

March 26, 2010

**VIA HAND DELIVERY**

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

**Re: ISO New England Inc. and New England Independent Transmission Company,  
L.L.C., Compliance Filing, Docket No. ER10-637-\_\_\_**

Dear Secretary Bose:

ISO New England Inc. ("ISO") and New England Independent Transmission Company, L.L.C. ("NEITC") (together, the "Filing Parties") submit this filing in compliance with the Commission's February 24, 2010 letter order in the referenced docket. That order accepted the "Operating Agreement with New England Independent Transmission Company, L.L.C." ("NEITC OA") subject to compliance with specified designation and identification requirements.

In compliance with that order, the ISO files six copies of its Rate Schedule No. 1 and NEITC files six copies of its Rate Schedule No. 1, in both cases designated, identified and paginated in accordance with Order No. 614. The rate schedules, which are identical in substance, also reflect the correction of two typographical errors in Section 2.01 of the NEITC OA, namely, that the last two subsections are now properly lettered (f) and (g), rather than (e) and (c) as originally filed on January 22, 2010.

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,

NEW ENGLAND INDEPENDENT  
TRANSMISSION COMPANY, L.L.C

ISO NEW ENGLAND INC.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 26<sup>th</sup> day of March, 2010.



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**OPERATING AGREEMENT**

**with**

**NEW ENGLAND INDEPENDENT TRANSMISSION  
COMPANY, L.L.C.**

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**OPERATING AGREEMENT**

**TABLE OF CONTENTS**

ARTICLE I. DEFINITIONS; INTERPRETATIONS .....	2
1.01. Definitions; Interpretations.....	2
ARTICLE II. TRANSMISSION FACILITIES .....	4
2.01. Transmission Facilities.....	4
2.02. New and Acquired Transmission Facilities and Transmission Upgrades .....	6
2.03. Merchant Facilities .....	6
2.04. Excluded Assets.....	6
2.05. Connection with Non-Parties .....	8
2.06. Review of Transmission Plans .....	11
2.07. Condemnation.....	11
ARTICLE III. OPERATING AUTHORITY.....	11
3.01. Grant of Operating Authority .....	11
3.02. Definition of ISO Operating Authority .....	12
3.03. Transmission Services and OATT Administration .....	16
3.04. Application Authority.....	20
3.05. The ISO’s Responsibilities.....	31
3.06. NEITC’s Responsibilities.....	32
3.07. Reserved Rights of NEITC.....	36
3.08. Repair and Maintenance of Transmission Facilities .....	38

---

3.09. Planning and Expansion .....	39
3.10. Invoicing, Collection and Disbursement of Customer Payments.....	40
3.11. Subcontractors .....	41
3.12. No Impairment of the ISO’s Other Legal Rights and Obligations.....	41
ARTICLE IV. REPRESENTATIONS AND WARRANTIES .....	42
4.01. Representations and Warranties of NEITC .....	42
4.02. Representations and Warranties of the ISO.....	43
ARTICLE V. COVENANTS OF NEITC.....	43
5.01. Covenants of NEITC .....	43
5.02. Financial Statements and Filings.....	43
5.03. Expenses .....	43
5.04. Consents and Approvals.....	43
5.05. Notice and Cure .....	44
ARTICLE VI. COVENANTS OF THE ISO.....	44
6.01. Covenants of the ISO .....	44
6.02. Financial Statements and Filings.....	44
6.03. Expenses .....	45
6.04. Consents and Approvals.....	45
6.05. Notice and Cure .....	46
ARTICLE VII. TAX MATTERS .....	35
7.01. Responsibility for NEITC Taxes .....	35

---

7.02. Responsibility for ISO Taxes .....	35
ARTICLE VIII. RELIANCE; SURVIVAL OF AGREEMENTS.....	35
8.01. Reliance; Survival of Agreements.....	35
ARTICLE IX. INDEMNIFICATION; INSURANCE; ASSUMPTION OF LIABILITIES.....	47
9.01. Indemnification.....	47
9.02. Notice of Proceedings.....	47
9.03. Defense of Claims .....	48
9.04. Subrogation .....	49
9.05. Insurance .....	49
9.06. Assumption of Liability.....	50
ARTICLE X. TERM; DEFAULT AND TERMINATION.....	52
10.01. Term; Termination Date .....	52
10.02. Release of Operating Authority .....	54
10.03. Events of Default of the ISO .....	55
10.04. Events of Default of NEITC.....	57
10.05 Transitions .....	58
ARTICLE XI. MISCELLANEOUS .....	58
11.01. Notices .....	58
11.02. Supersession of Prior Agreements.....	59
11.03. Waiver .....	59
11.04. Amendment; Limitations on Modifications of Agreement .....	59

---

11.05. No Third Party Beneficiaries.....	61
11.06. No Assignment; Binding Effect .....	61
11.07. Further Assurances; Information Policy; Access to Records .....	61
11.08. Business Day .....	63
11.09. Governing Law .....	63
11.10. Consent to Service of Process .....	63
11.11. Specific Performance; Force Majeure .....	63
11.12. Dispute Resolution .....	64
11.13. Invalid Provisions.....	64
11.14. Headings and Table of Contents.....	64
11.15. Liabilities; No Joint Venture .....	64
11.16. Counterparts .....	65
11.17. Conditions Precedent.....	65
11.18. Effective Dates .....	66

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**Schedules**

Schedule 1.01. Schedule of Definitions

Schedule 2.01(a). NEITC Category A Facilities. [reserved]

Schedule 2.01(b). NEITC Category B Facilities [reserved]

Schedule 3.02(d). List of Existing Operating Procedures

Schedule 3.09(a). Planning and Expansion – NEITC Rights and Obligations

Schedule 3.09(b). List of Existing Planning Procedures

Schedule 11.01. Notices

Schedule 11.17(c). Additional Conditions Precedent

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**OPERATING AGREEMENT**  
**WITH NEW ENGLAND INDEPENDENT TRANSMISSION COMPANY, L.L.C.**

This Operating Agreement (this "Agreement"), dated as of [date], is made and entered into by New England Independent Transmission Company, L.L.C., a Connecticut limited liability company ("NEITC"), and ISO New England Inc. ("ISO"), a Delaware corporation (NEITC and the ISO are collectively referred to herein as the "Parties").

