



September 28, 2007

The Honorable Kimberly D. Bose
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *ISO New England Inc. and New England Power Pool,*
Docket No. ER07-____-000; ISO New England Information Policy
Revisions Regarding Confidential Treatment of Proprietary Business
Information Provided By Project Sponsors

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“Section 205”),¹ ISO New England Inc. (the “ISO”) and the New England Power Pool (“NEPOOL”) Participants Committee² hereby jointly submit an original and six copies of this transmittal letter, revised tariff sheets and supporting testimony of Robert G. Ethier, reflecting proposed revisions to the ISO New England Information Policy to provide for confidential treatment of proprietary business information provided by non-Governance Participants that seek to participate in the Forward Capacity Market (“FCM”) qualification process as Project Sponsors.

¹ 16 U.S.C. § 824d (2000).

² Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, including the Information Policy (the “Tariff”), the Second Restated New England Power Pool Agreement and the Participants Agreement. The Information Policy is Attachment D to the Tariff.

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 Tariff and the Transmission Operating Agreement with the New England Participating Transmission Owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council (“NPCC”) and the North American Electric Reliability Council (“NERC”).

NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement that has grown to include more than 300 members. The Participants include all of the electric utilities rendering or receiving service under the Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, end users, demand resource providers and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission,³ 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.

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³ *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004)

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II. STANDARD OF REVIEW

The ISO submits the proposed changes pursuant to Section 205 of the FPA, which “gives a utility the right to file rates and terms for services rendered with its assets.”⁵ Under Section 205, the Commission “plays ‘an essentially passive and reactive’ role”⁶ whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”⁷ 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.”⁸ The change proposed herein “need not be the only reasonable methodology, or even the most accurate.”⁹ As a result, even if an intervenor or the

⁴ Due to the joint nature of this filing, the ISO and NEPOOL 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.

⁵ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

⁶ *Id.* at 10 (*quoting City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir 1984)).

⁷ *Id.*

⁸ *See ISO New England Inc.*, 114 FERC ¶ 61,315 at P 33 and n.35 (2005), *citing Pub. Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201, 1211 (10th Cir. 1987) and *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (“*City of Bethany*”), *cert. denied*, 469 U.S. 917 (1984).

⁹ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

Commission develops an alternative proposal, the Commission must accept the ISO's Section 205 filing if it finds that the filing is just and reasonable.¹⁰

III. BACKGROUND AND DESCRIPTION OF CHANGES

As explained in the attached testimony of Robert G. Ethier, certain Project Sponsors that are developing new resources in order to participate in New England's FCM are required to provide proprietary business information to the ISO at a time when those project developers have not yet become Market Participants or Governance Participants and, therefore, are not yet covered by the standard confidentiality protections provided by the ISO New England Information Policy. Specifically, under Section 13.1 of Market Rule 1, a Project Sponsor is not required to become a Market Participant until 30 days prior to the deadline specified in the Financial Assurance Policies for submitting its financial assurance deposit. The deadline for submitting financial assurance deposits for the first Forward Capacity Auction to be held in February 2008 is October 17, 2007.

As part of the FCM qualification process, Project Sponsors must provide detailed information about the new resources they have under development. For example, early in the qualification process a Project Sponsor that is developing a new resource must submit a New Capacity Show of Interest Form. The market rules specify the information that must be included in a New Capacity Show of Interest Form as follows:

A completed New Capacity Show of Interest Form shall include the following information, to the extent the information is not already provided under an active Interconnection Request under Schedules 22 and 23 of Section II of the Transmission, Markets and Services Tariff, and other such information necessary to evaluate a project: the project name; the Project Sponsor's contact information; the Project Sponsor's ISO customer status; the project's expected Commercial Operation date; the project address or location, and if relevant, asset identification number; the status of the project under the generator interconnection procedures described in Schedules 22 and 23 of Section II of the Transmission, Markets and Services Tariff, including whether an Interconnection Request has been submitted for the project; whether the resource has ever previously been listed as a capacity resource; the capacity (in MW) of the New Generating Capacity Resource; the Economic Minimum Limit (in MW) of the New Generating Capacity Resource; a general description of the project's equipment configuration; a simple location plan and a one-line diagram of the plant and station facilities, including any known

¹⁰ 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)).

transmission facilities; the location of the proposed interconnection; and other specific project data as set forth in the New Capacity Show of Interest Form.

