



February 16, 2010

**VIA HAND DELIVERY**

Honorable Kimberly D. Bose, Secretary  
Honorable Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: ISO New England Inc. and New England Power Pool,  
**Docket No. ER10- -000; Revisions to Financial Assurance Policy and Billing Policy**

Dear Secretary Bose and Deputy Secretary Davis:

Pursuant to Section 205 of the Federal Power Act,<sup>1</sup> ISO New England Inc. (the “ISO”) and the New England Power Pool (“NEPOOL”) Participants Committee (together, the “Filing Parties”) hereby jointly submit an original and six copies of this transmittal letter describing two minor changes to the ISO New England Financial Assurance Policy (the “Financial Assurance Policy”) and the ISO New England Billing Policy (the “Billing Policy” and, together with the Financial Assurance Policy, the “Policies”)<sup>2</sup> that clarify the prepayment and suspension provisions of those Policies.

**I. DESCRIPTION OF THE FILING PARTIES; COMMUNICATIONS**

The ISO is the private, non-profit entity that serves as the regional transmission organization (“RTO”) for New England. The ISO operates the New England bulk power system and administers New England’s organized wholesale electricity market pursuant to the ISO Tariff and the Transmission Operating Agreement with the New England transmission owners.

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<sup>1</sup> 16 U.S.C. § 824d (2006 and Supp. II 2009).

<sup>2</sup> Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (“ISO Tariff”), the Second Restated New England Power Pool Agreement, and the Participants Agreement.

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In its capacity as an RTO, the ISO also has the objective to assure that the bulk power supply system within the New England Control Area conforms to proper standards of reliability as established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and it has grown to include more than 420 members. The Participants include all of the electric utilities rendering or receiving services under the ISO Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, demand response providers, developers, end users and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission in *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004), the Participants act through the NEPOOL Participants Committee. The Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. Pursuant to Section 2.2 of the Participants Agreement, "NEPOOL" provide[s] the sole Participant Process for advisory voting on ISO matters and the selection of ISO Board members, except for input from state regulatory authorities and as otherwise may be provided in the Tariff, TOA and the Market Participant Services Agreement included in the Tariff."

All correspondence and communications in this proceeding should be addressed to the undersigned for the ISO and NEPOOL as follows:

To the ISO:

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To NEPOOL:

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NEPOOL Budget and Finance Subcommittee  
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\*Persons designated for service<sup>3</sup>

## II. STANDARD OF REVIEW

The instant revisions are submitted pursuant to Section 205 of the Federal Power Act, which “gives a utility the right to file rates and terms for services rendered with its assets.”<sup>4</sup> Under Section 205, the Commission “plays ‘an essentially passive and reactive’ role”<sup>5</sup> whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”<sup>6</sup> The Commission limits this inquiry “into whether the rates proposed by a utility are reasonable -- and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”<sup>7</sup> The revision “need not be the only reasonable methodology, or even the most accurate.”<sup>8</sup> As a result, even if an intervenor or the Commission develops an alternative proposal, the Commission must accept this Section 205 filing if it is just and reasonable.<sup>9</sup>

## III. DESCRIPTION OF THE REVISIONS

As described in the attached Testimony of Robert C. Ludlow, Vice President and Chief Financial and Compliance Officer of the ISO (sponsored solely by the ISO and not reviewed by

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<sup>3</sup> Due to the joint nature of this filing, the Filing Parties respectfully request a waiver of Section 385.203 of the Commission’s regulations to allow the inclusion of more than two persons on the service list in this proceeding.

<sup>4</sup> *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

<sup>5</sup> *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984)).

<sup>6</sup> *Id.*

<sup>7</sup> *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

<sup>8</sup> *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

<sup>9</sup> *Cf. Southern California Edison Co., et al.*, 73 FERC ¶ 61,219 at 61,608 n. 73 (1995) (“Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.” (citing *City of Bethany*, 727 F.2d at 1136)).

NEPOOL or its counsel prior to this filing), the first revision contained in the instant filing relates to the prepayment of Invoices. Previously, the ISO moved the day on which weekly Invoices are issued from Thursday to Monday.<sup>10</sup> However, because the language regarding prepayments was not also revised at that time, it fails to properly reflect the timing of prepayments. The instant change merely conforms the prepayment provisions to the timing of the Invoices by establishing that all prepayments made in a calendar week will be applied only to Invoices issued in the subsequent week.