WHEREAS, NEITC has been determined by the Federal Energy Regulatory Commission to meet the independence and capability requirements for an independent transmission company ("ITC") set forth in Attachment M to the ISO OATT and consistent with FERC's requirements;

WHEREAS, NEITC has presented itself to the ISO as willing and able to develop transmission projects that would address system reliability and economic efficiency once they have been identified as part of the Regional System Planning process, including but not limited to a proposal to develop the "Green Line" project, a high voltage direct current ("HVDC") transmission system linking AC/DC converter stations in Wiscasset, Maine, and the city of Boston, Massachusetts, via an underwater transmission cable that will be approximately 140-miles long and will be capable of transmitting 660 MW of energy;

WHEREAS, the ISO is a regional transmission organization ("RTO") authorized by the Federal Energy Regulatory Commission ("FERC") to exercise the functions required of RTOs pursuant to FERC's Order No. 2000 ("Order 2000") and FERC's RTO regulations;

WHEREAS, in accordance with the requirements of Order 2000, the ISO will be the transmission provider under the ISO Open Access Transmission Tariff (the "ISO OATT") of non-discriminatory, open access transmission services over the transmission facilities of NEITC ("Transmission Service");

WHEREAS, the ISO OATT will be designed to provide for the payment by transmission customers for Transmission Service at rates designed to recover the revenue requirements of NEITC in supporting the provision of such transmission service by the ISO under the ISO OATT;

WHEREAS, the ISO will be responsible for system planning within the ISO region subject to certain rights and obligations of NEITC, all as set forth in this Agreement;

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WHEREAS, the functions to be performed by the ISO and Order 2000 require that the ISO have the requisite operational authority over NEITC's transmission facilities;

WHEREAS, in accordance with the terms set forth herein, NEITC desires for the ISO to exercise, and the ISO desires to exercise, Operating Authority (as defined in Section 3.02 of this Agreement) over the NEITC Transmission Facilities (as defined in this Agreement) consistent with the requirements of Order 2000;

WHEREAS, NEITC will among other things, continue to own, physically operate, and maintain its transmission facilities; and

WHEREAS, references to the PTOs in this Agreement are not intended to impose additional requirements or obligations on the PTOs in addition to those in the TOA;

NOW, THEREFORE, in consideration of the promises, and the mutual representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, NEITC and the ISO agree as follows:

## ARTICLE I

### **DEFINITIONS; INTERPRETATIONS**

1.01 **Definitions; Interpretations.** Each of the capitalized terms and phrases used in this Agreement (including the foregoing recitals) and not otherwise defined herein shall have the meaning specified in Schedule 1.01. In this Agreement, unless otherwise provided herein:

- (a) words denoting the singular include the plural and vice versa;
- (b) words denoting a gender include all genders;
- (c) references to a particular part, clause, section, paragraph, article, exhibit, schedule, appendix or other attachment shall be a reference to a part, clause, section, paragraph, or article of, or an exhibit, schedule, appendix or other attachment to, this Agreement;
- (d) the exhibits, schedules and appendices attached hereto are incorporated herein by reference and shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein;

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(e) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, amendments, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in this Agreement;

(f) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time;

(g) a definition of or reference to any document, instrument or agreement includes any amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used;

(h) a reference to any Person (as hereinafter defined) includes such Person's successors and permitted assigns in that designated capacity;

(i) any reference to "days" shall mean calendar days unless "Business Days" (as hereinafter defined) are expressly specified;

(j) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day);

(k) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to this Agreement as a whole and not to any particular article, section, subsection, paragraph or clause hereof;

(l) a reference to "include" or "including" means including without limiting the generality of any description preceding such term, and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned; and

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(m) neither this Agreement nor any other agreement, document or instrument referred to herein or executed and delivered in connection herewith shall be construed against any Person as the principal draftsman hereof or thereof.

## ARTICLE II

### **TRANSMISSION FACILITIES**

2.01 **Transmission Facilities.** As to NEITC, the transmission facilities over which the ISO shall exercise Operating Authority in accordance with the terms set forth herein shall be:

(a) those facilities of NEITC listed in Schedule 2.01(a) (hereinafter “NEITC Category A Facilities”), as such list of facilities may be added to or deleted from in accordance with Sections 2.01(d) and 2.02 below;

(b) those facilities of NEITC listed in Schedule 2.01(b) (hereinafter “NEITC Category B Facilities”), as such list of facilities may be added to or deleted from, in accordance with Sections 2.01(d) and 2.02 below; and

(c) those transmission facilities of NEITC within the New England Transmission System with a voltage level of less than 69 kV and all transformers that have no NEITC Category A Facilities or NEITC Category B Facilities connected to the lower voltage side of the transformer that are not listed on Schedule 2.01(a) and Schedule 2.01(b) (hereinafter “NEITC Local Area Facilities”), provided that any excluded facilities of NEITC listed on Schedule 4.01(d) shall not be NEITC Local Area Facilities.

(d) The transmission facilities included on any of the lists of the NEITC Category A Facilities or the NEITC Category B Facilities contained in Schedule 2.01(a) and Schedule 2.01(b), respectively, may be redesignated on another of those two lists, deleted from such list, or redesignated as a NEITC Local Area Facility without the necessity of an amendment to this Agreement, but only in the following manner:

(i) at the direction of a Governmental Authority with jurisdiction over the Transmission Facilities in question, provided that the ISO and NEITC shall be provided prior written notice of such changes;

(ii) as agreed between the ISO and NEITC; or

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(iii) where the operational characteristics of a transmission facility have been materially modified (including a change from a radial transmission facility to a looped transmission facility that contributes to the parallel carrying capability of the New England Transmission System) in accordance with Section 2.01(e); provided that any such changes shall also be subject to ISO review consistent with Section 2.06.

(e) All transmission facilities to be redesignated as NEITC Category A Facilities, NEITC Category B Facilities, or Local Area Facilities or deleted from the lists in Schedule 2.01(a) and Schedule 2.01(b) in accordance with Section 2.01(d)(iii), and all transmission facilities to be added to the lists in Schedule 2.01(a) and Schedule 2.01(b) in accordance with Section 2.02 shall be classified in accordance with the following standards:

(i) NEITC Category A Facilities shall consist of: all transmission lines with a voltage level of 115 kV and above, except for those 115 kV transmission facilities specifically designated as NEITC Category B Facilities in accordance with Section 2.01(e)(ii); all transmission interties between Control Areas; all transformers that have NEITC Category A Facilities connected to the lower voltage side of the transformer; all transformers that require an NEITC Category A Facility to be taken out of service when the transformer is taken out of service; and all breakers and disconnects connected to, and all shunts, relays, reclosing and associated equipment, dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other equipment specifically installed to support the operation of such transmission lines, interties, and transformers.

(ii) NEITC Category B Facilities shall consist of: all 115 kV radial transmission lines and all 69 kV transmission lines that are not interties between Control Areas; all transformers that have any NEITC Category B Facilities and no NEITC Category A Facilities connected to the lower voltage side of the transformer except to the extent such transformers are designated as NEITC Category A Facilities in accordance with Section 2.01(e)(i); and all breakers and disconnects connected to, and all shunts, relays, reclosing and associated equipment, dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other equipment specifically installed to support the operation of such NEITC Category B Facilities.

(iii) NEITC Local Area Facilities shall consist of all transmission facilities with a voltage level of less than 69 kV and all transformers that have no NEITC Category A Facilities or NEITC Category B Facilities connected to the lower voltage side of the transformer.