Section 13.1.1.2.1(a) of Market Rule 1. The information required to be provided in the New Capacity Show of Interest Form is the type of information that the developers of new energy projects typically consider to be sensitive, proprietary business information that they would not want released to the public.

In order to provide appropriate confidential treatment of sensitive information provided by non-Governance Participant Project Sponsors, the ISO has entered into individual non-disclosure agreements to cover data provided as part of the FCM qualification process. However, instead of entering into individual non-disclosure agreements, the ISO is proposing to revise the ISO New England Information Policy to add a new category to Section 2.1, which is the section that defines categories of information that are subject to confidential treatment. The new category would include data provided by non-Governance Participants acting as Project Sponsors during the FCM qualification process. Other than adding this new category, the revisions do not alter or otherwise change the treatment of such confidential information under the ISO New England Information Policy once provided by the Project Sponsors to ISO.

The proposed revision to the ISO New England Information Policy has several benefits. First, the revision will ensure that the process for treatment of confidential information will be consistent and transparent regardless of whether a Project Sponsor is, or is not, a Governance Participant at a particular point in the FCM qualification process. Second, eliminating the need to enter into individual non-disclosure agreements will result in small decrease in the administrative burden and costs associated with the individual agreements.

IV. STAKEHOLDER PROCESS

After review and comment, the NEPOOL Markets Committee recommended at its August 14, 2007 meeting that the NEPOOL Participants Committee unanimously support the proposed changes. The NEPOOL Participants Committee subsequently voted to unanimously support the proposed changes at its September 7, 2007 meeting.

V. REQUESTED EFFECTIVE DATE AND REQUEST FOR WAIVER

Pursuant to Section 35.11 of the Commission's rules and regulations, 18 C.F.R. § 35.11, the ISO and NEPOOL request that the Commission permit the proposed revision to the ISO New England Information Policy to become effective on December 1, 2007.

VI. ADDITIONAL SUPPORTING INFORMATION

The ISO and NEPOOL submit the following additional information in substantial compliance with relevant provisions of Section 35.13 of the Commission's regulations:¹¹

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

- ◆ This transmittal letter;
- ◆ Attachment 1: Redlined Tariff Sheet reflecting the changes proposed by this filing¹²
- ◆ Attachment 2: Revised Tariff Sheet reflecting the changes proposed by this filing
- ◆ Attachment 3: Testimony of Robert G. Ethier
- ◆ Attachment 4: List of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to which a copy of this filing has been sent

35.13(b)(2) - As set forth in Section V above, the ISO and NEPOOL request that the proposed changes become effective on December 1, 2007.

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_prtcpts_eserved.pdf. A paper 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, and to NECPUC. The names and addresses of these governors and regulatory agencies 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.

¹¹ 18 C.F.R. § 35.13 (2005).

¹² Non-substantive ministerial changes are also being made as part of this filing to reflect the previously filed (and accepted) Section 3.4 and Appendix C in the Table of Contents of the ISO New England Information Policy.

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 this change is evidenced by this filing. This change reflects the results of the Participant Processes required by the Participants Agreement and reflect the support of Participants Committee.

35.13(b)(7) - Neither the ISO nor NEPOOL has 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.

35.13(b)(8) - A form of notice and electronic media are no longer required for filings in light of the Commission's Combined Notice of Filings notice methodology.

35.13(c)(1) - The proposed changes will not effect any rate increase.

35.13(c)(2) - The ISO does not provide services under other rate schedules that are similar to the wholesale resale and transmission services it provides under the Tariff.

35.13(c)(3) - No specifically assignable facilities have been or will be installed or modified in connection with the proposed changes.

VII. CONCLUSION

The ISO and NEPOOL request that the Commission accept the proposed revisions to the ISO New England Information Policy for filing to become effective on December 1, 2007.

Please acknowledge receipt of the foregoing by date-stamping and returning to our messenger the enclosed extra copies of this filing.

Respectfully submitted,

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Attachments

cc : Governance Participants (electronically) and entities listed in Attachment 4

Attachment 1
Redlined Tariff Sheet

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- (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) 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.~~

- (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)(d) 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.

Attachment 2
Revised Tariff Sheet

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- (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.

Attachment 3

Testimony of Robert G. Ethier

1 modeling. From 2000 on I have worked with the ISO in various roles and
2 have been responsible for Market Monitoring and Resource Adequacy.