The second revision contained in the instant filing simply ensures that the Billing Policy and the Financial Assurance Policy are consistent. In the past, both documents included nearly identical suspension provisions,<sup>11</sup> which required that parallel changes be made in both places whenever those provisions were modified. Recently, some changes that were made to the suspension provisions in the Financial Assurance Policy were inadvertently not also made in the Billing Policy.<sup>12</sup> To rectify this situation, this filing replaces the suspension provisions in the Billing Policy with a reference to the suspension provisions in the Financial Assurance Policy. This change will bring the two documents back into alignment, and will make the Policies easier to administer, as the ISO will no longer need to reproduce any changes to the Financial Assurance Policy's suspension process in the Billing Policy.

#### **IV. STAKEHOLDER PROCESS**

The ISO discussed the revisions with the NEPOOL Budget and Finance Subcommittee at its January 11, 2010 meeting, and no Subcommittee members objected to these changes. The Participants Committee unanimously supported the changes at its February 5, 2010 meeting.

#### **V. REQUESTED EFFECTIVE DATE**

The Filing Parties request an effective date of April 18, 2010 for the proposed revisions.

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<sup>10</sup> See filing by ISO New England Inc. and New England Power Pool in Docket No. ER09-932-000 (filed April 1, 2009), accepted in delegated letter order (April 29, 2009).

<sup>11</sup> In the Billing Policy, the suspension provisions relate to payment defaults; in the Financial Assurance Policy, the suspension provisions relate to financial assurance defaults.

<sup>12</sup> See filing by ISO New England Inc. and New England Power Pool in Docket No. ER09-1470-000 (filed July 17, 2009), accepted in delegated letter order (August 21, 2009); see also filing by ISO New England Inc. and New England Power Pool in Docket No. ER09-319-000 (filed November 20, 2008), accepted in delegated letter order (December 24, 2008).

## **VI. ADDITIONAL SUPPORTING INFORMATION**

Section 35.13 of the Commission's regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates.<sup>13</sup> However, the revision is not a traditional "rate" and the Filing Parties are not traditional investor-owned utilities. In light of these circumstances, the Filing Parties submit the following additional information in substantial compliance with relevant provisions of Section 35.13, and request a waiver of Section 35.13 of the Commission's regulations to the extent the content or form deviates from the specific technical requirements of the regulations.

35.13(b)(1) - Materials included herewith are as follows:

- ♦ This transmittal letter;
- ♦ Blacklined Tariff Sheets reflecting the revisions proposed by this filing (Attachment 1);
- ♦ Clean Revised Tariff Sheets reflecting the revisions proposed by this filing (Attachment 2);
- ♦ Testimony of Robert C. Ludlow, solely sponsored by the ISO (Attachment 3); and
- ♦ List of governors, utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, and other entities, to which a copy of this filing has been sent (Attachment 4).

35.13(b)(2) - The Filing Parties request that the revisions become effective April 18 2010.

35.13(b)(3) - Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO's website at [http://www.iso-ne.com/regulatory/ferc/nepool/gov\\_ptcpnts\\_eserved.pdf](http://www.iso-ne.com/regulatory/ferc/nepool/gov_ptcpnts_eserved.pdf). A copy of this transmittal letter and the accompanying materials have also been sent to the governors and electric utility regulatory agencies for the six New England states that comprise the New England Control Area, the New England Conference of Public Utility Commissioners, Inc., and to the New England States Committee on Electricity. Their names and addresses are shown in Attachment 4. In accordance with Commission rules and practice, there is no need for the Governance Participants or the entities identified on Attachment 4 to be included on the Commission's official service list in the captioned proceeding unless such entities become intervenors in this proceeding.

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<sup>13</sup> 18 C.F.R. § 35.13 (2009).

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35.13(b)(4) - A description of the materials submitted pursuant to this filing is contained in Section VI of this transmittal letter.

35.13(b)(5) - The reasons for this filing are discussed in Section III of this transmittal letter.

35.13(b)(6) - The ISO's approval of the revision is evidenced by this filing. With respect to NEPOOL's support, as noted in Section IV of this transmittal letter, these changes reflect the results of the Participant Processes required by the Participants Agreement and have been supported by a unanimous Vote of the Participants Committee.

35.13(b)(7) - The Filing Parties do not have knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

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## VII. CONCLUSION

This transmittal letter explains why the instant revisions are just and reasonable. The Filing Parties request that the Commission accept this filing effective April 18, 2010, without condition, suspension or hearing.