(iv) To the extent there is any dispute between the ISO and NEITC as owner of a transmission facility concerning classification of such transmission facility under these standards, such disagreement shall be subject to the dispute resolution provisions of this Agreement, provided that the ISO's classification of a transmission facility under the standards shall govern pending resolution of the dispute.

(f) Collectively, all NEITC Category A Facilities, NEITC Category B Facilities, and NEITC Local Area Facilities shall hereinafter be referred to as the "Transmission Facilities," provided that "Transmission Facilities" shall not include Excluded Assets as defined in Section 2.04 of this Agreement or Merchant Facilities. The ISO shall maintain on its OASIS a posting of the current versions of Schedule 2.01(a) and Schedule 2.01(b), in each instance, reflecting each such change promptly after such change is made.

(g) The classifications set forth in this Section 2.01 are for operational purposes. Rate treatment of Transmission Facilities shall be governed by the ISO OATT, provided that filings for rate treatment under the ISO OATT shall be subject to Section 3.04 of this Agreement.

2.02 **New and Acquired Transmission Facilities and Transmission Upgrades.**

(a) Any New Transmission Facility, any Transmission Upgrade, and any Acquired Transmission Facility shall be considered a "Transmission Facility" under this Agreement once it is placed into commercial operation by NEITC, unless otherwise agreed by the ISO and NEITC, shall be added to Schedule 2.01 by amendment of this Agreement, and shall be subject to the Operating Authority of the ISO in accordance with the terms of this Agreement.

(b) Any Merchant Facility interconnected to or within the New England Transmission System shall not be the subject of this Agreement. Any Merchant Facility interconnected to or within the New England Transmission System constructed and placed in commercial operation after the Operations Date shall be subject to the authority of the ISO under a separate agreement in accordance with Section 2.03 and any applicable provisions of the ISO OATT.

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2.03 **Merchant Facilities.** The terms and conditions under which NEITC, an Affiliate of NEITC or any other entity grants authority over any Merchant Facilities to the ISO shall not be governed by this Agreement, it being understood that NEITC shall enter into operating agreements relating to its Merchant Facilities directly with the ISO in accordance with applicable provisions of the ISO OATT. Nothing in this Agreement is intended to limit or expand the right of NEITC, the Affiliate of NEITC, or any other entity to propose, construct, or own Merchant Facilities interconnected to the New England Transmission System. No Merchant Facility may become an Acquired Transmission Facility.

2.04 **Excluded Assets.** The “Excluded Assets” of NEITC shall consist of those assets and/or facilities of NEITC set forth in Section 2.04(a) and (b). These Excluded Assets are expressly excluded from the definition of Transmission Facilities under this Agreement, and the ISO shall not have Operating Authority over NEITC’s Excluded Assets. Nothing in this Section 2.04 is intended to address the rate treatment of the Transmission Facilities or any other asset of NEITC. Rate treatment of Transmission Facilities shall be governed by the ISO OATT, provided that filings for rate treatment under the ISO OATT shall be subject to Section 3.04 of this Agreement:

(a) Excluded Assets are any assets, facilities, and/or portions of facilities owned by NEITC that are connected with or associated with Transmission Facilities to the extent specifically excluded pursuant to the following items (i) through (vii) of this Section 2.04(a):

(i) proceeds from the use or disposition of Transmission Facilities;

(ii) any payment, refund or credit (1) relating to Taxes in respect of the Transmission Facilities, (2) arising under any contracts or tariffs of NEITC and relating to services provided prior to the beginning of the Term, or (3) arising under any contract or tariff that provides for rates that are subject to regulation by an agency other than FERC.

(iii) any rights, ownership, title or interest NEITC may have with respect to telecommunications assets and equipment, provided that the ISO shall continue to have the right to use such telecommunication assets and equipment attached to or associated with Transmission Facilities solely to the extent needed for the exercise of the ISO’s Operating Authority and further provided that such use right shall not be assignable by the ISO;

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(iv) any existing contracts or contract rights of NEITC related in any manner to Transmission Facilities unless NEITC agrees to assign or transfer such contracts to the ISO;

(v) any assets, property rights, licenses, permits or facilities that are used for or in (1) the distribution, generation, trading or marketing of electricity (except for facilities specifically defined as Transmission Facilities that are used for such activities), (2) gas transportation, gas, water, petroleum, chemical, real estate development, or cable business, or (3) any other activity unrelated to the transmission of electricity located on, or making use of, the Transmission Facilities;

(vi) any causes of action or claims related to Transmission Facilities, provided, that, upon the written agreement of NEITC and the ISO to the assumption by the ISO of the management of such claims under mutually agreed terms and conditions, the ISO may manage NEITC's causes of action or claims against a third party relating to such Transmission Facilities, and provided further that the ISO shall have the right to pursue causes of action or claims against third parties to the extent necessary for the ISO to fulfill its responsibilities for invoicing, collection and disbursement of customer payments in accordance with Section 3.10; and

(vii) any asset or facility for which Operating Authority may not be lawfully transferred or assigned.

(b) Excluded assets are any assets or facilities of NEITC that are not specifically defined as Transmission Facilities, including without limitation the facilities or portions of facilities described in items (i) through (xii) of this Section 2.04(b):

(i) all cash, cash equivalents, bank deposits, accounts receivable, and any income, sales, payroll, property or other Tax receivables;

(ii) proceeds from the use or disposition of any facilities or assets owned by NEITC;

(iii) certificates of deposit, shares of stock, securities, bonds, debentures, and evidences of indebtedness;

(iv) any rights or interest in trade names, trademarks, service marks, patents, copyrights, domain names or logos;

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(v) any payment, refund or credit (1) relating to Taxes, (2) arising under any contracts or tariffs of NEITC and relating to services provided prior to the beginning of the Term, or (3) arising under any contract or tariff that provides for rates that are subject to regulation by an agency other than FERC;

(vi) any facilities, including transmission facilities, located outside the New England Transmission System;

(vii) any rights, ownership, title or interest NEITC may have with respect to telecommunications assets and equipment;

(viii) any existing contracts or contract rights of NEITC unless NEITC agrees to assign or transfer such contracts to the ISO;

(ix) any assets, property rights, licenses, permits or facilities that are used for or in (1) the distribution, generation, trading or marketing of electricity or (2) gas transportation, gas, water, petroleum, chemical, real estate development, or cable business, or (3) any other activity unrelated to the transmission of electricity whether or not located on, or making use of, the Transmission Facilities;

(x) any causes of action or claims;

(xi) any asset or facility for which Operating Authority may not be lawfully transferred or assigned; and

(xii) any interests of any kind in NEITC's real property, provided that nothing in this Section 2.04 shall restrict NEITC from conveying interests in real property in any future written agreement into which the ISO and NEITC may, in their sole discretion, enter.

