructured into a competitive regional wholesale marketplace with market-based pricing and greater involvement of commercial, non-utility entities in

contracts for electric power and other market products. This change fundamentally altered the nature of power contracts, introduced market forces and competition intended to reduce cost and promote greater efficiencies, and increased the need for confidential treatment of contract pricing information to preserve stakeholders' competitive positions.

See response to A.1., above.

3. **Assuming it is appropriate to extend confidentiality treatment to protect certain contract price information in tariff filings; what procedures should the Board adopt to provide for the adjudication of confidentiality requests in the context of those tariff filings that do not result or develop into rate investigations?**

CVPS Response:

Where confidential power contract information is filed with the Board in support of a tariff filing, the utility should be permitted to file said information blind (*i.e.*, without disclosing the identity of the seller or resource) or to seek the issuance of a protective order. Regardless of whether the Board's review of the tariff filing results in a rate investigation, the Board is empowered to issue a protective order that protects information filed with the Board from public disclosure.

- a. The Board should permit utilities to file information in support of their tariff requests that do not disclose the identity of the seller or the resource.

The Board has established rules that govern the composition of filing made by electric utilities when they seek to alter or amend their rates. Pursuant to Board Rule 2.402(A):

In order to enable the Board to determine whether new rates proposed by any utility should be further investigated or suspended, all rate filings shall contain complete and substantial justification for the proposed change, including the following: (1) detailed calculation of cost of service; (2) detailed calculation of cost of capital; (3) rate base calculation; (4) the effect of the filing on annual operating revenues; (5) projected construction expenditures by category for each of the following two years; (6) for electric utilities, *a detailed statement of purchased power and production costs (with fuel costs separately stated) by source for the 12 months prior to the filing and a similar statement of projected purchased power and production costs by source for the 12 months succeeding the filing*; such costs for both periods shall be shown net of sales to other utilities or, in the alternative, revenues from such sales shall be separately stated.

Id. (emphasis added). In order to efficiently administer the requirements of this rule, the Board should consider adopting a practice whereby electric utilities can file their statement of

purchased power and production costs without revealing the identity of the disclosed contracts or resources. Such an approach would further the purpose of the Rule without creating the need for the filing of a request for a protective order to protect confidential that might otherwise be required.

- b. The Board should follow its traditional practice, whereby an applicant for a Protective Order can file a Motion at the time information is submitted to the Board.

In addition to the proposal to permit the filing of a *blind* statement of purchased power and production costs, the Board should continue its practice of considering and granting Protective Orders that cover confidential supporting materials and workpapers filed by a company in conjunction with its tariff filings. When an applicant utility desires to file confidential power contract information in support of its tariff filings, the company should file an appropriate motion seeking a protective order. Copies of such motions should also be filed with the Department of Public Service (the “Department”) and docket parties.

See Response 1.A above.

- c. The Board does not need to open an investigation to issue a Protective Order.

The Board is empowered to issue protective orders that cover materials required to be filed with the Board even if it does not open an investigation into the utility’s filing. For example, the Board requires that power contracts be filed pursuant to Rule 5.200. CVPS has been granted a Protective Order when it filed a confidential power contract and request for waiver of the 90-day notice period even though the Board did not open an investigation into the contract. *See* Protective Order and Waiver of the 90-day Notice Provision, Power Purchase Agreement filed by CVPS under Board Rule 5.200, Order of 12/2/2009.

B. Duration of confidential treatment.

The Board’s protective orders routinely advise parties that they have a “continuing obligation to reexamine protected information” and to allow for the public release of material that would no longer cause competitive harm. It is not apparent that this reminder actually works in practice, and the Board wishes to explore whether it would be better to set a shorter duration for protective orders (possibly, one to three years) and require the parties to file motions to extend the protective orders, if desired, 30 to 90 days prior to the expiration of such term, with averments that provide a specific explanation as to why the information should continue to receive confidential treatment.

CVPS Response:

The Board should collaborate with stakeholders to develop a *pro forma* term (the Joint Utilities recommend three (3) years) for protective orders for general use in connection with requests by applicant concerning the confidentiality of power contracts. Applicants should also be afforded the option to seek case-specific review of a request for an alternative form of protective order.

- a. Information is entitled to protection as a trade secret as long as the information remains a trade secret under the applicable standard.

Courts have found that information is entitled to protection as a trade secret as long as the information remains a trade secret under the applicable standard. Gilda Industries v. U. S. Customs Border Protection Agency, 547 F. Supp. 2d 6, 9 (D.D.C. 2006)(citing Public Citizen Health Research Group v. F.D.A., 704 F.2d 1280, 1290 (D.C. Cir. 1983)(letters of bilateral trade negotiations between U.S. and Canadian lumber companies submitted in unfair trade practices dispute continued to be exempt under FOIA as “commercial” records and continued to be so exempt as long as submitter of records has a “commercial interest” in them); Underwater Storage, Inc. v. U.S. Rubber Co., 371 F.2d 954 (D.C. Cir 1966), cert. den., 386 U.S. 911 (1967)(finding in misappropriation case that so long as information remains trade secret it is valuable property to its possessor and divulging it would constitute a continuing theft).

Therefore, unless a duration limitation is established that has been supported by a valid determination that the protected information no longer meets the broad Vermont definition of trade secret after a specified period of time, a duration limitation would not be appropriate as a matter of law.

- b. The Board should work with stakeholders to define reasonable terms (e.g., three years) for power contract related Protective Orders.

Recognizing that the issues attendant to protection of power contract information raise many related legal considerations, the Board should work with stakeholders to define a reasonable *pro forma* term for power contract related protective orders. The joint utilities are prepared to work with the Board to develop a *pro forma* Protective Order and to incorporate process improvements to help make the procedure for obtaining such an order efficient.

1. **Would such protective order renewal requirements be unduly burdensome?**

CVPS Response:

Including a renewal requirement in a standard form of protective order would not be unduly burdensome. To the extent that an applicant believes that a longer term is necessary, it should also be able to make a case-specific showing as a part of its request for a protective order.

2. **How flexible and dependent on circumstances should the Board be in determining the duration of protective orders?**

CVPS Response:

Applicant should be able to make case-specific showings in support of their requests for protective orders. In connection with such requests, the Board has all requisite authority to approve protective orders with terms as necessary to protect confidential power contract information.

- a. As long as information qualifies for protection from public disclosure it should be protected under the terms of appropriate Protective Orders.

See response to previous question and responses to Section A, above. If information continues to qualify as exempted trade secrets information under Vermont law, the Board as custodian must protect such information from public inspection and copying, and has the authority to issue appropriate protective orders.

- b. An applicant for a Protective Order should have flexibility to request case-specific protections.

Even if the Board accepts the Joint Utility recommendation for a contract related protective order with a *pro forma* term of three years, an applicant should retain flexibility to request a term for a necessary protective order based on case-specific facts and circumstances. Due to the variety of supply arrangements and the uniqueness of each transaction, a one-size-fits-all agreement may not be appropriate under all circumstances.

3. Are there any contract terms that should be kept confidential for longer periods, perhaps even for the entire term of the purchase agreement?

CVPS Response:

There can be a variety of terms under a contract that should be kept confidential and the confidentiality terms required can vary. Applicants for Protective Orders should be able to make case-specific showings to support the relief requested under a proper Motion.

4. Is it appropriate for the Board to keep pricing or other contract terms confidential after the expiration of the power purchase agreement, particularly if the term of agreement is relatively short?

CVPS Response:

Yes it is appropriate for the Board to keep pricing or other contract terms confidential after the expiration of the power purchase agreement, particularly if the term of the agreement is relatively short.

- a. The terms established under a Protective Order can apply after expiration of a subject contract.

The need for confidentiality may not expire when a supply arrangement's term ends. Protected information can be of value to both the buyer and the seller, and can represent either party's trade secret. Where an applicant for a protective order has requested that the term for protection extend beyond the term of the supply agreement, the Board should establish appropriate protections that continue beyond the expiration of the agreement.

- b. Keeping commercially sensitive information confidential protects the interests of customers.

Generally speaking, unless a company concludes that its negotiating position with a counterparty is strengthened by revealing the terms of other contracts, it should be in the best interests of the company and its customers to keep the crucial contract terms (*i.e.*, price level, pricing formulas, collateral terms, embedded options or hedging mechanisms), for both short- and long-term contracts, confidential during and after the contract period. Keeping this information confidential strengthens the utility's negotiating posture by lessening a counterparty's ability to infer or surmise the bottom-line position in critical supply arrangement negotiations and contract formation efforts. Moreover, if the information is available to a counterparty it creates a frame of reference that may influence the counterparty's attitudes and/or negotiating strategies in ways that comprise a utility's ability to get the best possible terms on behalf of customers.

The disclosure of confidential contract terms also reveals the bottom line position of a utility's counterparty, who is also in competition, may have very long term interests to protect, and may be subject to forces that Vermont does not or cannot perceive. As such, disclosure

could do economic harm to counterparties and, if Vermont became known for not maintaining confidentiality consistent with industry norms, that could result in some or many counterparties being less willing or becoming unwilling to do business with Vermont utilities. Reducing the number of willing counterparties should be expected to have a similar effect to reducing supply in any market. Vermont companies will have fewer options and generally can expect to pay more when they buy or receive less when they sell. Vermont consumers would be harmed via higher rates as a result. *See also* pages 27-28 below.

- c. Protective Orders should be available for supporting materials including a company's evaluation methods and findings.

In addition to contract terms, it is also appropriate to keep confidential the analytical methods and tools employed by a company to assess resource supply options and evaluate alternatives. This can include market models, forecasts, and other tool and data compilations. These tools and methods, and the findings they produce, reveal a company's decision process which can itself be a trade secret that provides a competitive advantage. It is often necessary to provide these materials as a part of Board proceedings involving power supply. Applicants should be able to seek appropriate protective orders for related analytical materials so that they can be taken into account by the Board in proceedings concerning power contracts.

C. General standards to be applied by the Board in ruling on motions for protective orders.

1. **The Board welcomes any comments with respect to the Board's views as to its powers or as to standards the Board should apply in ruling on motions for protective orders.**

CVPS Response:

CVPS collaborated with other electric utilities to develop a joint recommendation concerning the practices to be employed by the Board in proceedings concerning the confidentiality of power contracts. CVPS submits that this recommendation describes a reasonable practice for the Board to consider that was designed to balance the interests of utilities and their customers.

2. The Board notes that parties seeking protective orders in Board proceedings often make the argument that the information constitutes a “trade secret,” seemingly invoking the public document exception in 1 V.S.A. § 317(c)(9). Is that the appropriate standard for the Board to apply when adjudicating motions for protective orders, especially when it comes to the pricing terms of power purchase agreements, which have historically been publicly available?

CVPS Response:

See response to A.1., above.

3. Although the Board may decline to provide confidential treatment without a request from any party to deny such treatment, the Board generally resolves issues about confidentiality only when there is a genuine disagreement about the confidential nature of information. When the motion for a protective order is not contested, the Board will review the motion and supporting averments to ensure that a *prima facie* case has been made for keeping the information under seal. The Board believes that requiring only a *prima facie* showing for an uncontested motion is appropriate given that the Board specifically allows any party or other person to subsequently challenge the protective order by seeking an amendment or modification of it. Is the Board’s approach to resolving confidentiality issues appropriate or should a higher standard than a *prima facie* showing be required even when none of the other parties oppose the motion for a protective order?

CVPS Response:

The Board’s approach to resolving confidentiality issues is reasonable.