Please acknowledge receipt of the foregoing by date-stamping the enclosed extra copies of this filing and returning them to the courier delivering this filing.

Respectfully submitted,

ISO NEW ENGLAND INC.

By: 

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By: 

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Its Attorneys

## **Attachment 1**

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Obligations fall below the applicable percentage of its Credit Test Amount.

Notwithstanding the foregoing, if a Non-Municipal Market Participant's Obligations equal or exceed 90 percent (90%) of its Credit Test Amount as a result of one or more Increment Offers or Decrement Bids submitted by that Non-Municipal Market Participant and, but for such Increment Offers and/or Decrement Bids, such Non-Municipal Market Participant would be in compliance with this Policy, a notice will not be issued.

If a Non-Municipal Market Participant's Obligations exceed 100 percent (100%) of its Credit Test Amount as a result of one or more Increment Offers or Decrement Bids submitted by that Non-Municipal Market Participant and, but for such Increment Offers and/or Decrement Bids, such Non-Municipal Market Participant would be in compliance with this Policy, a notice will be issued only to such Non-Municipal Market Participant, and such Non-Municipal Market Participant shall be "suspended" as described below.

Any such suspension as a result of one or more Increment Offers or Decrement Bids submitted by a Non-Municipal Market Participant shall take effect immediately upon submission of such Increment Offers and/or Decrement Bids to remain in effect until such Non-Municipal Market Participant is in compliance with this Policy, notwithstanding any provision of this Section II.D to the contrary.

If a Non-Municipal Market Participant is suspended from the New England Markets in accordance with the provisions of this Policy or the ISO New England Billing Policy, then the provisions of this Section II.D shall

the obligation to serve such unmetered load asset. If a suspended Non-Municipal Market Participant has an ownership share of a load asset, such ownership share shall revert to the Non-Municipal Market Participant that assigned such ownership share to such suspended Non-Municipal Market Participant. If a suspended Non-Municipal Market Participant has the obligation under the Tariff or otherwise to offer any of its supply or to bid any pumping load to provide products or services sold through the New England Markets, that obligation shall continue, but only in Real-Time, notwithstanding the Non-Municipal Market Participant's suspension, and such offer or bid, if cleared under the Tariff, shall be effective.

**c. FTRs**

If a Non-Municipal Market Participant is suspended from entering into future transactions in the FTR system, such Non-Municipal Market Participant shall retain all FTRs held by it but shall be prohibited from acquiring any additional FTRs during the course of its suspension. It is intended that any suspension under this Policy or the Billing Policy will occur promptly, and the definitive timing of any such suspension shall be determined by the ISO from time to time as reported to the NEPOOL Budget and Finance Subcommittee, and shall be posted on the ISO website.

A FTR-Only Customer that has been suspended in accordance with the preceding paragraph will not be allowed to participate in the FTR Auctions without re-registering as a FTR-Only Applicant, and such FTR-Only Applicant shall be required to cure all defaults hereunder prior to the acceptance of its application.

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**d. Virtual Transactions**

Notwithstanding the foregoing, if a Non-Municipal Market Participant is suspended in accordance with the provisions of this Policy as a result of one or more Increment Offers or Decrement Bids submitted by that Non-Municipal Market Participant and, but for such Increment Offers and/or Decrement Bids, such Non-Municipal Market Participant would be in compliance with this Policy, then such suspension shall be limited to (i) the immediate “last in, first out” rejection of pending individual uncleared Increment Offers and Decrement Bids submitted by that Non-Municipal Market Participant (it being understood that Increment Offers and Decrement Bids are batched by the ISO in accordance with the time, and that Increment Offers and Decrement Bids will be rejected by the batch); and (ii) the suspension of that Non-Municipal Market Participant’s ability to submit additional Increment Offers and Decrement Bids unless and until it has complied with this Policy, and the determination of compliance for these purposes will take into account the level of aggregate outstanding obligations of that Non-Municipal Market Participant after giving effect to the immediate rejection of that Non-Municipal Market Participant’s Increment Offers and Decrement Bids described in clause (i).