## 2.05 **Connection with Non-Parties.**

(a) NEITC shall connect its Transmission Facilities with the facilities of any entity that is not a Party, including the facilities of a current or proposed Transmission Customer, and shall install (or cause to be installed) and construct (or cause to be constructed) any transmission facilities required to connect the facilities of a non-Party to the Transmission Facilities to the extent such connection or construction is required by applicable law, including

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the Federal Power Act and any applicable regulations issued by FERC and provided that the construction of any such transmission facilities shall be subject to the conditions associated with NEITC's obligation to build set forth in Schedule 3.09(a). Any such connection shall be subject further to: (1) the receipt of any necessary regulatory approvals, (2) compliance with the procedures set forth in the ISO OATT for review of the reliability and operational impacts of a proposed interconnection (including the procedures for interconnection of a Generating Unit under the Interconnection Standard); and (3) execution of an Interconnection Agreement with such entity containing provisions for the safe and reliable operation of each interconnection with respect to such entity's facilities in accordance with Good Utility Practice, applicable NERC/NPCC Requirements, and applicable Law (including the Federal Power Act); provided that

(i) Except as provided in 2.05(a)(ii) below, NEITC shall engage in good faith negotiations as to the terms and conditions of such Interconnection Agreement with any such non-Party, but, except as may be required pursuant to regulations issued by FERC, NEITC shall not be required to enter into any Interconnection Agreement containing terms and conditions unacceptable to NEITC and shall reserve the right to resolve any disputes, and/or make any filings with FERC, with respect thereto.

(ii) With respect to the interconnection of a Large Generating Facility or a Small Generating Facility to any Transmission Facility, the Interconnection Agreement shall be a three-party agreement among NEITC, the ISO, and the interconnecting non-Party based on the Schedule 22 Large Generator Interconnection Agreement or Schedule 23 Small Generator Interconnection Agreement, respectively, in the ISO OATT. With respect to the interconnection of other Generating Units to any Transmission Facility of NEITC, the ISO shall be a party to Interconnection Agreements if and to the extent that FERC regulations require the ISO to be a party. Either the ISO or the PTOs (working with NEITC as a party to the Disbursement Agreement), may propose amendments to the Schedule 22 Large Generator Interconnection Agreement or Schedule 23 Small Generator Interconnection Agreement under Section 205 of the Federal Power Act and shall include in such proposal the views of the ISO and NEITC and PTOs, as applicable, provided that the standard applicable under Section 205 of the Federal Power Act shall apply only to the NEITC and/or PTOs' position on any financial obligations of the PTOs and/or NEITC (as applicable) or the interconnecting non-Party, and any provisions related to

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physical impacts of the interconnection on the Transmission Facilities or other assets. If NEITC, the ISO and the interconnecting non-Party agree to the terms and conditions of a specific Large Generator Interconnection Agreement or Small Generator Interconnection Agreement, as applicable, or any amendments to such an Interconnection Agreement, then NEITC and the ISO shall jointly file the executed Interconnection Agreement, or amendment thereto, with FERC under Section 205 of the Federal Power Act. To the extent NEITC, the ISO and such interconnecting non-Party cannot agree to proposed variations from the Schedule 22 or 23 Interconnection Agreement applicable to a Large Generating Facility or Small Generating Facility, respectively, or cannot otherwise agree to the terms and conditions of the Interconnection Agreement, or any amendments to such an Interconnection Agreement, then NEITC and the ISO shall jointly file an unexecuted Interconnection Agreement, or amendment thereto, with FERC under Section 205 of the Federal Power Act and shall identify the areas of disagreement in such filing, provided that, in the event of disagreement on terms and conditions of the Interconnection Agreement related to the costs of upgrades to the Transmission Facilities, the anticipated schedule for the construction of such upgrades, any financial obligations of NEITC, and any provisions related to physical impacts of the interconnection on the Transmission Facilities or other assets, then the standard applicable under Section 205 of the Federal Power Act shall apply only to NEITC's position on such terms and conditions.

The costs of interconnection facilities shall be allocated in the manner specified in the ISO OATT.

(b) NEITC shall also connect its Transmission Facilities with the facilities of any entity that is not a Party upon satisfaction of the "Elective Transmission Upgrade" provisions of the ISO OATT, provided that NEITC shall only connect the facilities of such entity (the "Elective Transmission Upgrade Applicant") upon satisfaction of the following conditions:

(i) The Elective Transmission Upgrade Applicant shall enter into an Interconnection Agreement with the affected PTO(s) and NEITC and, to the extent necessary and appropriate, enter into support agreements with the affected PTO(s) and NEITC, provided that the Elective Transmission Upgrade Applicant may request, upon providing the security, credit assurances, and/or deposits required by the affected PTO, the filing with the Commission by NEITC and/or affected PTOs of unexecuted Interconnection Agreements and support agreements.

(ii) The Elective Transmission Upgrade Applicant shall obtain all necessary legal rights and approvals for the construction and maintenance of the upgrade and shall cooperate with NEITC in obtaining all necessary legal rights and approvals for the construction and maintenance of additions or modifications, if any, required in conjunction with the upgrade.

(iii) The Elective Transmission Upgrade Applicant shall be responsible for 100% of all of the costs of said upgrade and of any additions to or modifications of the Transmission Facilities that are required to accommodate the Elective Transmission Upgrade. A request for rate treatment of an Elective Transmission Upgrade, if any, shall be determined by FERC in the appropriate proceeding.

2.06 **Review of Transmission Plans.** NEITC shall submit to the ISO in such form, manner and detail as the ISO may reasonably prescribe: (i) any new or materially changed plans for retirements of or changes in the capacity of such Transmission Facilities rated 69 kV or above or plans for construction of New Transmission Facilities or Transmission Upgrades rated 69 kV or above; and (ii) any new or materially changed plan for any other action to be taken by NEITC which may have a significant effect on the stability, reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant. The ISO shall provide notification of any such NEITC submissions to the appropriate Technical Committee(s). Unless prior to the expiration of ninety (90) days, the ISO notifies NEITC in writing that it has determined that implementation of the plan will have a significant adverse effect upon the reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant, NEITC shall be free to proceed. If the ISO notifies NEITC that implementation of such plan has been determined to have a significant adverse effect upon the reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant, NEITC shall not proceed to implement such plan unless NEITC takes such action or constructs such facilities as the ISO determines to be reasonably necessary to avoid such adverse effect.

2.07 **Condemnation.** If, at any time, any Governmental Authority commences any process to acquire any Transmission Facilities or any other interest in Transmission Facilities then held by NEITC through condemnation or otherwise through the power of eminent domain, (i) NEITC shall provide the ISO with written notice of such process, (ii) NEITC shall, at its cost, direct any litigation or proceeding regarding such condemnation or eminent domain matter, (iii) NEITC shall have the right to settle any such proceeding without the consent of the ISO, and (iv) any award in condemnation or eminent domain shall be paid to NEITC without any claim to such award by the ISO.

### **ARTICLE III** **OPERATING AUTHORITY**

3.01 **Grant of Operating Authority.** (a) Subject to the terms set forth in this Agreement, including Article III and Article X hereof, NEITC hereby authorizes the ISO, through its officers, employees, consultants, independent contractors and other personnel, to exercise Operating Authority over the Transmission Facilities, including provision of Transmission Service over the Transmission Facilities under the ISO OATT, and the ISO hereby agrees to assume and exercise Operating Authority over the Transmission Facilities in accordance with this Agreement.