The practices employed by the Board when issuing Protective Orders have been adequate to enable applicants to protect their commercially sensitive, proprietary and trade-secret information. These procedures have also been designed to protect the interests of customers and involve participation by the Department of Public Service. The Board has required applicants to

bear the burden of production with respect to their averments made in support of motions for protective orders. If challenged, the applicants have also been made to bear a burden of persuasion. CVPS does not recommend any material change in practice or alteration of the applied burdens absent a showing that current practice is ineffective.

4. In recent dockets, the Board has noted a lack of specificity in the averments of the parties seeking protective orders. Is it appropriate for the Board to demand a greater specificity with respect to each item of information for which confidentiality is sought? Can the Board determine the costs and benefits to ratepayers and the public of keeping specific information confidential (even on a *prima facie* basis) without more focused and contract-specific averments? How and to what extent should the Board test general averments as to the competitive disadvantage that will result from disclosure?

CVPS Response:

The Board's practice of reviewing and administering Protective Orders has been reasonable. The Board should collaborate with stakeholders to determine if process improvements can be identified and implemented to improve the efficacy of the process used to review and issue protective orders. A process that delineates burdens based on the scope of the protections sought would not be *per se* unreasonable.

Protective Orders require case-specific review by the Board. Under current Board practice the applicant bears the burden of production when it alleges a *prima facie* case in support of its Motion for a protective order. When averments offered in support of a Motion for a Protective Order are challenged, the applicant bears the burden of persuasion. Case-specific review of protective order requests empowers the Board, and the DPS in its consumer advocate role, to seek additional information from applicants when it is concerned about the support provided with a particular Motion. The Board should exercise caution when increasing the showing required for the issuance of a basic protective order. The Board has delineated the information to be presented and the averments sought to support a request for a protective order.

When an applicant has been able to make such a showing, the Board has routinely granted protective orders. This process has not been demonstrated to be ineffective.

D. Particular issues involving confidentiality of power purchase agreement terms.

1. The Board welcomes any comments with respect to the particular standards the Board should apply in ruling on motions for protective orders related to specific contract terms in power purchase agreements.

CVPS Response:

Please see the Joint Recommendation offered by CVPS and other interested electric utilities.

2. From the standpoint of the distribution utilities, are pricing terms often less commercially sensitive than certain other terms in power purchase contracts, such as credit support requirements?

CVPS Response:

The most sensitive information relates to a company's strategic position in the market. Price and other contract terms can each be commercially sensitive.

Pricing terms are not necessarily less commercially sensitive than other terms. Pricing terms are commercially sensitive for at least two reasons. First, the disclosure of pricing terms can frustrate a utility's efforts to achieve the best possible deal in negotiations with other counterparties. Second, counterparties that are sellers of power may be reluctant to offer favorable arrangements to a potential buyer if they are concerned that the terms will be made public with possible implications for other negotiations. The need for confidentiality for particular terms is case-specific and can vary based on the needs of the applicant. Accordingly applicant should retain flexibility to seek protection for the information that can harm its

competitive position. Such a policy serves the interest of customers and helps utilities to effectively serve the needs of their customers.

3. From the standpoint of ratepayers and the public, the price to be paid for power under a long-term contract would appear to be the information as to which there is the greatest interest in public disclosure. Is this correct? How relevant to future potential suppliers of power is the price a distribution utility is willing to pay at a particular time for a particular resource at a particular location?

CVPS Response:

Information that can be used to erode a counterparty's bargaining position when engaged in a purchase and sale negotiation is highly relevant to suppliers of power. Accordingly, protective orders should be available to provide appropriate protections for commercially sensitive, proprietary and trade-secret information. There are other sources of information which customers can consult to find the cost of power incurred by their serving utility. Protecting specific contract information does not undermine the public's ability to understand the cost of utility service.

4. The Board takes the position that the parties to a power purchase agreement cannot solely through their own agreement shield terms of the contract from public view in a Board proceeding. Accordingly, the Board has independently judged the merits of the motion for a protective order without regard to such provisions in the power purchase agreement. Is this appropriate?

CVPS Response:

The Board should take the contents of contracts into account when considering requests for Protective Orders.

5. Recently, the Board has distinguished between agreements under which a Vermont utility has purchased all or substantially all of the output of a generation facility from those in which a Vermont utility purchases only a portion of the output, suggesting that the argument for confidentiality from the perspective of the seller may be less persuasive in the first instance. Is such a distinction appropriate at least in some cases?

CVPS Response:

The distinction proposed by the Board probably is not appropriate in enough cases to warrant establishing it as a standard. The relief established under a protective order must be case-specific and may vary based on the needs of applicants. Applicants should be able to make necessary showings as appropriate to the relief requested under their Motions.

6. When the Board evaluates power purchases at above-market rates in light of other considerations such as renewable attributes and environmental benefits, does this heighten the need for public disclosure of pricing terms? Don't ratepayers and the public need sufficiently detailed information in order to evaluate whether the Board is making the appropriate trade-offs between price and other considerations in approving a power purchase under Section 248?

CVPS Response:

Board practice is not creating a barrier that unduly limits the public's ability to evaluate Board orders and determinations in rate cases or Section 248 investigations. The public is represented by the Department, an advocate with full access to all contract terms. Others who meet the standards for party status and sign a protective agreement can also have access unless disclosure would undermine the value of confidential treatment.

7. In addition to Vermont public policy preferences in favor of greater public disclosure, the general value of transparency, the facilitation of informed public input, debate and participation in Board proceedings, and the enhanced opportunity for informed discussion and analysis of Board decisions and of Vermont electric utilities, generally, by the public, the media, consultants and academic researchers, it can be argued that greater public disclosure of contract terms would result in a more informed and efficient market for the purchase and sale of wholesale power. Yet the emergence of a more competitive market for wholesale power seems to have resulted in increased efforts by the parties to wholesale power agreements to keep terms of such agreements confidential. Is this a case where the interests of individual electric generators and distribution utilities may diverge from the greater societal interest in more disclosure, at least at the national level?

CVPS Response:

CVPS believes that its responsibility is to seek to acquire power that is economic for its customers. In this context the Company maintains that its interest and those of its customers are aligned. Since CVPS must participate in the competitive wholesale power market established under FERC

jurisdiction, it asks the Board not to take action that would make it more difficult for it to serve the best interests of its customers.

The Board has developed policies that help to align the interests of serving utilities and their customers. Companies seek protection for commercially sensitive, proprietary and trade-secret information in order to improve the quality and cost of the services made available to customers. It is not necessarily the case that wide public disclosure of commercially sensitive information, which might affect the outcome of negotiations between counterparties, will enhance market efficiency. On the contrary in the current market, the greater social interest will be best served through a process that facilitates and supports vigorous competition among and between buyers and sellers which would be undermined if public disclosure of contract terms were required. The design of the regional wholesale market is a matter within the jurisdiction of the Federal Energy Regulatory Commission. Vermont should not take action that impairs its electric companies from participating in the wholesale market so as to obtain the lowest reasonable cost for supply resources at commercially attractive terms.

- a. The Board seeks more information about the practices of other states, FERC and ISO-NE as it relates to protecting the confidentiality of contract terms for the purchase of power.**

CVPS Response:

Other jurisdictions and regulatory agencies have established procedures to protect the confidentiality of contract terms for the purchase of power.

- a. FERC Guidelines Re: Confidential Information and Submission Requirements
 - A. FERC's 2002 Rule Re: Public Utility Filing Requirements Electronic Quarterly Reports & FERC Form 1

In 2002, FERC issued its Final Rule on Revised Public Utility Filing Requirements, Order No. 2001, 99 FERC ¶ 61,107, Docket No. RM01-8-000, issued Apr. 25, 2002. This rule

outlines the requirements for public utility filing requirements relating to public utility rates, terms and conditions of service. FERC noted that the new requirements allow it to perform its regulatory functions and also allow both customers and FERC to identify situations that indicate the possible exercise of market power that warrant specific investigation. Id. at 7.

Under this rule, FERC requires jurisdictional utilities to file detailed information about wholesale power purchases in Electronic Quarterly Reports (“EQRs”). The EQR provides a backward-looking, aggregated average quarterly detail on price paid for the quarter by resource/contract.

While the EQR provides an aggregated average quarterly detail on price paid for the quarter by resource/ contract, the FERC Form 1 is more detailed and tracks the average price for each month. At the same time, however, it reports an all-in price and therefore does not break out the price by product (*i.e.*, energy, capacity and RECs are not listed separately). Additionally, the Form 1 represents an historic, average aggregate payments per supplier. The FERC Form 1 also does not disclose PPA prices or price algorithms.

In its 2002 decision, FERC explained that:

The revised filing requirements also reflect the Commission’s careful balancing of the need for data transparency against the concern that price information can be used for anti-competitive purposes. The Electric Quarterly Reports will be filed 30 days after each calendar quarter. This time delay will greatly reduce the usefulness of the data as a tool for collusion but gives customers data they need for long-term decision making.

Id. at 9.

During the rulemaking process and in response to comments suggesting that FERC should extend confidential treatment to cover market-based transactions to prevent harm to competitors and to the markets generally, FERC countered that its decision to disclose rate information as consistent with judicial directives to focus on the needs of the overall market,

rather than focusing on protecting the interests of individual competitors within the market. Id. at 40. It further stated that the disclosure requirements are appropriate to give customers better information to benefit from competitive power markets. Id. at 32.

B. FERC's General FOIA Rule

The FERC general rule relating to treatment of confidential information is set forth at 18 C.F.R. § 388.112, and provides that any person submitting a document to the FERC may request privileged treatment by claiming that some or all of the information contained therein is exempt from the mandatory disclosure requirements of the Freedom of Information Act (“FOIA”).² The FERC rule sets forth the following procedure. First, the filing party submits a written statement requesting privileged treatment of the information and providing a justification for such treatment. Second, the filing party submits a public version of the document with the sensitive information removed, as well as an original of the privileged version that is clearly marked as Privileged or Protected on each page and placed in a sealed envelope. The Secretary of the FERC then places the sensitive materials in a nonpublic file while the request is pending, but the FERC does not make a determination on any claim of privilege at that time. The Secretary also places the request for privileged treatment and a copy of the original document (with the sensitive information omitted) is made public. Then, when a FOIA requester seeks a document for which privilege has been claimed, or when the FERC considers releasing the information, the person who originally submitted the information is notified and given an opportunity to comment (or, an opportunity to seek protection of the materials in court).

² Pursuant to the FOIA, 5 U.S.C. § 552, public records are generally subject to mandatory disclosure. Section 552 lists a series of exceptions to this rule, including that provided in part (b)(4), which provides an exemption for matters that are “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

b. SEC Rule.

Rule 24b-2 (17 C.F.R. § 240.24b-2) provides the “exclusive means of requesting confidential treatment of information required to be filed” under the Securities Exchange Act of 1934. It permits any person filing any document pursuant to the act to make a “written objection” to the public disclosure of any information contained therein. The rule sets forth a procedure similar to that provided by the FERC rule: (1) the applicant omits from the filing the portion of material that is claimed to be confidential; (2) the applicant marks the submitted material to indicate the confidential portion has been omitted and filed separately; (3) the applicant files a copy of the confidential portion in a separate enveloped marked “Confidential Treatment”; and (4) the applicant files a separate application objecting to the disclosure of the confidential portion, stating the grounds for that objection and a justification of the period of time for which confidential treatment is sought. Pending a determination by either the Commission or the Division of Corporate Finance³, the material is not made publicly available. If the applicant’s objection to disclosure of the information is sustained, then a notation will be made in the material and the material will be treated as confidential. However, such a determination does not preclude reconsideration “whenever appropriate,” including when a request is made under the FOIA. If the objection is not sustained, or if a prior grant of confidential treatment has been revoked, the applicant is notified and may petition for review of the decision.