**3. Serial Notice and Suspension Penalties**

If either (x) a Non-Municipal Market Participant is suspended from the New England Markets because of a failure to satisfy its Financial Assurance Requirements in accordance with the provisions of this Policy or (y) a Non-Municipal Market Participant receives more than five notices that its Obligations have exceeded 100 percent of its Credit Test Amount in any rolling 12-month period, then such Non-Municipal Market Participant

- e) *Prepayments.* A Covered Entity may prepay any Invoice, in whole or in part, according to the following procedures:
- (i) only one such prepayment shall be made by any Covered Entity in any calendar week, and no prepayments shall be made on a Friday;
  - (ii) all prepayments made in a calendar week will be applied only to Invoices issued in the subsequent~~that~~ week;
  - (iii) prepayments and payments for issued Invoices must be made in separate wire transfers;
  - (iv) for purposes of calculating a Covered Entity's financial assurance obligations under the ISO's Financial Assurance Policy, prepayments will be applied first to Hourly Charges, then any remaining prepayment will offset the Covered Entity's financial assurance obligations on a dollar-for-dollar basis;
  - (v) if a prepayment exceeds the amount due on the Invoice in any week the Covered Entity making that prepayment may direct at the time of the prepayment that the excess be deposited with its cash deposit maintained under the ISO's Financial Assurance Policy, and if the Covered Entity does not direct the ISO to make that deposit, the excess will be returned to the Covered Entity. Under either circumstance, the deposit in the cash deposit or the return of excess funds will occur on the same date as the ISO pays Remittance Advices for the applicable billing period under Section 3.2; and
  - (vi) all prepayments will be held in the ISO's settlement account until the Invoice payments are due, and no interest will be paid to any Covered Entity on any prepayments provided by it.

shall notify ~~such Market Participant, the NEPOOL Budget and Finance Subcommittee, all members and alternates of the Participants Committee, the New England governors and utility regulatory agencies and the credit and billing contacts for all Market Participant~~~~each Market Participant's billing contact, the Chair of the NEPOOL Budget and Finance Subcommittee and each of the New England governors and utility regulatory agencies~~ of (i) the identity of the Covered Entity receiving such notice, (ii) whether such notice relates to a Payment Default, (iii) whether the defaulting Market Participant has a registered load asset, and (iv) the actions the ISO plans to take and/or has taken in response to such Payment Default. In addition, the ISO will provide any additional information with respect to such Payment Default as may be required under the ISO New England Information Policy. If a Payment Default is not cured by 10:00 a.m., Eastern Time, of the second Business Day after the date when such payment was originally due, the defaulting Covered Entity shall be suspended (~~if applicable~~) pursuant to the suspension provisions of the ISO New England Financial Assurance Policy (which will apply to the defaulting Covered Entity regardless of whether it is a "Municipal Market Participant" or a "Non-Municipal Market Participant" under that Financial Assurance Policy). Such defaulting Covered Entity shall be suspended as described in the Financial Assurance Policy until from: (a) the New England Markets; (b) receiving transmission service under any existing or pending arrangement under the Tariff or scheduling any future transmission service under the OATT; (c) voting on matters before the Participants Committee or any NEPOOL Technical Committee; (d) entering into any future transactions in the FTR system; and (e) submitting an offer in any Forward Capacity Auction or any reconfiguration auction in the Forward Capacity Market (each a "Reconfiguration Auction"), in each case until (x) in the case of activity in the ~~New England Markets, the scheduling and receipt of transmission~~

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~~services, entering future transactions in the FTR system and submitting offers in  
Forward Capacity Auctions and Reconfiguration Auctions, such Payment~~

Default has been cured in full. ~~The suspension of a Covered Entity, and any resulting annulment, termination or removal of OASIS reservations, removal from the settlement system and the FTR system and the Forward Capacity Market system, forfeiture of FTRs and the drawing down of financial assurance, shall not limit, in any way, the ISO's or other Covered Entity's right to invoice or collect payment for any amounts owed (whether such amounts are due or becoming due) by such Covered Entity under the Documents.~~ If the ISO has issued a notice that a Covered Entity has defaulted on a payment obligation and that Covered Entity subsequently cures that Payment Default, such Covered Entity may request the ISO to issue a notice stating such fact; provided, however, that the ISO shall not be required to issue that notice unless, in its sole discretion, the ISO determines that such Payment Default has been cured and such Covered Entity has no other outstanding Payment Defaults. ~~If a Covered Entity is suspended in accordance with this Section 3.3(1), the provisions of this Section 3.3(1) shall control notwithstanding any other provision of the Transmission, Markets and Services Tariff to the contrary.~~

~~A suspended Covered Entity shall have no ability so long as it is suspended to be reflected in the ISO's settlement system as either a purchaser or a seller of any Market Products under any Bilateral Transactions that cause such suspended Covered Entity to incur a financial obligation in the ISO's settlement system or any liability to a Covered Entity. A suspended Covered Entity shall have no~~

[Reserved for future use.]