(b) The grant by NEITC to the ISO and the assumption by the ISO of Operating Authority over the Transmission Facilities are solely for the purposes of allowing the ISO to fulfill the functions of an RTO as specified herein (including provision of Transmission Service under the ISO OATT) and do not constitute an assumption by the ISO of any liabilities with respect to the Transmission Facilities except as otherwise specifically provided herein (including as provided in Article IX of the Agreement).

(c) Nothing herein or elsewhere contained shall be construed as requiring or effecting a transfer of NEITC's responsibility (or the assumption thereof by the ISO) for the physical control of the Transmission Facilities, including the physical operation, repair, maintenance and replacement of such Transmission Facilities, or as conveying to the ISO: (x) any right, ownership, title or interest in or to the Transmission Facilities; (y) any right of access to NEITC's real property, except as specified in Section 3.02(i); or (z) any rights or authority with respect to NEITC's Excluded Assets, except as specifically provided herein.

3.02 **Definition of ISO Operating Authority.** Consistent with the provisions of this Agreement, including Section 3.02(a) below, "Operating Authority" shall mean those functions set forth in Sections 3.02, 3.03, and 3.08 and those responsibilities set forth in Section 3.05, and shall not include those rights, responsibilities and functions set forth in Sections 3.06 and 3.07. Subject to the first sentence of this Section 3.02, the ISO shall exercise such Operating Authority in accordance with applicable Operating Procedures as specified in Section 3.02(d) below.

(a) The ISO shall perform the following functions with respect to the Transmission Facilities, consistent with applicable NERC/NPCC Requirements and other applicable regulatory standards, including (as needed) issuing instructions to, or coordinating with, any NEITC's Local Control Center(s):

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- (i) centrally dispatch generation (and dispatchable and interruptible load) and implement real-time balancing, including meeting NERC control performance criteria;
  - (ii) determine Operating Limits based on forecasted or real-time system conditions and in accordance with the facility ratings established by NEITC in collaboration with the ISO pursuant to Section 3.06;
  - (iii) take such actions as may be necessary to plan and maintain short-term (including real-time) reliability and system security (including curtailment of external transactions in accordance with FERC-accepted or -approved Market Rules and the applicable transmission tariff or transmission agreement);
  - (iv) consistent with the ISO Information Policy, exchange security information with NEITC, applicable PTOs, non-PTO transmission operators and other neighboring systems and regional entities; and
  - (v) provide for an ISO Control Center and an independent Back-up Control Center, as the ISO deems necessary to comply with applicable NERC/NPCC Requirements and any applicable regulatory requirement.

(b) The ISO shall receive, confirm and schedule External Transactions for the New England Transmission System; enter into Coordination Agreements and operating arrangements with the operators of neighboring Control Areas; coordinate system operation and emergency procedures with neighboring Control Areas; and administer any NEITC Interconnection Agreements with neighboring Control Areas and scheduling provisions of the tariff(s) applicable to External Transactions, in accordance with the terms of those agreements and tariffs;

(c) The ISO shall act as the Reliability Authority for the New England Transmission System. The ISO may intercede and direct appropriate near-term operational actions in order to protect reliability, provided that nothing in this Section 3.02(c) shall require NEITC to undertake an action contrary to applicable Law or shall limit the right of NEITC pursuant to Section 3.07 to take any action(s) that it deems necessary to prevent loss of human life, injury to persons and/or damage to property.

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(d) The ISO shall utilize the Operating Procedures relating to the exercise of Operating Authority over the Transmission Facilities. The Operating Procedures shall initially consist of the Operating Procedures in existence on the Operations Date (hereinafter “Existing Operating Procedures”). Such Existing Operating Procedures shall consist of those Operating Procedures listed in Schedule 3.02(d). The ISO shall develop any modifications to Operating Procedures (including Existing Operating Procedures) and any new Operating Procedures that it may deem necessary or appropriate: (i) in coordination with NEITC (or its Local Control Centers, as applicable) and other transmission owners so as to ensure that NEITC’s (or its Local Control Centers’) knowledge of their Transmission Facilities is given due consideration in the development or modification of the transmission-related portions of such Operating Procedures and (ii) in consultation with other stakeholders. The ISO shall have the authority to modify Operating Procedures or develop new Operating Procedures without such coordination or consultation when the ISO does not have sufficient time to undertake such coordination or consultation due to emergent and unanticipated circumstances. In the event that the ISO and NEITC disagree about modifications to the transmission-related portions of Operating Procedures or any new Operating Procedures related to the operation of the Transmission Facilities, NEITC will have the opportunity to submit the dispute for resolution in accordance with the dispute resolution provisions set forth in Section 11.12 herein. Pending such resolution, the ISO shall have the authority, as the system operator with ultimate authority for the real-time operation of the New England Transmission System, to implement any such new Operating Procedures or modified Operating Procedures. Notwithstanding anything in the foregoing, Operating Procedures related to the establishment of ratings for New Transmission Facilities and Acquired Transmission Facilities or related to changes to existing ratings of the Transmission Facilities (collectively “Rating Procedures”) shall be developed and placed into effect pursuant to Section 3.06(a)(v).

To the extent NEITC will be required to physically operate its Transmission Facilities in accordance with any operational documents in effect as of the Operations Date or as subsequently developed or amended by the ISO (other than the Operating Procedures), the ISO shall develop such operational documents and amendments thereto in coordination with NEITC and with the PTOs (or their Local Control Centers, as applicable) whose Transmission Facilities will be operated in accordance with such documents, provided that stakeholders shall have the right to consult in the development of such documents, subject to any limitations associated with the confidential nature of such documents consistent with confidentiality, that the ISO will have the right to place such operating documents into effect in the event of a dispute concerning such documents, and that NEITC shall have the right to submit any such dispute for resolution in accordance with the dispute resolution provisions set forth in Section 11.12 herein. Any such coordination among NEITC, the PTOs and the ISO pursuant to this Section 3.02(d) shall be subject to applicable standards of conduct consistent with FERC Order No. 889.

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(e) The ISO shall seek agreement with NEITC, where time limitations do not make it impracticable to do so, on real-time operational decisions affecting the Transmission Facilities not otherwise specified in the Operating Procedures developed in accordance with Section 3.02(d). In the absence of such agreement, or if time limitations do not permit reaching agreement, the ISO shall implement its operational decision. If such ISO decision is disputed, the ISO's position shall control pending resolution of the dispute.

(f) The ISO shall develop, maintain, and, if needed, implement the System Restoration Plan for the New England Transmission System. NEITC shall develop any NEITC Local Restoration Plan (and modifications thereto) for the Transmission Facilities in consultation with the ISO and the ISO shall incorporate into the System Restoration Plan the NEITC Local Restoration Plan and any modifications developed thereto, provided that any modifications to the NEITC Local Restoration Plan are subject to the ISO's approval in order to coordinate and promote the reliability of the Restoration Plans.