Rule 24b-2 does not provide guidance as to what sort of information is considered to be confidential. In a Staff Legal Bulletin, issued by the Division of Corporate Finance on Feb. 28,

³ Pursuant to 17 C.F.R. § 200.30-1(a)(3), the Commission has delegated to the Division of Corporate Finance the authority to grant and deny requests for confidential treatment of contract provisions that are filed with the Commission under the 1933 Act. The language of Rule 24b-2 and of the 2/28/97 Staff Bulletin issued by the Division of Corporate Finance suggests that the Division has the same authority when materials are filed with the Commission pursuant to the 1934 Act.

1997 (with Addendum dated 7/11/01), the Division recognized that contract pricing terms (referring to contracts generally and not specifically in reference to wholesale power contracts) may be deemed confidential because their disclosure may result in competitive harm. The Division noted that most applicants submitting a request for confidential treatment rely on the FOIA exemption covering “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” The Division requires an applicant to request a specific date for the termination of confidential treatment of the subject information, as well as analysis that supports the request. CVPS has filed power contracts with the SEC and sought and received protection from the disclosure of confidential terms for a period of 10 years.

c. ISO-NE.

ISO New England’s Markets and Services Tariff (8/30/2010), § 3.1(h) deals with ISO-NE’s treatment of “Strategic Information,” defined as:

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

Strategic Information includes Confidential Information supplied to ISO-NE to the extent it would affect a Governance Participant’s bid or offer strategy. The tariff provides the following examples of Strategic Information: (1) offer prices and parameters for particular resources including bid blocks and times; and (2) cost information regarding operations of one or more resources if and to the extent supplied to the ISO. In addition, Strategic Information may include information calculated or produced by the ISO, including “[a]ggregate prices and quantities offered that are derived through the unit commitment process.” Id.

Strategic Information that is “Confidential Information” will be released only in accordance with the applicable provisions set forth in the ISO-NE tariff. Section 2 of the tariff

provides that Confidential Information furnished to ISO is considered to be the sole and exclusive property of the Governance Participant, and release of such information to other Governance Participants is not permitted unless the furnishing participant provides written authorization for its release.

Pursuant to Section 2.1, “Confidential Information” includes information furnished to ISO that constitutes “trade secret or commercial or financial information, the disclosure of which would harm the Furnishing Governance Participant or prejudice the position of that Governance Participant in the New England Electricity,” and has been designated as confidential or proprietary by the Governance Participant.

d. Public Utility Commission Decisions from Other States.

- A. Public Utilities Commission of the State of California, Order Instituting Rulemaking to Implement Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690) Relating to Confidentiality of Information, Decision 06-06-066, dated June 29, 2006.

This decision implemented Senate Bill No. 1488 which required the California Public Utilities Commission (“PUC”) to examine its practices regarding confidential information to ensure meaningful public participation in PUC proceedings and open decision making, while honoring its obligations to protect the confidentiality of certain information. *Id.* at 2. In this decision, the PUC examined its approach to confidentiality in the context of electricity procurement by investor-owned utilities (“IOUs”) and energy service providers (“ESPs”). *Id.* at 4.

In interpreting the legislature’s intent with respect to SB No.1488, the PUC noted that it could not disregard California’s recent experience with market manipulation. *Id.* at 15. In particular, the PUC noted that in 2000, electric prices had risen to levels often in excess of \$500/MWh even though natural gas prices would have supported electric prices of only about

\$75/MWh. Id. FERC issued a report concluding that this occurred as a result of excessively high bids which appeared to have been made solely as attempts to raise prices. Id.⁴

Noting that market manipulation can arise if market-sensitive information is released across the board, the PUC addressed the need to keep such information confidential. Id. at 15-18. The PUC established a Matrix,⁵ listing certain categories of data and the confidentiality protections to be applied prospectively to those categories. Id. at 18, 23, 43, and 63. The applicant requesting confidential treatment would have the burden of proving the information was entitled to protection either by showing it fell under one of the Matrix categories or, if it was not within one of the listed categories, for some other reason. Id. at 23 and 49.

The PUC also distinguished between “market sensitive” information and “trade secrets.” “Market sensitive” information, which is specifically afforded protection by statute, involves information that is contained in procurement plans or power purchase agreements or related contracts and which would affect the market price an energy buyer pays for electricity. Id. at 41-42. While the PUC noted that there may be instances where certain information meets the standard for protection as both market-sensitive information and trade secrets, the PUC made clear that the two bases for confidential treatment are distinct. Id. at 46. However, the PUC said that the process for analyzing trade secrets would be helpful in determining how to protect market sensitive information. Id. at 50.

Finally, the PUC provided a guideline for the duration of confidentiality for procurement and related data (one year backward and three to five years forward). “The most sensitive data may require protection for five years but cases of such protection in the IOU Matrix are rare. In

⁴ The PUC cited FERC’s Final Report on Price Manipulation in Western Markets, Docket No. PA02-2-000 (March 26, 2003).

⁵ A copy of the Matrix is attached.

most cases, we adopt a window of confidentiality for such data that protects it for three years into the future, and one year in the past at most.” The PUC also stated that data that is confidential may be kept from market participants altogether, and need not necessarily be made available to such parties pursuant to a reasonable protective order. Id. at 43.

B. New Hampshire Public Utilities Commission, DE 10-195, Public Service Company of New Hampshire, Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC, Order on Motion for Confidentiality and Motions to Compel, dated Nov. 24, 2010.

PSNH filed a motion for confidential treatment of certain pricing terms and other information submitted in connection with its petition for approval of a power purchase agreement between it and Laidlaw.

As a starting point, the PUC noted that New Hampshire’s Right to Know Law provides each citizen with the right to inspect public information held by the PUC. At the same time, the PUC acknowledged that confidential, commercial and financial information is exempted from this requirement. Id. at 11.

In evaluating whether certain information requests involved confidential information, the PUC determined that copies of bids and proposals from competitive providers for RECs, energy or capacity to PSNH were confidential and competitively sensitive; however, the PUC also determined that the public had an interest in knowing how the PUC determined that the Laidlaw PPA was in the public interest and access to bid and proposal information would serve that interest. Id. at 12. The PUC determined that the identities of suppliers would not be disclosed but that pricing, product and length of contract terms would be. Id. at 13. The PUC directed PSNH to disclose an “aggregated summary of proposals received, including the range of prices and products offered, but without information identifying the suppliers.” Id.

PSNH argued that in connection with a Staff request for copies of RFPs for RECs, energy and capacity, lists of potential suppliers receiving the RFPs, the responses to the RFPs, and the names of the winning bidders, the names of winning bidders and amounts to be purchased were confidential and commercially sensitive. Id. at 15. The PUC agreed but also noted that: (a) the public had an interest in knowing the basis of the PUC's determination regarding the Laidlaw PPA; and (b) pricing obtained by PSNH for similar products through competitive RFPs would be important market data for judging the reasonableness of the Laidlaw PPA. Thus, the PUC determined that the public's right to know outweighed the interest in confidentiality with regard to the pricing resulting from the RFPs but not as to the identities of the bidders. The PUC directed PSNH to disclose a summary of the pricing and products purchased, giving a range of pricing obtained.

In responding to information requests for copies of contracts PSNH had entered which had a duration of more than three years and were for energy, capacity or RECs, PSNH argued such contracts were confidential and commercially sensitive. The PUC agreed while at the same time acknowledging that the terms of the contracts might provide market data which would inform the public about the PUC's determination of the public interest of the Laidlaw PPA. However, disclosure could also impair PSNH's ability to negotiate with competitive suppliers in the future. The PUC struck a balance by requiring disclosure of pricing and product terms but not data identifying a specific supplier or facility. In sum, the PUC required PSNH to make pricing and product terms available in aggregated or summary form without revealing any specific supplier or facility information. Id. at 15.

C. Maine PUC

Chapter 305, § 2(E) of the Commission's rules provides, as a condition of licensing, that all Competitive Electricity Providers ("CEPS") must file an annual report each year. Information that must be filed in the report includes the providers' average retail sales price, total revenues, and kilowatt-hour sales in Maine, by utility service territory and customer class. In order to verify this information, the Maine PUC requested that Central Maine Power Company, Bangor Hydro Electric Company and Maine Public Service Company provide it with the total MWh sales delivered to customers by each Competitive Electricity Provider during the calendar year 2009 in the aggregate. Re Competitive Electricity Providers Annual Reports for the Year 2009 Price, Revenue and Customer Information, Docket No. 2010-68 (Maine PUC), Order of 6/22/10. In its June, 2010 Order, the Maine PUC noted that Chapter 311 also requires that all CEPS provide supporting documentation on how the RPS requirements have been met, and that in order to verify this information it requested that the CEPS provide it with the aggregate costs of GIS certificates, alternative compliance payments, and the purchase of qualifying energy. Finally, as sales to customers under contract prior to September 20, 2007 are exempt from Maine's portfolio requirements, it requested a list of the large customers and the MWh sales whose sales the CEPs consider exempt from the portfolio requirements.

As to how it would address the confidentiality of the information, the Order simply states: "Because this type of information is considered commercially sensitive, we are providing confidential treatment to the information described above." Id. PPAs are not required to be submitted under the annual reporting requirements.

D. Indiana Utility Regulatory Commission Cases

In one case before the Indiana Utility Regulatory Commission the Petitioner requested certain information, including pricing terms of a PPA, be treated as confidential on the grounds that if such information were made public, it could be detrimental to the Petitioner and its customers with regard to future power purchases and sales. Indiana Utility Regulatory Commission, In the Matter of the Petition of Duke Energy Indiana, Inc., Cause No. 43715, Order of June 23, 2010, at 30. The Petitioner argued that the information constituted trade secrets. Id. at 31. No party objected to the request for confidential treatment, so the Commission found that certain PPA information and sales information constituted trade secrets to be afforded confidential treatment pursuant to statute. Id. at 38-39. *See also* Indiana Utility Regulatory Commission, Verified Petition of Indianapolis Power & Light Company, Case No. 43740, Order of January 27, 2010 (treating power purchase agreement pricing and related information as confidential trade secret information); Indiana Utility Regulatory Commission, In the Matter of Petition of Duke Energy Indiana, Inc., Cause No. 43505, Order of June 17, 2009; Indiana Utility Regulatory Commission, Verified Petition of Indianapolis Power & Light Co., Cause No. 43485, Order of Oct. 1, 2008.

- E. Florida Public Service Commission, In Re: Joint Petition to Determine Need for Gainesville Renewable Energy Center in Alachua County by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC, Docket No. 090451-EM, Order of May 17, 2010.

Florida has a statute, Section 366.093(1), F.S., that provides confidentiality protection for records received by the Commission that are shown to be proprietary confidential business information. The statute defines “proprietary confidential business information” as “information that is intended to be and is treated by the company as private, in that disclosure of the

information would cause harm to the company’s ratepayers or business operations, and has not been voluntarily disclosed to the public.” Id. at 1-2. Such information includes “information concerning bids or other contractual data, the disclosure of which would impair efforts of a public utility or its affiliates to contract for goods or services on favorable terms.” Id. at 2. The petitioners in this case, GRU and GREC LLC, sought confidential treatment of certain information which they argued could be used by other Florida utilities — with which GREC LLC was negotiating agreements to sell power to from similar projects — to compute or “reverse engineer” the contract payments that GREC LLC developed and negotiated specifically in the power purchase agreement between GRU and GREC LLC. Id. at 4-5. The Commission granted confidential treatment of the information and, pursuant to the statute, stated that the information would remain protected for a period of 18 months from the date of issuance of the order, after which point the information would no longer be exempt from public disclosure unless it was shown that the records continue to contain proprietary confidential business information.