~~ability so long as it is suspended to submit Demand Bids, Decrement Bids or Increment Offers in the New England Markets or to submit offers in any Forward Capacity Auction or Reconfiguration Auction. Any Bilateral Transactions with a suspended Covered Entity that cause such suspended Covered Entity to incur a financial obligation in the ISO's settlement system and any Demand Bids, Decrement Bids and Increment Offers submitted by a suspended Covered Entity shall be deemed to be terminated for purposes of the Day Ahead Market Clearing and the ISO's settlement system. Any load asset registered to a suspended Market Participant shall be terminated, and the obligation to serve the load associated with such load asset (including the related Installed Capability obligation) shall be assigned to the relevant unmetered load asset(s) unless and until the host Market Participant for such load assigns the obligation to serve such load to another asset. If the suspended Covered Entity is responsible for serving an unmetered load asset, such suspended Covered Entity shall retain the obligation to serve such unmetered load asset. If a suspended Covered Entity has an ownership share of a load asset, such ownership share shall revert back to the Covered Entity that assigned such ownership share to such suspended Covered Entity. If a suspended Covered Entity has the obligation under the Transmission, Markets and Services Tariff to offer any of its supply or to bid any pumping load to provide Market~~

Issued by: ~~Raymond W. Hepper~~Kathleen A. Carrigan, Effective: April 18, 2010With notice, on or after June 1, 2007  
Senior Vice President and General Counsel  
Issued on: February 16, 2010~~February 15, 2007~~

~~Products, that obligation shall continue, but only in Real Time, notwithstanding the Covered Entity's suspension and such offer or bid, if cleared under the Transmission, Markets and Services Tariff shall be effective. If a Covered Entity is suspended from entering into future transactions in the FTR system, such Covered Entity shall retain all FTRs held by it but shall be prohibited from acquiring any additional FTRs during the course of its suspension. A suspended DRP-Only Customer shall have no ability to participate in the Forward Capacity Market or be listed as having available capacity during the course of its suspension. It is intended that any suspension under this Policy will occur promptly, and the definitive timing of any such suspension shall be determined by the ISO, in consultation with its independent financial advisor (if any) and as reported to the Budget and Finance Subcommittee, and shall be posted on the ISO website. If the ISO has issued a notice pursuant to this Section 3.3(l) and subsequently the subject Covered Entity cures the Payment Default that was the subject of that notice, such Covered Entity may request the ISO to issue a notice stating such fact. However, the ISO shall not be obligated to issue such a notice unless, in its sole discretion, the ISO concludes that such Payment Default has been cured and such Covered Entity has no other outstanding Payment Defaults. If either (x) a Covered Entity is suspended from the New England Markets as a result of a Payment Default as described in accordance with the provisions of this Section 3.3(l) or (y) a Covered Entity receives more than five notices of Payment Defaults in any rolling 12-month period, then such Covered Entity shall pay a \$1,000 penalty for such suspension and for each notice after the fifth notice in a rolling 12-month period. All penalties paid under this paragraph shall be deposited in the Late Payment Account.~~

- (m) Notwithstanding the other provisions of this Section 3.3, an unpaid amount shall not be considered a “Default Amount,” and the ISO will not take any of the actions described in the suspension provisions of the ISO New England Financial Assurance Policy or in this Section 3.3 with respect to that unpaid amount, if the total unpaid amount is attributable to Qualification Process Cost Reimbursement Deposits (including any annual true-up of those amounts). To the extent that a Covered Entity pays only a part of an Invoice that includes a Charge for a Qualification Process Cost Reimbursement Deposit, the unpaid amount shall first be allocated to that Qualification Process Cost Reimbursement Deposit, and other Charges on that Invoice will only be considered not to have been paid if the unpaid amount exceeds the amount of the Qualification Process Cost Reimbursement Deposit.

## **Attachment 2**

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Obligations fall below the applicable percentage of its Credit Test Amount.