(g) The ISO shall coordinate voltage and reactive dispatch of facilities to the extent normal schedules are unable to be maintained by Local Control Centers.

(h) The ISO shall direct the implementation of emergency procedures, including Load Shedding and voltage reduction, in coordination with the Local Control Centers.

(i) The ISO shall have the authority to perform the following tasks in relation to compliance with current or future NEITC responsibilities:

(i) perform all compliance and monitoring responsibilities of the ISO, including the issuance of sanction letters, with respect to existing or successor NERC or NPCC compliance programs associated with standards, criteria and measurements for which NEITC is responsible and accountable to the ISO. To the extent that the ISO receives a sanction letter from NERC or NPCC that is substantially related to the actions of NEITC, the ISO may issue a sanction letter to NEITC;

(ii) perform all compliance and monitoring responsibilities of the ISO associated with Operating Procedures relating to standards, criteria and measurements that NEITC is responsible for and accountable to the ISO. Such responsibilities shall include audits of NEITC for compliance with Operating Procedures to the extent the ISO determines such audits are necessary, and the issuance of sanction letters;

(iii) perform periodic audits of each Local Control Center's and NEITC's performance of the functions listed in Sections 3.06(a)(i), (ii), (v), (vi), (vii), (viii) and (ix) in accordance with applicable Operating Procedures and applicable reliability standards, including audits to monitor compliance of the Local Control Center (and NEITC employees interacting with the Local Control Centers) with the ISO Information Policy and applicable standards of conduct consistent with FERC Order No. 889 in performing these functions. Such Local Control Center audits shall generally be conducted no more frequently than once every three years, provided that the ISO shall have the authority to conduct an audit more frequently if it determines that circumstances so require.

All audits conducted pursuant to this Section 3.02(i) shall be conducted by the ISO or by an independent third party, with expenses of the ISO (or the third-party auditor) borne by the ISO and recovered through its administrative tariff. NEITC shall bear its own expenses in complying with the audit. Such audits shall be conducted during normal business or operational hours and with reasonable notice. The general scope of each audit and the general process for conducting the audit will be discussed with NEITC in advance. Nothing in this Section 3.02(i) shall imply that a sanction letter shall include any financial or other penalties. Nothing in this Section 3.02(i) shall limit the right of the ISO to separately file proposals at FERC to assess financial or other penalties against any entity or shall limit the right of NEITC to comment on or protest any such proposals.

(j) In addition to the functions set forth in Sections 3.02(a) - (i), Operating Authority shall also consist of the following functions that the ISO shall perform with respect to NEITC Category A Facilities; provided, however, that the ISO (in the absence of NEITC's consent) is not authorized to perform such functions with respect to any NEITC Category B Facilities or Local Area Facilities, unless the outages of such facilities reasonably could be expected to result in a violation of reliability criteria:

- (i) monitor and control, in accordance with the facility ratings established by NEITC in collaboration with the ISO pursuant to Section 3.06, on a real-time basis, power flows on the system, voltage and system frequency; and
- (ii) coordinate with the Local Control Centers on the settings for dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other similar dynamic equipment that affects power flows, and approve or direct changes to such settings.

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(k) If at any time, any Party provides notice to the other Party that it believes NERC and NPCC documents that are not NERC/NPCC Requirements have been modified so as to expand the scope of the functions to be performed by the ISO or NEITC, the Parties shall consider in good faith changes to this Agreement that will allow the Parties to follow such guidelines; provided, however, that, the Parties shall have no obligation to agree to such changes. If the Parties cannot agree to such changes, the dispute resolution procedures of Section 11.12 shall be utilized. Nothing in this Section 3.02(k) shall be construed to excuse any Party from complying with applicable NERC/NPCC Requirements.

**3.03 Transmission Services and OATT Administration.**

(a) The ISO shall administer the ISO OATT in the manner specified in this Section 3.03. The ISO's OATT administration responsibilities shall include those enumerated below:

(i) The ISO shall receive, post on OASIS as required by Commission regulations, and respond to requests by Large Generating Facilities and Small Generating Facilities to be interconnected under the ISO OATT, all Transmission Service requests and requests under the Local Service Schedules. Except as provided in Section 3.03(a)(ii), the ISO shall perform the system impact studies and facilities studies (and execute and administer agreements for such studies) in connection with such requests to the Administered Transmission System. Notwithstanding the foregoing, (A) the ISO shall consult with NEITC prior to completion of system impact studies and facilities studies in connection with requests that affect the Transmission Facilities and distribution facilities and shall include in any such studies NEITC's reasonable estimates of the costs of upgrades to the Transmission Facilities needed to implement the conclusions of such studies and NEITC's reasonable anticipated schedule for the construction of such upgrades; (B) nothing in this Agreement shall preclude the ISO from entering into a separate agreement(s) with NEITC for such studies, pursuant to the ISO's supervision and the ISO's authority to require modifications to such studies, to perform system impact studies and facilities studies; (C) except as provided in Section 3.03(a)(ii) with respect to interconnection of Generating Units that would not have an impact on facilities used for the provision of regional transmission service, nothing in this Agreement shall preclude the performance of studies related to the interconnection of Generating Units by a third party consultant to the extent permitted by applicable procedures in the ISO OATT (including

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procedures governing the treatment of confidential information) and provided that such studies performed by any third party consultant must include NEITC's reasonable estimates of the costs of upgrades to such Transmission Facilities needed to implement the conclusions of such studies and NEITC's reasonable anticipated schedule for the construction of such upgrades; and (D) NEITC shall, upon request by the ISO, conduct any necessary studies related to the Transmission Facilities, including system impact studies and facilities studies, and shall assist in the performance of any such studies, including the provision of information and data in accordance with Section 11.07 of this Agreement.

(ii) The ISO shall forward to NEITC applications for Local Service. The ISO shall review applications for Local Service or requests for the interconnection of Large Generating Facilities and Small Generating Facilities to be interconnected to a Transmission Facility to determine whether the service or interconnection would have an impact on facilities used for the provision of regional transmission service. If so, and the interconnection is to a Transmission Facility, the ISO will perform a system impact study and facilities study, as necessary to address the impacts on facilities used for the provision of regional transmission service. NEITC shall be responsible for reviewing and responding to requests for Local Service not having an impact on facilities used for the provision of regional transmission service and for interconnections not having an impact on facilities used for the provision of regional transmission service, and shall perform all system impact studies and facilities studies regarding such requests; provided, however, that NEITC shall consult with the ISO prior to completion of such system impact studies and facilities studies and further provided that the ISO will use reasonable efforts to assist NEITC and interconnecting party in resolving disputes arising regarding the performance of such studies. NEITC shall provide the ISO with information necessary to evaluate any such dispute in accordance with Section 11.07 of this Agreement, and shall include provisions in each of its study agreements providing for reimbursement of the ISO's costs incurred in these efforts.