- b. To what extent have other states, FERC and ISO-NE considered public interest and market efficiency arguments in assessing the value of greater public disclosure of the terms of wholesale power purchase agreements?**

CVPS Response:

- a. The ISO-NE has a policy to protect the confidentiality of commercially sensitive power supply information.

ISO-NE, as the regional electric grid operator and market administrator, maintains an information policy to which it strictly adheres in making disclosure decisions. ISO-NE states that “[t]he Information Policy is expressly intended both: (1) to protect against the disclosure of Confidential Information that could facilitate anticompetitive conduct prohibited by the antitrust laws and (2) to distribute information to the extent and in a manner consistent with preserving

the competitiveness and efficiency of the New England electric markets and the reliability of the bulk power system.”⁶

Section 2.0 of the ISO-NE Information Policy further acknowledges that ownership of information provided to ISO-NE remains the exclusive property of the provider, as follows:

Confidential Information furnished by a Governance Participant to Stakeholder Committees and/or the ISO shall, for the purposes of this Information Policy, be considered the sole and exclusive property of such Governance Participant (the “Furnishing Governance Participant”). To the extent that such Confidential Information is furnished to Stakeholder Committees and/or the ISO it shall be used solely to perform their obligations under the NEPOOL Agreement and the ISO Agreement. No Governance Participant shall be entitled to receive from the ISO and/or Stakeholder Committees any Confidential Information furnished by another Governance Participant under the NEPOOL Agreement unless the Furnishing Governance Participant has provided the relevant Stakeholder Committees and/or the ISO written authorization for such release.⁷

As mentioned above, moreover, Section 3.1(h) of ISO-NE’s policy provides that certain power purchase information constitutes “Strategic Information” which is entitled to confidential treatment.

- c. **To what extent is there agreement or disagreement as to the accuracy of any of the following statements:**
- (i) **Greater transparency about the specific terms of power purchase agreements is desirable both because of the public interest and because competitive markets tend to operate more efficiently when market participants have greater information.**
 - (ii) **There is a national trend toward keeping the terms of power purchase agreements confidential.**
 - (iii) **In most, if not almost all, jurisdictions, outside of Vermont, price and credit terms relating to wholesale power agreements are regarded as commercially sensitive and are typically not disclosed to the public.**
 - (iv) **There is legitimate concern that requiring Vermont distribution utilities to publicly disclose commercially sensitive power purchase**

⁶ ISO-NE, http://www.iso-ne.com/regulatory/tariff/attach_d/attachment_d.pdf, page 6.

⁷ IBID

terms may put them at a competitive disadvantage in relation to out-of-state sellers and buyers of power that are not subject to similar public disclosure requirements.

- (v) Public disclosure of certain terms of power purchase agreements will undermine the bargaining position of Vermont utilities and lead to higher rates for their customers.**

CVPS Response:

CVPS does not contest the general validity of these statements.

This question seeks concurrence from stakeholders around various policies and conclusions regarding the status of regional practices involving the protection of confidential power contract information. CVPS has not conducted an exhaustive study of the policies and practices employed in other jurisdictions regarding the protections afforded commercially sensitive supply information. Without prejudicing further positions regarding the protective order practices and policies of the Board, Central Vermont nonetheless reports its general concurrence with the statements.

The Board should exercise caution when considering transparency concerns to avoid erecting barriers that impair a utility's ability to effectively serve customers. Public utilities are subject to a duty to serve established by statute, and are required by the Board to act prudently when endeavoring to provide adequate service. CVPS does not favor policies that would decrease the likelihood that it can successfully serve customers or that create barriers to achieving the lowest reasonable cost to provide such service. The regulated supply market built with cost-of-service contracts was deliberately restructured with the objective of creating an effectively competitive wholesale power marketplace. A driving force in support of restructuring was the desire to harness market forces to improve the efficiency of the market and create incentives to lower cost. For a competitive market to work it is important that there be an

even playing field. The Board should not react to perceived concerns with market transparency in a manner that impairs the competitive position of Vermont utilities to the detriment of the interests of customers.

Attachment A

**Order Instituting Rulemaking (OIR) 05-06-040
Matrix of Allowed Confidential Treatment
Investor Owned Utility (IOU) Data**

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
I) Natural Gas Information		
A) Forecasts (gas)		Covers gas forecasts only insofar as they relate to gas used in electric generation.
1) Commercially available gas price forecasts	Public unless there is confidentiality provision with vendor. If there is such a provision, IOU shall first attempt to secure permission to release information. If that fails, data confidential no more than three years. ²	A price forecast is a projection of future price levels (these could be day-ahead prices, futures prices, monthly prices etc.) expressed either in nominal or a given year's dollars. Covers commercially available gas price forecasts from NYMEX, ³ CERA, ⁴ PIRA ⁵ and similar vendors only.

¹ Unless otherwise indicated, the “Public/Confidential Treatment” determinations for each item in the matrix covers data for that item for all time periods (annual, quarterly, monthly, daily etc.)

² Where this Matrix allows confidential treatment for a period of time, that period shall begin on the first date a party submits the data to the Commission or furnished it to a third party, including an affiliated company, whichever comes first.

³ New York Mercantile Exchange.

⁴ Cambridge Energy Research Associates.

⁵ PIRA Energy Group.

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
2) Utility gas price forecasts	Front three years of forecast data confidential. ⁶	Covers forecasts developed by IOUs only.
3) Utility gas demand forecasts – consumption	Utility specific – front three years of demand forecast data confidential. Aggregate – demand forecast by service territory public.	Covers forecasts of natural gas used in IOU generators and/or purchased by IOUs and delivered to other generators with contracts with IOUs to deliver power.
4) Long-term fuel (gas) buying and hedging plans	Confidential for three years	
5) Monthly California Department of Water Resources (DWR)	Confidential for three years	

⁶ For example, an IOU's forecast in 2006 of gas prices for 2007, 2008, and 2009 would be confidential, but the forecast in 2006 of gas prices for 2010 would be public. As data become one year old, the one-year window of confidentiality for historical data comes into play. Thus, in the 2006 gas price forecast for 2007, 2008 and 2009, the data for 2007 should be released in 2008, when it is one year old. The data for 2008 should be released in 2009, and so on.

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
gas position updates, including information about hedging activities		
B) Historical information (gas)		
1) Commercially available historical market gas prices	Public unless there is confidentiality provision with vendor. If there is such a provision, IOU shall first attempt to secure permission to release information. If that fails, data confidential no more than three years.	Closing trading market price of natural gas at gas delivery points.
2) Utility recorded gas procurement and cost information	Confidential for one year.	Covers actual quantity and cost of procured natural gas.
II) Cost Forecast Data - Electric		

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
A) Electric Price Forecasts		
1) Commercially available electric price forecasts	Public unless there is confidentiality provision with vendor. If there is such a provision, IOU shall first attempt to secure permission to release information. If that fails, data confidential no more than three years.	Covers broker projections of the average cost of energy, capacity, and other costs that influence the customer cost of electricity which is used to determine average customer rates broken into two time periods (on-peak and off-peak).
2) Utility electric price forecasts	Confidential for three years	Covers on-peak and off-peak annual, quarterly, monthly, and daily data
B) Generation Cost Forecasts		
1) Utility Retained Generation (URG)	Confidential for three years Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	Forecast of cost by resource
2) DWR Contracts	Variable cost of dispatchable resources confidential.	DWR Contracts are contracts for generating resource capacity and energy deliveries executed by the California Department of Water Resources during 2001 and allocated to the investor owned utilities for

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
	All other information public	contract administration purposes only.
3) QF Contracts	Confidential for three years. Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	
4) Non-QF bilateral contracts	Confidential for three years. Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	
5) Demand response program cost	Public	
6) Demand side management (not including demand response) and Energy Efficiency	Public	

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
cost		
7) Non-contractual and spot purchases of energy and capacity	Aggregated net sale and purchase cost public	
8) Forecast of total cost of generation	Public	
III) Forecast of Revenue Requirements and Customer Rates – Electric		
A) Utility Generation Revenue Requirements including DWR Contracts	Public	Does not include Transmission & Distribution or other non-Generation items.
B) Customer Class Total Revenue Requirements and Rates	Public	Total system revenue requirements allocated to existing rate classes using existing rate allocation formulas.
IV) Resource Planning Information – Electric		
A) Forecast of IOU Generation Resources	Confidential for three years.	Covers the capacity rating and expected energy output of power plants owned partly or fully by an IOU.

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
(MW and MWh)	Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	
B) Forecast of Qualifying Facility Generation	Confidential for three years. Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	
C) Forecast of IOU Hydro Greater than 30 Megawatts (MW)	Confidential for three years. Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	Hydro generation stations > 30 MW do not qualify for the Renewable Portfolio Standard (RPS).
D) Forecast of IOU Hydro Less than 30 MW - RPS-eligible	Public	Hydro generation stations <30 MW stations qualify for the RPS
E) Forecast of Pre-1/1/2003 ("Old-World") Bilateral Contracts	Individual contract information confidential for three years, or until one year following expiration, whichever comes first.	"Old World" contracts are IOU contracts for electric capacity and energy executed prior to January 1, 2003 when utilities returned to procurement. Covers price, other key terms and descriptive information for each contract or aggregations of contracts with the same supplier.

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
	Aggregated annual capacity and energy data from all contracts public.	
F) Forecast of Post-1/1/2003 ("New World") Bilateral Contracts	<p>Individual contract information confidential for three years, or until one year following expiration, whichever comes first.</p> <p>Aggregated annual capacity and energy data from all contracts public</p>	<p>"New World" contracts are IOU contracts for electric capacity and energy executed after January 1, 2003 when utilities returned to procurement.</p> <p>Covers price, other key terms and descriptive information for each contract or aggregations of contracts with the same supplier. Contracts submitted to CPUC for approval through the Application process.</p>
G) Forecast of DWR contracts	<p>Individual contract information confidential for three years, or until one year following expiration, whichever comes first.</p> <p>Aggregated annual capacity and energy data from all contracts public i</p>	

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
H) Forecast of generic renewable resources disaggregated by location and technology type	Public	Estimates of future resources that may be needed to meet the RPS requirements. This information relates to capacity, expected energy, location, technology, and possibly expected average generation costs and emissions. Ranges of the internal cost benefit scores by technology, expiring renewable contract capacity by resource type, minimum renewable procurement needed per year by resource type.
I) Forecast of existing renewable resource contracts	Public	Specific details regarding specific individual renewable resources, or projects, which include the capacity, energy, timing, and pricing terms of the contracts. Terms and conditions of executed contracts and contract amendments.
J) Forecast of wholesale market purchases	Front three years of forecast of aggregate purchases confidential	Purchases of energy, and possibly capacity, that occur for shorter durations of time and are usually purchased only shortly before needed. The purchases may be made as short term bilateral contracts or as purchases of energy from other energy markets.
K) Forecast of wholesale market sales	Front three years of forecast of aggregate sales confidential	Sales of energy, and possibly capacity, that occur for shorter durations of time and are usually sold only shortly before needed. These may be made as short term bilateral contracts or through exchange markets.