Notwithstanding the foregoing, if a Non-Municipal Market Participant's Obligations equal or exceed 90 percent (90%) of its Credit Test Amount as a result of one or more Increment Offers or Decrement Bids submitted by that Non-Municipal Market Participant and, but for such Increment Offers and/or Decrement Bids, such Non-Municipal Market Participant would be in compliance with this Policy, a notice will not be issued.

If a Non-Municipal Market Participant's Obligations exceed 100 percent (100%) of its Credit Test Amount as a result of one or more Increment Offers or Decrement Bids submitted by that Non-Municipal Market Participant and, but for such Increment Offers and/or Decrement Bids, such Non-Municipal Market Participant would be in compliance with this Policy, a notice will be issued only to such Non-Municipal Market Participant, and such Non-Municipal Market Participant shall be "suspended" as described below.

Any such suspension as a result of one or more Increment Offers or Decrement Bids submitted by a Non-Municipal Market Participant shall take effect immediately upon submission of such Increment Offers and/or Decrement Bids to remain in effect until such Non-Municipal Market Participant is in compliance with this Policy, notwithstanding any provision of this Section II.D to the contrary.

If a Non-Municipal Market Participant is suspended from the New England Markets in accordance with the provisions of this Policy or the ISO New England Billing Policy, then the provisions of this Section II.D shall

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the obligation to serve such unmetered load asset. If a suspended Non-Municipal Market Participant has an ownership share of a load asset, such ownership share shall revert to the Non-Municipal Market Participant that assigned such ownership share to such suspended Non-Municipal Market Participant. If a suspended Non-Municipal Market Participant has the obligation under the Tariff or otherwise to offer any of its supply or to bid any pumping load to provide products or services sold through the New England Markets, that obligation shall continue, but only in Real-Time, notwithstanding the Non-Municipal Market Participant's suspension, and such offer or bid, if cleared under the Tariff, shall be effective.

**c. FTRs**

If a Non-Municipal Market Participant is suspended from entering into future transactions in the FTR system, such Non-Municipal Market Participant shall retain all FTRs held by it but shall be prohibited from acquiring any additional FTRs during the course of its suspension. It is intended that any suspension under this Policy or the Billing Policy will occur promptly, and the definitive timing of any such suspension shall be determined by the ISO from time to time as reported to the NEPOOL Budget and Finance Subcommittee, and shall be posted on the ISO website.

A FTR-Only Customer that has been suspended in accordance with the preceding paragraph will not be allowed to participate in the FTR Auctions without re-registering as a FTR-Only Applicant, and such FTR-Only Applicant shall be required to cure all defaults hereunder prior to the acceptance of its application.

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**d. Virtual Transactions**

Notwithstanding the foregoing, if a Non-Municipal Market Participant is suspended in accordance with the provisions of this Policy as a result of one or more Increment Offers or Decrement Bids submitted by that Non-Municipal Market Participant and, but for such Increment Offers and/or Decrement Bids, such Non-Municipal Market Participant would be in compliance with this Policy, then such suspension shall be limited to (i) the immediate “last in, first out” rejection of pending individual uncleared Increment Offers and Decrement Bids submitted by that Non-Municipal Market Participant (it being understood that Increment Offers and Decrement Bids are batched by the ISO in accordance with the time, and that Increment Offers and Decrement Bids will be rejected by the batch); and (ii) the suspension of that Non-Municipal Market Participant’s ability to submit additional Increment Offers and Decrement Bids unless and until it has complied with this Policy, and the determination of compliance for these purposes will take into account the level of aggregate outstanding obligations of that Non-Municipal Market Participant after giving effect to the immediate rejection of that Non-Municipal Market Participant’s Increment Offers and Decrement Bids described in clause (i).

**3. Serial Notice and Suspension Penalties**

If either (x) a Non-Municipal Market Participant is suspended from the New England Markets because of a failure to satisfy its Financial Assurance Requirements in accordance with the provisions of this Policy or (y) a Non-Municipal Market Participant receives more than five notices that its Obligations have exceeded 100 percent of its Credit Test Amount in any rolling 12-month period, then such Non-Municipal Market Participant