(iv) The ISO shall calculate the TTC and ATC for all interties on the New England Transmission System and determine the TTC and ATC calculation methodologies for interties on the New England Transmission System (consistent with applicable NERC/NPCC Requirements and applicable regulatory standards),

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provided that modifications to calculation methodologies as they exist on the Operations Date shall be developed by the ISO in consultation with the PTOs, NEITC and other interested stakeholders. To the extent that TTC and ATC on a NEITC's Local Network must be calculated in connection with the provision of Local Service, then NEITC shall calculate such TTC and ATC.

(v) The ISO shall operate and maintain the OASIS (or a successor system) as required by FERC, including posting of TTC/ATC for interties on the New England Transmission System; provided, however, that such system shall conform to the requirements for such systems as specified by FERC. NEITC shall provide updates to the NEITC-specific Local Service pages on the OASIS site, subject to the ISO's review of such updates. The ISO shall have the authority to direct any changes to such NEITC-specific Local Service pages that it deems appropriate to conform to FERC requirements and the terms and conditions of the ISO OATT.

(vi) The ISO shall procure and act as supplier of last resort of Ancillary Services (including arranging for the sale and purchase of emergency capacity and energy with neighboring Control Areas), in accordance with the ISO OATT and FERC-accepted or -approved Market Rules.

(vii) The ISO shall provide regional Transmission Service to Transmission Customers over the Transmission Facilities in accordance with the rates, terms and conditions of the ISO OATT, subject to Section 3.03(c) with respect to Local Service.

(viii) The ISO shall track inadvertent energy and administer inadvertent energy payback/accounting with neighboring Control Areas in accordance with the terms and conditions of the Interconnection Agreements or Coordination Agreements with neighboring Control Areas and applicable tariff provisions.

(ix) The ISO shall make informational filings with the Commission that are required of an RTO, provided that NEITC shall provide the ISO with all necessary information to make such filings, in such manner as the ISO shall reasonably prescribe and in accordance with Section 11.07 of this Agreement.

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(b) Notwithstanding Section 3.03(a), retail load customers requesting to interconnect with the Transmission Facilities of NEITC shall submit service requests to NEITC. Such service requests submitted to the ISO shall be forwarded to NEITC. NEITC shall execute and administer the agreements, and shall be responsible for billing, collections, dispute resolution and the performance of system impact studies and facilities studies, in coordination with the ISO as necessary, in connection with such requests.

(c) Local Service. NEITC authorizes the ISO to act as its agent in the performance of its Transmission Service and OATT administration duties with regard to Local Service, including all ISO responsibilities with respect to Local Service and Local Area Facilities as set forth in Section 3.03(a) above. NEITC agrees to perform all tasks and undertake all responsibilities necessary and appropriate to facilitate the provision of Local Service in accordance with its Local Service Schedule. NEITC shall, in accordance with Section 11.07 of this Agreement, provide the ISO with information and data requested by the ISO to perform its Transmission Service and OATT administration duties with regard to Local Service. NEITC shall maintain its Local Service Schedule in accordance with FERC regulations governing filed rate schedules, shall provide the ISO with copies of proposed changes to its Local Service Schedules when filed with the FERC, and shall notify the ISO when FERC approves or accepts changes to such Local Service Schedules. NEITC shall be responsible for sending all invoices for Local Service to Transmission Customers and pursuing collections for outstanding payments due for Local Service. The ISO, by the execution of this Agreement, shall not assume any liability in connection with the provision of Local Service other than the liability which may result from an act or omission of the ISO related to the ISO's rights and responsibilities under this Agreement, including an ISO directive and/or instruction to a Party. Nothing in this Section 3.03(c) shall affect the relative rights and responsibilities of the Parties pursuant to Article IX of this Agreement.

(d) Transmission Service Agreements. The ISO and NEITC shall enter into all agreements for Transmission Service over the Transmission Facilities; provided that:

(i) A pro forma regional transmission service agreement (or service agreements) shall be attached to the ISO OATT and such pro forma service agreement(s) shall set forth the respective rights and responsibilities of the Transmission Customer, the ISO, the PTOs and NEITC. The ISO shall have the authority, pursuant to Section 205 of the Federal Power Act, to amend the pro forma service agreement(s) or the Market Participant Service Agreement ("MPSA") or executed service agreements related to the terms and conditions of

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regional Transmission Service. NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall have the authority, pursuant to Section 205 of the Federal Power Act, to amend the pro forma service agreement(s) related to the terms and conditions of Local Service and NEITC shall have the authority, pursuant to Section 205 of the Federal Power Act, to amend executed service agreements related to the terms and conditions of Local Service over its Transmission Facilities.

(ii) The ISO shall be responsible for filing with the FERC, or electronically reporting to the FERC as applicable, all new agreements for Transmission Service over the Transmission Facilities. Such filings with respect to Local Service will be made by the ISO as agent for NEITC. In the event of any dispute between the ISO or NEITC and a Transmission Customer concerning the terms and conditions of such service agreements, the ISO shall file an unexecuted copy of the pro forma service agreement set forth in the ISO OATT and shall include in such filing any statement provided by NEITC, affected PTO(s) and the Transmission Customers concerning their respective positions on any proposed changes or additions to the pro forma service agreement.

(e) Local Networks. A “Local Network” shall consist of those networks of Transmission Facilities identified on Attachment E of the ISO OATT as of the Operations Date. The Local Networks shall only be changed to reflect the effectuation of a merger, acquisition, or consolidation and reorganization, to add a new PTO from outside of the New England Control Area, or to reflect the withdrawal from the ISO of a PTO.

### 3.04 Application Authority.

(a) NEITC shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise:

(i) the revenue requirements for all Transmission Facilities used for the provision of Transmission Service (including Transmission Facilities leased to NEITC or to which NEITC has contractual entitlements);

(ii) any rates or charges for transmission services that are based solely on the revenue requirements of the Transmission Facilities (including Transmission Facilities leased to NEITC or to which NEITC has contractual entitlements) under NEITC’s FERC-accepted or -approved Local Service Schedule to the ISO OATT;

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(iii) any terms and conditions for Local Network Service or Local Point-to-Point Transmission Service under NEITC's Local Service Schedule to the ISO OATT;

(iv) any rates or charges for the recovery of NEITC's investment in a New Transmission Facility or Transmission Upgrade that enters commercial service after the Effective Date of this Agreement and the construction of which was not required under an ISO System Plan or categorized as "Proposed," "Planned," or "Under Construction" in the RSP Project List; provided, however, that if the ISO OATT utilizes a formula-type transmission rate, the revenue requirement for such Transmission Facility shall not be rolled into such rate without a FERC order expressly permitting such roll-in;

(v) any rates or charges, and terms and conditions related thereto, that implement an incentive or performance-based rate proposal made by NEITC, applicable only to service provided by NEITC under its Local Service Schedule; and

(vi) subject to the provisions of Section 2.05, any terms and conditions of Interconnection Agreements with any entities connecting with the Transmission Facilities, provided that such Interconnection Agreements shall not include any operating arrangements and Coordination Agreements that the ISO may enter into with operators of neighboring Control Areas in accordance with provisions of the TOA.