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IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
L) Forecast of Interruptible tariff and other dispatchable Demand Response programs	Public, except any reference to these programs as a percentage of peak. For such reference, the front three years of information is confidential.	Impacts of Demand Response programs and demand reduction programs.
M) Forecast of non-Demand Response Demand Side Managements (DSM) and Energy Efficiency (EE) Savings	Public	Consortium for Energy Efficiency (CEE) forecasted capacity and energy savings.
V) Load Forecast Information and Data – Electric		
A) Load Servicing Entity (LSE) demand forecasting methodology	Public	General descriptive information regarding the methodology used by LSEs when estimating future expected electric capacity and energy needs.
B) LSE Total Peak Load Forecast - Bundled Customer (MW)	Front three years of forecast data confidential	Each LSE’s own forecast of its bundled customer peak load.

APPENDIX 1
IOU Matrix

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
C) LSE Total Energy Forecast - Bundled Customer (MWh)	Front three years of forecast data confidential	Each LSE's own forecast of its bundled customer total energy requirements.
D) LSE Peak Load Forecast by Service Area (MW), i.e., Retail at ISO Peak Forecast	Front three years of forecast data confidential	Forecasts of expected highest demand (MW) during the hour, month or the year for Retail Load at ISO (which equals bundled customer load + direct access at the ISO).
E) LSE Energy Forecast by Service Area (MWh), i.e., Retail at ISO Energy Forecast	Front three years of forecast data confidential.	Forecasts of expected total energy demand (MWh) during the hour, month or the year for Retail Load as ISO (which equals bundled customer energy + direct access at ISO).
F) Total Peak Demand Load Forecast - IOU Planning Area (MW)	Annual and Quarterly data: Public. Monthly and Daily data: Front three years of forecast data confidential	Forecasts of the expected highest demand (MW) in the entire system area of the IOU. This system area includes both the customers served by the IOU (area of bundled customers) and the customers served by other retail providers. Includes bundled load, Direct Access, Community Choice Aggregation (CCA), Municipal Utilities (Munis), and Transmission and Distribution (T&D) losses.
G) Total Energy Load Forecast - IOU Planning	Annual and Quarterly data: Public.	Forecasts of the total energy requirements (MWh) in the entire system area of the IOU. The planning area includes both the customers served

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IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
Area (MWh)	Monthly and Daily data: Front three years of forecast data confidential.	by the IOU (area of bundled customers) and the customers served by other retail providers. Includes bundled load, Direct Access, CCA, Munis, and T&D losses.
H) Net capacity and energy forecasts by retail provider	Front three years of forecast data confidential	Forecast bundled customer load of each LSE plus T&D losses
I) Incremental peak load from 1:5, 1:10, and 1:20 compared to 1:2 peak	Front three years of forecast data confidential	Forecasts of expected highest demand (MW) under different weather scenarios. 1:2 means average weather conditions. 1:5, 1:10, 1:20 mean higher probability of hot temperature (one in every five, ten or twenty year).
J) Projections of Distributed Generation energy production and peak output reducing energy sales to end-users	Public	Estimation of the total energy production by all distributed generation, which reduces the total energy needed from other generation resources.
K) Energy and peak impacts of demand response programs	Public, except any reference to these programs as a percentage of peak. For such reference, the front three years of information is	Forecasts of the estimated capacity and energy impacts of various demand response programs, which reduce resource needs provided by generation resources.

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IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
	confidential.	
VI) Net Open Position Information – Electric		
A) Utility Bundled Net Open (Long or Short) Position for Capacity (MW)	Front three years of forecast data confidential	The difference between the available amount of capacity and the forecasted need for capacity which can be aggregated on an hourly, monthly, quarterly, or annual basis.
B) Utility Bundled Net Open (Long or Short) Position for Energy (MWh)	Front three years of forecast data confidential	The difference between the available amount of energy and the forecasted need for energy which is aggregated on a monthly or annual basis.
C) Utility Bundled Net Open (Long or Short) Position for Capacity (MW) by Customer Class	Front three years of forecast data confidential	The difference between the available amount of capacity and the forecasted need for capacity which can be aggregated on an hourly, monthly, quarterly, or annual basis.

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IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
D) Utility Bundled Net Open (Long or Short) Position for Energy (MWh) by Customer Class	Front three years of forecast data confidential	The difference between the available amount of energy and the forecasted need for energy which is aggregated on a monthly or annual basis.
E) Utility Planning Area Net Open (Long or Short) for Capacity (MW)	Annual and Quarterly data: Public. Monthly and Daily data: Front three years of forecast data confidential.	On a regional basis, including all LSEs, the difference between the available amount of capacity and the forecasted need for capacity which can be aggregated on an hourly, monthly, quarterly, or annual basis.
F) Utility Planning Area Net Open (Long or Short) for Energy (MWh)	Annual and Quarterly data: Public. Monthly and Daily data: Front three years of forecast data confidential.	On a regional basis, including all LSEs, the difference between the available amount of energy and the forecasted need for energy which is aggregated on a monthly or annual basis.
VII) Bilateral Contract Terms and Conditions – Electric		
A) Contracts and power purchase agreements between utilities and their affiliates.	Public	Specific details regarding specific resources owned by the affiliates (any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with) of the IOU. The contract information includes the capacity, energy, timing, and

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
		pricing terms of the contracts.
B) Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Other terms confidential for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.</p>	Specific contracts between the IOU and other parties (including affiliates of the IOU) to deliver power to the IOU. The contract information includes the capacity, energy, timing, and pricing terms of the contracts.
C) Expired Power Purchase Agreements (PPAs)	Public	Terminated Power Purchase Agreements under which power is no longer delivered
D) Interruptible tariff and other dispatchable	Public	Descriptions of Demand Response programs and their operating characteristics, customer groups etc.

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
Demand Response programs		
E) New non-utility affiliated bilateral contracts (except RPS)	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Other terms confidential for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.</p>	Includes contracts of greater and fewer than 5 years in duration
F) Renewable Resource Contracts under RPS program - Contracts with Supplemental Energy Payments (SEPs)	Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and	SEPs are payments, administered by the California Energy Commission (CEC), that are intended to cover some or all (at CEC's discretion) of the difference between the market price referent and the (higher) price of RPS contracts that are approved.

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
	<p>online date.</p> <p>Other terms confidential for three years, or until one year following expiration, whichever comes first.</p>	
G) Renewable Resource Contracts under RPS program - Contracts without SEPs	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Other terms confidential for three years, or until one year following expiration, whichever comes first</p>	
Score sheets, analyses, evaluations of proposed RPS projects	Confidential for three years.	

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
VIII) Competitive Solicitation (Bidding) Information – Electric		Bid data on price, terms and conditions.
A) Bid information	Total number of projects and megawatts bid by resource type (e.g. fossil, wind, solar, hydro-electric, etc.) – public after final contracts submitted to CPUC for approval	Participating bids, counter-party names, prices and quantities offered.
B) Specific quantitative analysis involved in scoring and evaluation of participating bids	Evaluation guidelines should be public. Other information confidential for three years after winning bidders selected.	Other information includes levelized and/or escalated bid prices, transmission upgrade cost adders, wheeling charges, congestion costs, delivery characteristics, portfolio fit, "dump energy" quantities and costs, SEP calculations.
IX) Strategic Procurement Information – Electric		

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
A) Qualitative identification of specific uncertainties leading to risks	Public	Discussion of various uncertainties impacting resource need, potential supply and prices (e.g. core/non core market structure, community choice aggregation).
B) Reliance on various types of resources, such as energy efficiency, demand reduction, shaped energy contracts, capacity contracts, new utility power plants, and purchases from California Independent System Operator (CAISO) markets expressed as annual percentages	Public	Forecasts or recorded data on broad categories of supply sources used to serve bundled load, expressed as annual percentages.
C) Qualitative description of risk management plans with use of hedging instruments, including gas supply purchases, tolling arrangements, financial arrangements.	Public	Discussion of various means, both physical and financial, which utility may employ to hedge energy cost risk without quantification of hedging strategy, hedging products used or hedged volumes.

**APPENDIX 1
IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
D) Procurement incentive mechanisms including principles underlying incentive mechanisms, formulas to allocate cost responsibility relative to reference levels or benchmarks, and escape conditions.	Public	Description of incentive mechanisms including underlying principles, comparisons to reference levels or benchmarks, allocation of costs/benefits and escape conditions.
E) Procurement mechanics including number, type, and design of Requests of Offers (RFO) proposed to secure bilateral bids, and contract oversight appropriate to ex-ante review in lieu of prudency review.	Public	General discussions of RFO procurement, products being sought through RFO and criteria to be used to evaluate RFO.

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IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
X) Recorded (Historical) Data and Information – Electric		
A) Bundled customer total historical peak demand (MW)	Public after data are one year old,	Historical peak demand for all customers in aggregate.
B) Bundled customer historical peak demand by customer class	Public after data are one year old,	Historical peak demand by customer class.
C) IOU planning area historical peak demand	Public	Historical peak demand at system area level. Highest demand system level hourly historical load for previous calendar year is made public by FERC sometime after June 1 of the current year (entire year: 8760 hours).
D) IOU Planning Area historical peak demand by customer class (MW)	Public after data are one year old.	Historical peak demand segmented by customer class.
E) Total IOU Bundled Customer historical energy sales (MWh)	Annual, quarterly, monthly – Public. Daily, hourly data public after data are one year old.	Historical sales are as billed at the customers meter without the addition of distribution and transmission losses.
F) Bundled Customer historical energy sales	Annual, quarterly, monthly – Public	Historical sales are as billed at the customers meter without the addition of distribution and transmission losses.

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Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
by customer class (MWh)	Daily, hourly data public after data are one year old.	
G) IOU historical energy sales for bilateral contracts in which the IOU is the seller	Public	Transaction detail of all exchange traded sales of energy from IOU to another party).
H) Market purchases of energy and capacity	Public	Transaction detail of all exchange-traded purchases of energy by IOU to another party
I) Market sales of energy and capacity	Public	Transaction detail of all exchange traded capacity purchases and sales
XI) Monthly Procurement Costs (Energy Resource Recovery Account [ERRA] Filings)	Confidential for three years	Detail of monthly variable cost on energy and utility operation.
XII) Monthly Portfolio Risk Assessment	Confidential for three years	Value at Risk (VaR) of electric and gas for electric generation – (a.k.a. To Expiration Value at Risk [TeVAr]).
XIII) Energy Division Monthly Data Request (AB 57)	Confidential for three years	Updates (on the monthly/weekly on/off-peak procurement cost, procurements cost categorized by transaction type, monthly energy and capacity forecast, monthly residual net short (RNS) forecast for a rolling

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IOU Matrix**

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment¹	Explanation of Item
		12-month the number of hours the utility is expecting to be short or long, the nature of the long position (physical vs. economic), monthly electric and gas price forecast) filed in response to the Energy Division's monthly data request.

(END OF APPENDIX 1)

Attachment B

**ISO New England Inc. Transmission, Markets and Services Tariff
Information Policy**

ISO New England Inc. Transmission, Markets and Services Tariff

ISO New England

ISO New England Inc. Transmission, Markets and Services Tariff

Document Generated On: 8/30/2010

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ISO New England Information Policy

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APPENDIX A FORM OF NON-DISCLOSURE AGREEMENT

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Introduction

The ISO New England Information Policy establishes rules and guidelines regarding the appropriate disclosure of all information received, created and distributed in connection with the operation of and participation in the markets administered by ISO New England Inc. (the “ISO”). The Policy allows stakeholder committees, task forces and working groups (collectively, “Stakeholder Committees”), the ISO, and Governance Participants to share information with the benefit of a common understanding regarding how that information will be used and how appropriate confidentiality will be maintained. This Policy document consists of three sections. Section 1 highlights the Policy's intent and objectives. Section 2 discusses confidentiality issues. Finally, Section 3 specifies what types of information are available to whom. This Section, in its entirety, is intended to replace the Information Classification Document appendix of the formerly adopted Policy (March 5, 1999 version). Changes to the Information Policy will be made in accordance with Section 11.3 of the Participants Agreement.