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- e) *Prepayments.* A Covered Entity may prepay any Invoice, in whole or in part, according to the following procedures:
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  - (ii) all prepayments made in a calendar week will be applied only to Invoices issued in the subsequent week;
  - (iii) prepayments and payments for issued Invoices must be made in separate wire transfers;
  - (iv) for purposes of calculating a Covered Entity's financial assurance obligations under the ISO's Financial Assurance Policy, prepayments will be applied first to Hourly Charges, then any remaining prepayment will offset the Covered Entity's financial assurance obligations on a dollar-for-dollar basis;
  - (v) if a prepayment exceeds the amount due on the Invoice in any week the Covered Entity making that prepayment may direct at the time of the prepayment that the excess be deposited with its cash deposit maintained under the ISO's Financial Assurance Policy, and if the Covered Entity does not direct the ISO to make that deposit, the excess will be returned to the Covered Entity. Under either circumstance, the deposit in the cash deposit or the return of excess funds will occur on the same date as the ISO pays Remittance Advices for the applicable billing period under Section 3.2; and
  - (vi) all prepayments will be held in the ISO's settlement account until the Invoice payments are due, and no interest will be paid to any Covered Entity on any prepayments provided by it.

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shall notify such Market Participant, the NEPOOL Budget and Finance Subcommittee, all members and alternates of the Participants Committee, the New England governors and utility regulatory agencies and the credit and billing contacts for all Market Participants of (i) the identity of the Covered Entity receiving such notice, (ii) whether such notice relates to a Payment Default, (iii) whether the defaulting Market Participant has a registered load asset, and (iv) the actions the ISO plans to take and/or has taken in response to such Payment Default. In addition, the ISO will provide any additional information with respect to such Payment Default as may be required under the ISO New England Information Policy. If a Payment Default is not cured by 10:00 a.m., Eastern Time, of the second Business Day after the date when such payment was originally due, the defaulting Covered Entity shall be suspended pursuant to the suspension provisions of the ISO New England Financial Assurance Policy (which will apply to the defaulting Covered Entity regardless of whether it is a “Municipal Market Participant” or a “Non-Municipal Market Participant” under that Financial Assurance Policy). Such defaulting Covered Entity shall be suspended as described in the Financial Assurance Policy until such Payment

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Default has been cured in full. If the ISO has issued a notice that a Covered Entity has defaulted on a payment obligation and that Covered Entity subsequently cures that Payment Default, such Covered Entity may request the ISO to issue a notice stating such fact; provided, however, that the ISO shall not be required to issue that notice unless, in its sole discretion, the ISO determines that such Payment Default has been cured and such Covered Entity has no other outstanding Payment Defaults.

[Reserved for future use.]

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If either (x) a Covered Entity is suspended from the New England Markets as a result of a Payment Default as described in this Section 3.3(l) or (y) a Covered Entity receives more than five notices of Payment Defaults in any rolling 12-month period, then such Covered Entity shall pay a \$1,000 penalty for such suspension and for each notice after the fifth notice in a rolling 12-month period. All penalties paid under this paragraph shall be deposited in the Late Payment Account.

- 
- (m) Notwithstanding the other provisions of this Section 3.3, an unpaid amount shall not be considered a “Default Amount,” and the ISO will not take any of the actions described in the suspension provisions of the ISO New England Financial Assurance Policy or in this Section 3.3 with respect to that unpaid amount, if the total unpaid amount is attributable to Qualification Process Cost Reimbursement Deposits (including any annual true-up of those amounts). To the extent that a Covered Entity pays only a part of an Invoice that includes a Charge for a Qualification Process Cost Reimbursement Deposit, the unpaid amount shall first be allocated to that Qualification Process Cost Reimbursement Deposit, and other Charges on that Invoice will only be considered not to have been paid if the unpaid amount exceeds the amount of the Qualification Process Cost Reimbursement Deposit.

## **Attachment 3**



1 (“NERC”), North American Energy Standards Board, the Northeast Power  
2 Coordinating Council (“NPCC”) as well as other regulatory obligations.

3 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
4 **PROCEEDING?**

5 A: The purpose of this testimony is to explain two minor changes to the ISO’s  
6 Financial Assurance Policy (the “Financial Assurance Policy”) and the ISO’s  
7 Billing Policy (the “Billing Policy” and, together with the Financial Assurance  
8 Policy, the “Policies”).

9  
10 **Q: PLEASE EXPLAIN THE ISO’S PROPOSED REVISIONS TO THE**  
11 **PREPAYMENT PROVISIONS IN THE BILLING POLICY.**

12 A: Previously, the ISO moved the day on which weekly Invoices are issued from  
13 Thursday to Monday. However, because the language regarding prepayments  
14 was not also revised at that time, it fails to properly reflect the timing of  
15 prepayments. The change made in this filing merely conforms the prepayment  
16 provisions to the timing of the Invoices by establishing that all prepayments made  
17 in a calendar week will be applied only to Invoices issued in the subsequent week.