3

4 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 **A.** My testimony discusses proposed revisions to the ISO New England Information
6 Policy to provide for confidential treatment of proprietary business information
7 provided by non-Governance Participants that seek to participate in the Forward
8 Capacity Market qualification process as Project Sponsors.¹

9

10 **Q: PLEASE DESCRIBE THE PROPOSED CHANGE TO THE ISO NEW**
11 **ENGLAND INFORMATION POLICY.**

12 **A.** The proposed revisions would add a new category to Section 2.1 of the ISO New
13 England Information Policy, which is the section that defines categories of
14 information that are subject to confidential treatment. The new category would
15 include data provided by non-Governance Participants acting as Project Sponsors
16 during the Forward Capacity Market qualification process.

17

18 **Q: WHY IS IT NECESSARY TO CREATE A NEW CATEGORY IN THE ISO**
19 **NEW ENGLAND INFORMATION POLICY FOR NON-GOVERNANCE**
20 **PARTIPANTS THAT ARE PROJECT SPONSORS?**

21 **A:** Under Section 13.1 of Market Rule 1, a Project Sponsor is not required to become
22 a Market Participant until 30 days prior to the deadline for submitting the

¹ 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.

1 financial assurance deposit described in Section 13.1.9 of Market Rule 1. For the
2 first Forward Capacity Auction to be held in February 2008, the financial
3 assurance deposit deadline does not occur until October 12, 2007. This means
4 that during the Forward Capacity Market qualification process a Project Sponsor
5 that is not yet a Market Participant or Governance Participant may provide
6 sensitive, proprietary business information to the ISO, but the Project Sponsor
7 would not be a covered entity under the existing ISO New England Information
8 Policy. Pending approval of changes to the ISO New England Information
9 Policy, the ISO has entered into individual non-disclosure agreements with non-
10 Governance Participant Project Sponsors in order to ensure appropriate
11 confidential treatment of information provided during the Forward Capacity
12 Market qualification process.

13
14

15 **Q: WHAT TYPES OF PROPRIETARY INFORMATION DO PROJECT**
16 **SPONSORS PROVIDE TO THE ISO?**

17 A: As part of the Forward Capacity Market qualification process, Project Sponsors
18 must provide detailed information about the prospective project, including but not
19 limited to information related to site control, critical path schedules, the projected
20 commercial operation date, a general description of the project's equipment
21 configuration; a simple location plan and a one-line diagram of the plant and
22 station facilities and the location of the proposed interconnection. This is the type
23 of information that the developers of new energy projects typically consider to be

1 sensitive, proprietary business information and project developers generally seek
2 to prevent the unrestricted public release of the information.

3

4 **Q: WHY IS THE ISO PROPOSING TO CHANGE THE ISO NEW ENGLAND**
5 **INFORMATION POLICY RATHER THAN CONTINUING TO ENTER**
6 **INTO NON-DISCLOSURE AGREEMENTS?**

7 **A:** The ISO would prefer to revise the ISO New England Information Policy, rather
8 than rely on individual non-disclosure agreements, so that the process for
9 treatment of confidential information will be consistent and transparent regardless
10 of whether a Project Sponsor is, or is not, a Governance Participant at a particular
11 point in the Forward Capacity Market qualification process. In addition,
12 eliminating the need to enter into individual non-disclosure agreements will result
13 in small decrease in the administrative burden and costs associated with the
14 individual agreements.

1 Q: DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes.

3

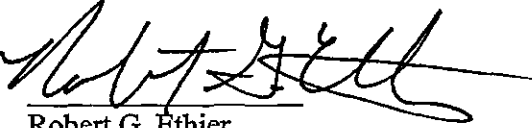
4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on: 9/26/07

6

7

8


Robert G. Ethier

Attachment 4

List of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to which a copy of this filing has been sent

**New England Governors
and Utility Regulatory
and Related Agencies
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New Britain, CT 06051-2605

Maine

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

Maine Public Utilities Commission
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Augusta, ME 04333-0018

Massachusetts

The Honorable Deval Patrick
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Massachusetts Department of Public Utilities
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Boston, MA 02110

New Hampshire

The Honorable John H. Lynch
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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

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Warwick, RI 02888

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The Honorable James H. Douglas
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**New England Governors
and Utility Regulatory
and Related Agencies**

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