Section 1 -Policy Intent & Objectives

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

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

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

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

This Information Policy will:

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

This Information Policy is intended to comport with the obligation of the ISO, Stakeholder Committees and the Governance Participants to comply fully with the antitrust laws and the information access and disclosure provisions of the standards of conduct promulgated by the Federal Energy Regulatory Commission in 18 C.F.R. § 37.4 (the “Codes of Conduct”). The Information Policy is expressly intended both: (1) to protect against the disclosure of *Confidential Information* that could facilitate anticompetitive conduct prohibited by the antitrust laws and (2) to distribute information to the extent and in a manner consistent with preserving the competitiveness and efficiency of the New England electric markets and the reliability of the bulk power system.

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

Section 2 -Confidentiality Issues

2.0 Confidentiality

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

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

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

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

2.1 Confidential Information

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

- (a) Information that **(i)** is furnished by a Governance Participant (the "Furnishing Governance Participant") to the ISO, Stakeholder Committees or another Governance Participant, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Furnishing Governance Participant or prejudice the position of that Governance Participant in the New England electricity markets, and **(iii)** has been designated in writing by the Furnishing Governance Participant as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Furnishing Governance Participant seeks confidential treatment for such information.

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

job status or performance or terms of employment of any ISO employee (“ISO Employment Information”) shall be *Confidential Information*.

- (c) Information that (i) is furnished by a non-Governance Participant that takes part in a demand response program operated by the ISO (a “DR Information Provider”) to the ISO, Stakeholder Committees or any Governance Participant in connection with the demand response program, (ii) constitutes trade secrets or commercial or financial information, the disclosure of which would harm the DR Information Provider or prejudice the position of the DR Information Provider in the demand response program, and (iii) has been designated in writing by the DR Information Provider as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the DR Information Provider seeks confidential treatment for such information.
- (d) Information that (i) is furnished by a non-Governance Participant acting as a Project Sponsor to the ISO, Stakeholder Committees or any Governance Participant in connection with the Forward Capacity Market, (ii) constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Project Sponsor or prejudice the position of the Project Sponsor in the Forward Capacity Market, and (iii) has been designated in writing by the Project Sponsor as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Project Sponsor seeks confidential treatment for such information.
- (e) Any report, compilation or communication produced by the ISO or a Stakeholder Committee that contains information described in Clause (a), (b) or (c) above and allows for the specific identification of the Furnishing Governance Participant or the DR Information Provider.

Confidential Information shall exclude information if and to the extent such information (1) is or becomes generally available to the public without any party violating any obligation of secrecy relating to the information disclosed, or (2) is received by a Governance Participant in good faith from a third party who discloses such information on a non-confidential basis without violating any obligation of secrecy relating

to the information disclosed, or (3) is defined as “Public Information,” in Section 3, or (4) can be shown by the recipient's prior records to have been already known to the recipient other than through disclosure by a third party which would not be subject to exclusion based on (2) above.

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

2.2 Treatment of Confidential Information

The Governance Participants shall take reasonable measures to assure that all of their employees, representatives, or agents who by virtue of their participation on, or as an alternate on, a Stakeholder Committee have access to *Confidential Information* of another entity that furnished the information, including, as appropriate, a Furnishing Governance Participant, a DR Information Provider or the ISO (the “Furnishing Entity”) (1) do not disclose such *Confidential Information* to any other employee, representative, or agent of the same Governance Participant or any other person except as permitted under this Section 2.2 and (2) use such information solely for the purpose of satisfying that person’s responsibilities on the Stakeholder Committee. Each Governance Participant shall, upon request by the Participants Committee, provide assurance that the terms of this Section 2.2 are complied with. Any Governance Participant that has furnished *Confidential Information* to Stakeholder Committees may require each recipient to return all or any portion of the *Confidential Information* once it is no longer needed by such recipient to fulfill its responsibilities under the Filed Documents.

Notwithstanding the foregoing, the ISO, the Participants Committee or any Governance Participant may disclose *Confidential Information* of another Governance Participant or the ISO only: (1) if such disclosure is permitted in writing by the Furnishing Entity, DR Information Provider or the ISO, as the case may be, or (2) if disclosure is required by order of a court or regulatory agency of competent jurisdiction or dispute resolution pursuant to the Filed Documents, or (3) as otherwise specifically permitted by this Policy. Any entity subject to this Information Policy shall provide prompt written notice to the Furnishing Entity if that entity either is compelled by order of a court or regulatory agency of competent jurisdiction to disclose, or receives a request seeking to compel disclosure of, *Confidential Information* for which it is not the Furnishing Entity. Further, in recognition that certain Governance Participants are subject to public records and open meeting laws and that certain other demands may be

placed on Governance Participants to disclose *Confidential Information*, a recipient of *Confidential Information* of another Governance Participant or the ISO may disclose such *Confidential Information* if and to the extent required by law or requested in writing pursuant to a public records demand or other legal discovery process, provided in either event that the disclosing Governance Participant gives the Furnishing Governance Participant or the ISO prompt written notice of the circumstances that may require such disclosure in time so that the Furnishing Governance Participant or the ISO has a reasonable opportunity to seek a protective order to prevent disclosure.

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

Notwithstanding anything to the contrary in this Information Policy, resource-specific information contained in the data fields of the Forward Capacity Tracking System, but not information provided to the ISO as separate attachments via the Forward Capacity Tracking System, will be shared with subsequent Lead Market Participants or Project Sponsors for that resource.

2.3 Disclosure of Information Regarding Defaulting Governance Participants

Notwithstanding any provision herein to the contrary, the information for release to Governance Participants identified in this Section shall no longer be deemed “*Confidential Information*” pursuant to the Information Policy. For any Governance Participant that is the subject of a voluntary or involuntary bankruptcy petition or has sought relief under bankruptcy or insolvency laws, or that has otherwise defaulted under its arrangements with the ISO, which default is not, or the ISO reasonably concludes will not be, cured within five days of the date of the default, in the case of a Payment Default (as defined in the Billing Policy) or within ten days of the date of its default in the case of any other defaults, the following information with respect to that Governance Participant’s obligations shall be disclosed by the ISO to each member and alternate on the Participants Committee, each Governance Participant’s billing

contacts, appropriate Stakeholder Committee(s) designated by the Participants Committee, and appropriate state regulatory or judiciary authority:

For the 60 calendar day period prior to the date of the bankruptcy, insolvency petition or other default (the “Default Date”) and from the Default Date forward until such time as the Governance Participant cures the default: **(i)** the type and available amount of financial assurance in place; **(ii)** any notification provided by such Governance Participant pursuant to the Financial Assurance Policy and/or Billing Policy to the ISO of a material change in its financial status; **(iii)** any change in the type or available amount of financial assurance provided by such Governance Participant; **(iv)** whether such Governance Participant has defaulted on its payment obligations under the Billing Policy, the amount of any such default, the date of the default, and when or whether the default is cured; **(v)** whether such Governance Participant has defaulted on its obligations under the Financial Assurance Policy, the amount of any such default, the date of the default, and when or whether the default is cured; **(vi)** where the financial assurance provided by such Governance Participant is a bond, whether the ISO has provided notice of default to the surety and whether the surety has given notice of termination of the bond or otherwise disclaimed or refused to honor or delayed in honoring its obligations under the bond, and the response of the ISO to any such notice; **(vii)** whether such Governance Participant is a net seller or purchaser in the New England Markets; **(viii)** the amount of such Governance Participant’s purchases in the New England Markets; and **(ix)** whether such Governance Participant owns a registered Load Asset.

If a Governance Participant is suspended from the New England Markets, the ISO immediately shall send notice of such suspension to each of the members and alternates on the Participants Committee, the energy regulatory agencies in each of the New England states and the Federal Energy Regulatory Commission. Said notice shall identify the specific date and time of the suspension.

2.4 Breach of Confidential Information Obligations

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

- (a) A Furnishing Governance Participant may, at its option, take one or both of the following actions:
 - (i)** apply to any court of equity having jurisdiction for an injunction restraining the ISO, any Stakeholder Committee or any Governance Participant from an actual or threatened violation of

this Section 2 relating to *Confidential Information* provided by such Furnishing Governance Participant and (ii) submit such actual or threatened violation to arbitration in accordance with the procedure provided in Section 17.3 of the Participants Agreement and Section I of the Transmission, Markets and Services Tariff.

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

Section 3 -Information Access

3.0 Information Access

(a) Public Information

This information includes:

- Public record filings with regulatory agencies. (Some examples include, but are not limited to, ISO Budget Data required for ISO Tariff Filings; and data associated with the Open Access Transmission Tariff.)
- Data posted on the Open Access Same-Time Information System (“OASIS”). (Some examples include, but are not limited to, Transmission Facilities Information including System Inventory; New Applications; Scheduling Information, Real Time Tie Line Use and Surplus Availability, Aggregate MW of generation operating out of merit (for transmission, reliability, and VAR) by Reliability

Region (these Regions will be defined by the ISO, such that no *Confidential* or Strategic Information is released), Real Time Operating Reserve Availability and curtailment or interruption of External Transactions.)

- Information and/or reports that are required to be filed with the Federal Energy Regulatory Commission (“FERC”) (unless specifically required to be filed on a confidential basis). (For example, the Filed Documents.)
- Public Generator Information including System Inventory and New Applications. (Some examples include, but are not limited to, Capacity, Energy, Loads & Transmission (CELT) Report; and 18.4 Applications.)
- Public Market Information includes any items required to be made public by (i) the Filed Documents; (ii) other relevant documents, including without limitation the ISO New England Manuals and any other system rules, procedures or criteria for the operation of the New England system and administration of the Market and the Filed Documents; and (iii) the items listed in Aggregate Market Results, as posted under “Market Information” on the ISO website pursuant to this Information Policy. (Some examples include, but are not limited to, aggregate Market requirements and settlements; Clearing Prices; Locational Marginal Prices; lists of load zones, nodes and hubs; Emergency Energy notices; market monitoring input assumptions and threshold values; Financial Transmission Rights modeling and auction results; Auction Revenue Rights modeling and auction results; information relating to the Load Response Program; ICAP Market Schedules and UCAP auction results.)
- In addition, the System Operator shall publish each month’s bid and offer information for all markets on its website on the first day of the fourth calendar month following the month during which the applicable demand bids and supply offers were in effect (e.g., bid and offer data for January would be released on May 1), provided that the information is presented in a manner that does not reveal the specific load or supply asset, its owners, or the name of the entity making the bid or offer, but that allows the tracking of each individual entity’s bids and offers over time.
- Market test information including any information equivalent to Public Market Information derived from test programs for new markets or market software or simulations of proposed market improvement (includes any and all information necessary for evaluation of the impacts of a proposed

new market or an improvement to an existing market, such as cost-shifting impacts and price impacts under certain conditions).

- System Aggregate Planning Data including load forecasts. (Some examples include, but are not limited to, Objective Capability (OC); and total Governance Participants and non-Governance Participants proposed Generation.)
- Public Reports required by the Filed Documents (including, but not limited to, evaluation of procedures for determination of Locational Marginal Prices as well as the awarding Financial Transmission Rights and associated Congestion Costs and Transmission Congestion Credits).
- Public Market Monitoring Information including, but not limited to, public reports by the Independent Market Advisor required by the Market Rules (includes the ISO's time and expenses in pursuing sanctionable behavior on a case-by-case basis and periodic reports of sanctions imposed and the sanctionable behavior upon which such sanctions were imposed, provided that the information is presented in a manner that does not allow for the identification of the Governance Participants by name or provide a manner for identifying such Governance Participants, except as otherwise provided in the Filed Documents).
- Any other information that is not *Confidential Information* that the ISO determines is appropriate for public dissemination because it will improve system reliability, the efficiency of the markets or public understanding of the New England system and the operations of the ISO.