18  
19 **Q: WHY IS THE ISO PROPOSING TO REPLACE THE SUSPENSION**  
20 **PROVISIONS IN THE BILLING POLICY WITH A REFERENCE TO**  
21 **THE SUSPENSION PROVISIONS IN THE FINANCIAL ASSURANCE**  
22 **POLICY?**

1 In the past, the Policies included nearly identical suspension provisions, which  
2 required that parallel changes be made in both places whenever those provisions  
3 were modified. Recently, some changes that were made to the suspension  
4 provisions in the Financial Assurance Policy were inadvertently not also made in  
5 the Billing Policy. The changes in the instant filing are being made to rectify this  
6 situation. This is being accomplished by replacing the suspension provisions in  
7 the Billing Policy with a reference to the suspension provisions in the Financial  
8 Assurance Policy. This change will bring the two documents back into alignment,  
9 and will make the Policies easier to administer, as the ISO will no longer need to  
10 reproduce any changes to the Financial Assurance Policy's suspension process in  
11 the Billing Policy.

12 **Q: DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

13 **A:** Yes.


1 I declare, under penalty of perjury, that the foregoing is true and correct.

2

3 Executed on February 8, 2010.

4

5

6   
\_\_\_\_\_

7 Robert C. Ludlow

8 Vice President, Chief Financial Officer and Compliance Officer

9

10

11 Commonwealth of Massachusetts

12 Hampden ss.

13

14 On this 8<sup>th</sup> day of February, 2010, before me, the undersigned notary public, personally  
15 appeared Robert C. Ludlow, proved to me through satisfactory evidence of personal  
16 knowledge of identity, to be the person who signed the preceding or attached document  
17 in my presence, and who swore or affirmed to me that the contents of the document are  
18 truthful and accurate to the best of his knowledge or belief.

19

20   
\_\_\_\_\_

21 Linda M. Morrison, Notary Public

22 My Commission Expires: 1/28/2011

23

## **Attachment 4**

**New England Governors  
and Utility Regulatory  
and Related Agencies**

**Connecticut**

The Honorable M. Jodi Rell  
State Capitol  
210 Capitol Ave.  
Hartford, CT 06106

Connecticut Department of Public Utility Control  
10 Franklin Square  
New Britain, CT 06051-2605

**Maine**

The Honorable John E. Baldacci  
One State House Station  
Rm. 236  
Augusta, ME 04333-0001

Maine Public Utilities Commission  
State House, Station 18  
242 State Street  
Augusta, ME 04333-0018

**Massachusetts**

The Honorable Deval Patrick  
Office of the Governor  
Rm. 360 State House  
Boston, MA 02133

Massachusetts Department of Public Utilities  
One South Station  
Boston, MA 02110

**New Hampshire**

The Honorable John H. Lynch  
State House  
25 Capitol Street  
Concord, NH 03301

New Hampshire Public Utilities Commission  
21 South Fruit Street  
Suite 10  
Concord, NH 03301-2429

**Rhode Island**

The Honorable Donald L. Carcieri  
State House Room 115  
Providence, RI 02903

Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**Vermont**

The Honorable James H. Douglas  
109 State Street, Pavilion  
Montpelier, VT 05609

Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

**New England Governors  
and Utility Regulatory  
and Related Agencies**

Tim Woolf, President  
New England Conference of  
Public Utilities Commissioners, Inc.  
c/o Massachusetts Department of Public Utilities  
One South Station  
Boston, MA 02110

William M. Nugent  
Executive Director  
New England Conference of  
Public Utilities Commissioners, Inc.  
50 Forest Falls Drive, Suite 6  
Yarmouth, ME 04096-6937

Harvey L. Reiter, Esq.  
Counsel for New England Conference  
of Public Utilities Commissioners, Inc.  
c/o Stinson Morrison Hecker LLP  
1150 18th Street, NW, Suite 800  
Washington, DC 20036-3816

Power Planning Committee  
New England Governors' Conference, Inc.  
76 Summer Street, 2nd Floor  
Boston, MA 02110-1226

Heather Hunt  
Executive Director  
New England States Committee on Electricity  
HeatherHunt@NESCOE.com