This data may be made available to the public at large. (Fees may be applicable to cover process and handling expenses.) [This information corresponds to the MIS security rule "PB" Public.]

(b) Non-Public Transmission Information

This information includes:

- Information and/or reports that are filed with the North American Electric Reliability Council (NERC). (Some examples include, but are not limited to, all NPCC data, see examples below.)

- Information and/or reports that are filed with the Northeast Power Coordinating Council (NPCC). (Some examples include, but are not limited to, NPCC Library Power System Loadflow Modeling Data; and NPCC Library Power System Stability Data.)
- Information related to the transmission system, which is not posted on the OASIS, including but not limited to Detailed Operations Data. (Some examples include, but are not limited to, all transmission planning models; and guides for modeling the New England Bulk Power System.)
- Information relating to specific Generating facilities, which is required by transmission personnel to ensure the reliable operation of the New England bulk power system. (Some examples include, but are not limited to, detailed Generator operating characteristics; and dynamic swing recorder plots.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of Special Protection Systems; and transmission operations related to Stability Limits.)
- Information related to system restoration efforts. (Some examples include, but are not limited to, ISO and Governance Participants' detailed Power System Restoration Plans.)

This information may be made available to Reliability Councils and all Governance Participants' Transmission Personnel. The release of relevant transmission outage information to affected generators, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation. There is no direct correlation to the MIS Security Rules and there is currently no specific transmission information distributed via the MIS.

(c) Governance Participant Specific Data

This information includes:

- Data not yet posted on the OASIS. (Some examples include, but are not limited to, Interface Transmission Service Schedules Lists; and pre-posted forecast of Transmission Interface Transfer and Limits.)

- *Confidential Information*, as defined in Section 2.1 of this Policy, for which this Governance participant, or an Agent thereof, has the right to receive the data. (Some examples include, but are not limited to, Product Obligation; and Load.)
- Invoice and Settlement Data. (Some examples include, but are not limited to, Governance Participant Phase I/II Hourly Transfer Capability Allocations; Electrical Load, Adjusted Net Interchange, Obligation, Entitlement, Charges, and Payments for each market.)

[This data may be made available to active users or agents of the specified Governance Participant. This information corresponds to the MIS security rule “SM” Settlement Rule.]

(d) Asset Specific Information – Near Real-Time

This information includes:

- Near real-time information related to the particular asset. (Some examples include, but are not limited to, Generation Levels (MW); Designations (MW); Automatic Generation Control Status, Operating Limits, Response Rates, unit forecast and operation information, and Real Time Status of External Contract Sales and/or Purchases for which a Governance Participant has a contract on file with the ISO.)

This data may be made available to those Governance Participants, or Agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. [This information corresponds to the MIS security rules “OS” Ownership Rule, “RS” Responsible Party Rule and an Entitlement Holder Rule, currently not identified in the MIS security rules. As applicable, this data may also be made available to a Governance Participant who is a contractual party to external or internal bilateral contracts for the specified Asset, which corresponds to the MIS security rule “TH” Transaction Holder Rule.] The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation.

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

This information includes:

- Unit Forecast information relating to a particular Asset, which is necessary to determine the projected operation of particular Generators. (Some examples include, but are not limited to, Start Time; Generation; and Shut-Down Time.)
- Information relating to a particular Asset, which is necessary to determine the accuracy of Settlement. (Some examples include, but are not limited to, High Operating Limit; Generation; Ownership Share; and Duration on Automatic Generation Control.)
- Governance Participant input data. (Some examples include, but are not limited to, Generation and Tie Input Data; and Records of Deficient Performance.)
- Capability Responsibility (CR) data and calculations, for those specific Generating facilities for which a Governance Participant(s) has an ownership interest. (Some examples include, but are not limited to, Unit Capability Demonstrations and Audits; and Seasonal Claimed Capability.)
- All information, with the exception of bids, offers and meter data, necessary to verify Settlement data. (Some examples include, but are not limited to, Response Rate data; and Minimum Run-Time data.)

This data may be made available to those Governance Participants, or Agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. [This information corresponds to the MIS security rules “OS” Ownership Rule, “RS” Responsible Party Rule and an Entitlement Holder Rule, currently not identified in the MIS security rules.] The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation.

(f) Meter, Bid and Offer Data

This information includes:

- *Confidential Information* submitted as input to the Market System. Bid and offer data may be made available to any Governance Participant with a Generation Ownership Share, or Agent thereof, for a specified Asset. [This information corresponds to the MIS security rules “RS” Responsible Party Rule.]

- Meter data may be made available to the Assigned Meter Reader for a specified Asset. There is no direct correlation to the MIS Security Rules and there is currently no specific MIS distribution of meter data. However, meter data may be manually distributed to the Host Participant whose unmetered load is calculated based on said meter data.

(g) Reliability, Operations and Area Control Information

(i) External Control Center Information

This information includes:

- All System Operations or Planning Information that relates to the particular external Control Center. (Some examples include, but are not limited to, Transmission Interface Transfer and Limits; and Inter-Area Emergency Assistance available, used for Planning purposes, under OP-4 conditions.)
- Information that is required to assure the reliable operation of the interconnected bulk power system. (Some examples include, but are not limited to, all information deemed necessary in the event of OP 4 implementation; and, under non-OP-4 system conditions, information related to Inter-Area flow control.)
- Inter-area Transmission Operating Guides that relate to the particular external control area. (Some examples include, but are not limited to, PV-20 Cross Trip SPS – available to New York; and Phase I Runback SPS – available to Hydro Quebec.)
- *Confidential Information* (under signature of confidentiality agreements that provide rights to Governance Participants equivalent to those granted in this Information Policy to notice of and opportunity to defend against any release of their *Confidential Information*) and non-confidential information may be shared among Control Areas for the purposes of increasing markets coordination, including elimination of seams, increasing market efficiency and study purposes of the interconnected bulk power system. (Some examples include, but are not limited to, ISO operations and markets information, including market monitoring information, provided that market monitoring information shall only be shared with independent market operators or independent market monitors and only in connection with particular investigations affecting regional markets.)

There is no direct correlation to the MIS Security Rules and there is no specific MIS distribution of External Control Center Information. This information is not available to Governance Participants, a

subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) or Planning Department directly to External Control Center personnel.

(ii) Internal (Satellites) Control Center Information

This information includes:

- All System Operations or Planning Information. (Some examples include, but are not limited to, detailed system models; and transmission element data as detailed on the NX-9 forms.)
- Information relating to specific Generating facilities that is needed to assure the reliable operation of the New England Control Area. (Some examples include, but are not limited to, Generator constraints, including the reason for such constraint; and detailed Generator unit commitment.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of Special Protection Systems; and transmission operations related to Stability Limits.)
- New England and Satellite System Restoration Plans. (Some examples include, but are not limited to, the ISO, Satellite and Governance Participants' detailed Power System Restoration Plans.)

There is no direct correlation to the MIS Security Rules and there is no specific MIS distribution of Internal (Satellite) Control Center Information. This information is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) directly to Satellite personnel.

(h) Load Response Provider Information

This information is asset-specific *Confidential Information*, including:

- Retail customer information.
- Customer data.
- Load profiles.

This information is subject to certain state law restrictions and is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) directly to Load Response Provider personnel.

(i) ISO New England Information

This information includes:

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

ISO personnel, Consultants, Counsel, and Board Members may have access to any information defined in the categories listed above. This information corresponds to the MIS security rule “ISO” ISO New England.

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

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

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

This information includes:

- Information designated by a Governance Participant or the ISO as CEII, which is defined by FERC as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure.”
- Reports, summaries, compilations, analyses, notes or other information which contain such information.

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

3.1 Information Requests

(a) Requesting Entities

As used in this Section 3.1, the term “Requesting Entity” shall mean any entity (other than the FERC or an Authorized Person, as defined in Section 3.3 of this Information Policy) that requests information from the ISO.

(b) Public Information

If a Requesting Entity requests that the ISO publish Public Information (as defined in Section 3.0(a) of this Information Policy) that is not currently published by the ISO, the ISO may after consultation with the Participants Committee or its designated subcommittee or working group defer or deny such request if the ISO determines that publication of such data is not feasible at the time of such request due to resource limitations, including, without limitation, available software.

(c) Non-Public Information

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

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

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

(d) Form of Request; Tracking

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

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

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

(e) Timing and Notice

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

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

(iii) If the Initial Response indicates that the ISO is further consulting with the Participants Committee, the ISO Information Officer normally shall provide the Requesting Entity with a follow-up response (a “Follow-Up Response”) the earlier of ten (10) business days after a recommendation by the Participants Committee as set forth in Section 3.1(f)(ii) below or sixty (60) days following the Request Date, which response shall indicate either (A) that the ISO has

made a decision on the Formal Information Request in accordance with Section 3.1(f)(ii) below, in which case it shall describe such decision, or (B) that the ISO has failed to make a decision with respect to the Formal Information Request, in which case such request shall be deemed denied.

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

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

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

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

(f) Consideration of Requests

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

(A) If the ISO determines that the information is *Confidential Information*, the ISO Information Officer will refer the request to the Furnishing Entity(ies) and the ISO will not release the requested information unless it is directed to do so by the Furnishing Entity(ies) or ordered to do so by a court or regulatory authority with jurisdiction over such matters. If the Furnishing Entity(ies) directs the ISO to release the requested information, the ISO will next determine whether the requested information is Strategic Information as set forth in Section 3.1(c)(i)(B) below. The Furnishing Entity(ies) shall bear any costs reasonably incurred by the ISO in opposing the issuance of such an order requiring disclosure of the Furnishing Entity(ies)' *Confidential Information*. Notwithstanding the foregoing, upon the request of a regulatory agency, other than FERC or its staff, having appropriate jurisdiction and subject to an appropriate confidentiality order entered under such agency's procedures sufficient to preserve the confidential nature of the information submitted, and with advance notice to the Furnishing Entity(ies), the ISO Information Officer may submit *Confidential Information* to such agency.

(B) If the information requested is Strategic Information, the ISO shall determine whether to release the requested information, in consultation with the Independent Market Advisor, NEPOOL Counsel and/or the Furnishing Entity(ies), as the ISO deems

appropriate. If the ISO releases such information, it will do so by making the information public.

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

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

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

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

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

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

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

(h) Definition of Strategic Information

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

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

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

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

- Aggregate prices and quantities offered that are derived through the unit commitment process.
- Information regarding which resources will run or have run during any particular market settlement period.

- Information derived through the unit commitment process or the market settlement system as to units that run out of merit.
- Information regarding the existence or location of certain short-term transmission constraints.

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

3.2 Disclosure to FERC

If the FERC or its staff, during the course of an investigation or otherwise, requests information from the ISO that is *Confidential Information* or CEII, the ISO shall provide the requested information to the FERC or its staff, within the time provided for in the request for information. In providing *Confidential Information* to FERC or its staff, the ISO shall, consistent with 18 C.F.R §§ 1b.20 and 388.112, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The ISO shall notify any affected Furnishing Entity(ies) (1) when it is notified by FERC or its staff, that a request for disclosure of *Confidential Information* has been received at which time the ISO and the affected Furnishing Entity(ies) may respond before such information would be made public; and (2) when it is notified by FERC or its staff that a decision to disclose *Confidential Information* has been made, at which time the ISO and the affected Furnishing Entity(ies) may respond before such information would be made public. In providing CEII to FERC or its staff, the ISO shall, consistent with 18 CFR § 388.112, request that the information be treated as CEII by the FERC and its staff.

3.3 Disclosure to Authorized Persons

(a) Definitions

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

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

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

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

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

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

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

“State Certification” shall mean the Certification of an Authorized Commission, pursuant to Section 3.3 of this Information Policy, the form of which is appended to this Information Policy (Appendix B), wherein the Authorized Commission identifies all Authorized Persons employed or retained by such Authorized Commission, a copy of which shall be filed with FERC.

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

(b) Procedures

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

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

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

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

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

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

(5) The Authorized Person may discuss Confidential Market Information with other Authorized Persons who are parties to Non-Disclosure Agreements, provided; however, that the ISO shall have confirmed in advance and in writing that it has previously released the Confidential Market Information in question to such Authorized Persons.

The ISO shall respond to any written request for confirmation within two (2) business days of its receipt.

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

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

provided; however, the identity of the Affected Party must be made to the Authorized Person within two (2) business days of the initial oral disclosure. The ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of any oral disclosure as soon as possible, but not later than two (2) business days after the date of the oral disclosure.

(iii) As regards Information Requests:

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

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

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

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

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

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

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

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

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

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

3.4 Disclosure to Academic Institutions

Notwithstanding anything to the contrary set forth herein, the ISO may disclose Confidential Market Information (as defined in Section 3.3), otherwise to be maintained in confidence pursuant to this

Information Policy, to a research university (an “Authorized Institution”), solely for the purpose of academic research by Authorized Researchers (as defined below), under the following conditions:

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

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

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

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

and agrees not to disclose the Confidential Market Information and to deny any third-party requests for the Confidential Market Information and defend against any legal process that seeks the release of any Confidential Market Information.

(e) The ISO shall provide affected Governance Participants and counsel to the Participants Committee written notice, which shall include electronic communication, of its determination whether to release Confidential Market Information in response to an Academic Institution Information Request as soon as possible, but no later than five (5) business days following the provision of the notice required in subsection (c) above. Notice of the ISO's determination shall also include all of the information contained in the Academic Institution Information Request, and shall inform the affected Governance Participants of their right to object to such release, as well as the deadline for any such objection and shall specifically state that in the event that the affected Governance Participants do not object to such release, any information released by the ISO pursuant to an Academic Institution Information Request may be subject to publication by the Authorized Institution; provided that such publication may only be made (x) upon written consent of the ISO and (y) if any material the Authorized Institution proposes to publish, which is related to or that relies upon the Confidential Market Information, is sufficiently redacted or summarized in a manner so that it may not be identified. The ISO shall not release Confidential Market Information relating to any affected Governance Participant that objects to such release within ten (10) business days of the ISO's notice of its determination. Following the tenth (10th) business day after providing such notice, the ISO may, in its sole discretion, release Confidential Market Information relating to those affected Governance Participants that have not objected to such release to the Authorized Institution, provided, however, that the ISO shall redact all Confidential Market Information relating to any objecting affected Governance Participants, as applicable.

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

APPENDIX A
FORM OF NON-DISCLOSURE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

1. Definitions

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

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

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

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

Monitor, (vi) communications between an Affected Governance Participant and ISO made on a confidential basis as part of a settlement proceeding or negotiation; and (vii) information provided to ISO on a confidential basis as part of an Alternative Dispute Resolution proceeding.

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

1.6 FERC. The Federal Energy Regulatory Commission.

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

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

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

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

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

2. Protection of Confidentiality.

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

legal process which seeks the release of Confidential Market Information in contravention of the terms of this Agreement.

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

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

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

in writing is legally required to be furnished, and to exercise their best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

2.5 Care and Use of Confidential Market Information.

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

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

2.5.3 Schedule of Authorized Persons.

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

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

2.5.4 Use of Confidential Market Information. The Authorized Person and his or her Authorized Commission shall use the Confidential Market Information solely for the purpose of assisting the Authorized Commission in discharging its legal responsibility to monitor the wholesale and retail electricity markets, operations, transmission planning and siting, and generation planning and siting materially affecting retail customers within the State in which the Authorized Commission has regulatory jurisdiction, and for no other purpose. Without limiting the foregoing, the Authorized Person and his or

her Authorized Commission shall not use its right to acquire Confidential Market Information as a means of conducting discovery or providing evidence during an adversarial proceeding against an Affected Governance Participant or any group of Participants. The Authorized Person and his or her Authorized Commission, however, shall not be prevented from using in an adversarial proceeding Confidential Market Information the Authorized Commission has obtained if: (i) such information becomes known in that proceeding through disclosure by entities other than the Authorized Commission; and (ii) the Authorized Commission discloses such Confidential Market Information consistent with the protections and procedures governing the disclosure of Confidential Market Information to parties in that proceeding; or (iii) the information being disclosed no longer meets the definition of Confidential Market Information.

2.5.5 Return of Confidential Market Information. Upon completion of the inquiry or investigation referred to in the Information Request, or for any reason the Authorized Person is, or will no longer be an Authorized Person, the Authorized Person shall (a) return the Confidential Market Information and all copies thereof to ISO, or (b) provide a certification that the Authorized Person has destroyed all paper copies and deleted all electronic copies of the Confidential Market Information, unless such actions are inconsistent with or prohibited by applicable state law, in which case the Authorized Person shall continue to maintain the confidentiality of the Confidential Market Information in accordance with the terms and conditions of this Agreement. ISO may waive this condition in writing if such Confidential Market Information has become publicly available or non-confidential in the course of business or pursuant to the ISO Tariff or order of the FERC.

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

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

and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of ISO and/or the Affected Governance Participant.

3. Procedure for Information Requests

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

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

Affected Governance Participant shall include the substance of the oral disclosure, but shall not reveal any Confidential Market Information of any other Governance Participant and must be received by the Affected Governance Participant before the name of the Affected Governance Participant is released to the Authorized Person; provided however, the identity of the Affected Party must be made available to the Authorized Person within two (2) business days of the initial oral disclosure. ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of any oral disclosure as soon as possible, but not later than two (2) business days after the date of the initial oral disclosure.

3.3 Response to Information Requests.

3.3.1 Subject to the provisions of Section 3.3.2 below, ISO shall supply Confidential Market Information to the Authorized Person in response to any Information Request within five (5) business days of the receipt of the Information Request, to the extent that the requested Confidential Market Information can be made available within such period; provided however, that in no event shall Confidential Market Information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Governance Participant. To the extent that ISO can not reasonably prepare and deliver the requested Confidential Market Information within such five (5) day period, ISO shall, within such period, provide the Authorized Person with a written schedule for the provision of such remaining Confidential Market Information. Upon providing Confidential Market Information to the Authorized Person, ISO shall either provide a copy of the Confidential Market Information to the Affected Governance Participant(s), or provide a listing of the Confidential Market Information disclosed; provided, however, that ISO shall not reveal any Governance Participant's Confidential Market Information to any other Governance Participant.

3.3.2 Notwithstanding section 3.3.1, above, should ISO or an Affected Governance Participant or the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) object to an Information Request or any portion thereof, ISO, the Affected Governance Participant and/or the Participants Committee may, within four (4) business days following ISO's receipt of the Information Request, request, in writing (which shall include electronic communication) addressed to the State Commission with a copy to either the Affected Governance Participant, ISO and/or counsel to the Participants Committee, as the case may be, a conference with the State Commission or the State Commission's authorized designee to resolve differences concerning the scope or timing of the Information Request; provided, however, nothing herein shall require the State Commission to participate

in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute. Should such conference be refused by any participant, or not resolve the dispute, then ISO, the Affected Governance Participant, the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) or the State Commission may initiate appropriate legal action at FERC within three (3) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a “fast track” complaint and each party shall bear its own costs in connection with such FERC proceeding. If no FERC proceeding regarding the Information Request is commenced by ISO, the Affected Governance Participant or the State Commission within such three day period, ISO shall utilize its best efforts to respond to the Information Request promptly. During any pending FERC proceeding regarding an Information Request, ISO shall continue to maintain the confidentiality of the Confidential Market Information subject to such Information Request.

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

4. Remedies.

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

4.2 Judicial Recourse. In the event of any breach of this Agreement, ISO, the Affected Governance Participant and/or the Participants Committee shall have the right to seek and obtain at least the following

types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all Confidential Market Information to ISO. The Authorized Person expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Market Information to ISO.

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

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

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

If to the Authorized Person:

-

(email address)
with a copy to

(email address)

If to Counsel for the Participants Committee:

(email address)
with a copy to

(email address)

If to ISO:

(email address)
with a copy to

(email address)

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

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

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

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

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

ISO NEW ENGLAND INC.

By:

Name:

Title:

AUTHORIZED PERSON

By:

Name:

Title:

APPENDIX B
FORM OF CERTIFICATION

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

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

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

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

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

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

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

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

2. Requisite Authority.

- a. The Authorized Commission hereby certifies that it has all necessary legal authority to execute, deliver, and perform the obligations in this Certification.

- b. Each Authorized Person is, at the time of the execution of this Certification, an employee of, or consultant to, the Authorized Commission, and has not materially breached any existing or past nondisclosure agreement or obligation, except as has been disclosed by the Authorized Commission to ISO in writing.

- c. The Authorized Persons have, through all necessary action of the Authorized Commission, been appointed and directed by the Authorized Commission to execute and deliver the Non-Disclosure Agreements to ISO and receive Confidential Market Information on the Authorized Commission's behalf and for its benefit.

- d. The Authorized Commission will, at all times after the provision of Confidential Market Information to the Authorized Persons, provide ISO with: (i) written notice of any changes in the Authorized Persons' qualification as an Authorized Person within two (2) business days of such change; (ii) written confirmation to any inquiry by ISO regarding the status or identification of any specific Authorized Person within two (2) business days of such request, and (iii) periodic written updates, no less often than semi-annually, containing the names of all Authorized Persons appointed by the Authorized Commission.

3. Protection of Confidential Market Information.

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

- b. The Authorized Commission has legal authority to protect the confidentiality of Confidential Market Information from public release or disclosure and/or from release or

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

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

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

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

5. Use and Destruction of Confidential Market Information.

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

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

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

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

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

Executed, as of the date first set out above.

[Commission]

By: _____

Its: _____

[SEE NEXT PAGE]

EXHIBIT A

CERTIFICATION LIST OF AUTHORIZED PERSONS

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

FORM OF ACADEMIC INSTITUTION NON-DISCLOSURE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

1.5 FERC. The Federal Energy Regulatory Commission.

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

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

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

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

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

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

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

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

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

2. Protection of Confidentiality.

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

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

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

2.3 Care and Use of Confidential Market Information.

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

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

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

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

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

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

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

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

3. Remedies.

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

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

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

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

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

If to the Authorized Institution:

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(email address)

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with a copy to

(email address)

If to Counsel for the Participants Committee:

(email address)

with a copy to

(email address)

If to ISO:

(email address)

with a copy to

(email address)

6. Severability and Survival. In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms.

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

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

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

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

ISO NEW ENGLAND INC.

AUTHORIZED INSTITUTION

By:

By:

Name:

Name:

Title:

Title:

NON-DISCLOSURE CERTIFICATE

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

By:

Title:

Representing:

Date: _____

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[NOTICE ADDRESS]