NEITC shall not have the authority to revise such rates, terms and conditions in a manner that would abridge the rights granted to the ISO in Section 3.04(c). NEITC shall provide written notification to the ISO and stakeholders of any filing described in sub-paragraph (ii) through (iv), above, which notification shall include a detailed description of the filing, at least 30 days in advance of a filing. NEITC shall consult with interested stakeholders upon request. NEITC shall retain the right to modify aspects of any filing authorized by this Section 3.04(a) after it provides written notification to the ISO and stakeholders, and shall provide notification to the ISO and stakeholders of any material modification to such filings.

With respect to any filing described in sub-paragraph (ii) through (vi), above, NEITC shall include in any filing a statement that, in the good faith judgment of NEITC, the proposal will not be inconsistent with the design of the New England Markets, as accepted or approved by FERC. In the event the ISO believes that a proposed filing described in sub-paragraph (ii) through (iv),

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above, would have such an inconsistency, it shall so advise NEITC and NEITC and the ISO shall consult in good faith to resolve any ISO concerns, but, if such disagreement cannot be resolved, NEITC may submit a filing under Section 205, provided that NEITC's filing (including the transmittal letter for such filing) to FERC shall include any written statement provided by the ISO setting forth the basis for the ISO's concerns.

NEITC shall consult with the ISO to determine whether the ISO will need to make any software modifications in order to implement any filing authorized by this Section 3.04(a) and when any needed software modifications could reasonably be expected to be implemented. NEITC's filing to FERC (and the transmittal letter for such a filing) shall include any written statement provided by the ISO setting forth the basis for any software-related implementation concerns raised by the ISO. The ISO shall make Commercially Reasonable Efforts to implement any needed software modifications by the effective date accepted by the FERC for a filing authorized by this Section 3.04(a), provided that, if the ISO has exercised such Commercially Reasonable Efforts, a failure to implement needed software modifications by the FERC-accepted effective date shall not constitute an event of default by the ISO under this Agreement or subject the ISO to financial damages, and further provided that the ISO shall run retroactive settlements consistent with the FERC-accepted effective date for a filing authorized by this Section 3.04(a) once such software modifications have been implemented.

(b) NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise:

(i) the rates and charges for Transmission Service pursuant to which the revenue requirements for the Transmission Facilities and all PTO Transmission Facilities used for the provision of Transmission Service are recovered; including the design of any rates or charges for: (A) regional Transmission Service on the New England Transmission System involving the use of the Transmission Facilities and more than one PTO's PTO Transmission Facilities (as defined in the TOA); (B) Transmission Service between the New England Transmission System and any other transmission system; (C) Transmission Service through the New England Transmission System between other transmission systems; (D) the recovery of any portion of the revenue requirements of NEITC and the PTOs attributable to the elimination of any rates or charges (e.g., border charges) for any such Transmission Service; (E) the methodology by which the costs of Transmission Upgrades and of PTO

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Transmission Upgrades related to generator interconnections are allocated under the ISO OATT and (F) the methodology by which the costs of New Transmission Facilities and Transmission Upgrades and PTO New Transmission Facilities and PTO Transmission Upgrades are allocated under the ISO OATT; *provided, however,* that if the costs of Transmission Facilities are to be recovered on a New England-wide basis, the recovery shall be through an integrated rate that, when received by the ISO for billing under Section 3.10 of this Agreement, includes the costs of the PTOs Transmission Facilities as well.

(ii) the methodology for the recovery and allocation of the line losses on the New England Transmission System, if and to the extent that the calculation of locational marginal prices for energy is not designed to recover such losses; and

(iii) any rates or charges, and terms and conditions related thereto, that implement an incentive or performance-based rate proposal, applicable to the entire New England Transmission System.

NEITC, and the PTOs as appropriate under the Disbursement Agreement, shall not have the authority to revise such rates or charges in a manner that would abridge the rights granted to the ISO in Section 3.04(c). NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall provide written notification of any proposed filing under this Section 3.04(b) to the ISO and stakeholders, which notification shall include a detailed description of the proposed filing, at least 30 days prior to the filing. NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall retain the right to modify aspects of any filing authorized by this Section 3.04(b) after written notification is provided to the ISO and stakeholders, and shall provide notification to the ISO and stakeholders of any material modification to such filings. If less than all of the PTOs support the filing, or if NEITC does not support the filing, NEITC and the PTOs will advise the ISO and stakeholders of that fact and the dissenting entities shall advise the ISO and stakeholders of their concerns.

The PTOs, NEITC and the ISO shall make every reasonable effort to agree upon the proposed filing under Section 3.04(b). In the event they are unable to agree on such filing, and the ISO in its good faith judgment concludes that the filing will:

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(A) be inconsistent with the design of the New England Markets, including the congestion pricing methodology for the ISO region, as accepted or approved by FERC;

(B) have a material adverse effect on the efficiency or competitiveness of the New England Markets, or on the ability of the ISO to provide transmission access on a not unduly discriminatory or preferential basis; or

(C) have a material adverse effect on the reliability of the ISO bulk power system;

then, except as provided in the next sentence, the filing will not become effective until such time as FERC issues an order determining the proposal set forth in the filing to be consistent with the standard applicable under Section 205 of the Federal Power Act, and such a filing (including the transmittal letter for such a filing) shall include any written statement provided by the ISO setting forth the basis for the ISO's concerns. In the case of a filing described in sub-paragraph (iii), above, NEITC and the PTOs, acting in accordance with the Disbursement Agreement, may request that FERC permit the filing to go into effect on an interim basis, notwithstanding the conclusion of the ISO. If FERC grants the request to permit the filing to go into effect on an interim basis, the filing will become effective, subject to refund, on the date specified in FERC's order.

NEITC shall consult with the ISO to determine whether the ISO will need to make any software modifications in order to implement any filing authorized by this Section 3.04(b) and when any needed software modifications could reasonably be expected to be implemented. The filing to FERC (and the transmittal letter for such a filing) shall include any written statement provided by the ISO setting forth the basis for any software-related implementation concerns raised by the ISO. The ISO shall make Commercially Reasonable Efforts to implement any needed software modifications by the effective date accepted by the FERC for a filing authorized by this Section 3.04(b), provided that, if the ISO has exercised such Commercially Reasonable Efforts, a failure to implement needed software modifications by the FERC-accepted effective date shall not constitute an event of default by the ISO under this Agreement or subject the ISO to financial damages, and further provided that the ISO shall run retroactive settlements consistent with the FERC-accepted effective date for a filing authorized by this Section 3.04(b) once such software modifications have been implemented.

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(c) The ISO shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise:

(i) any terms and conditions of the ISO Tariff, and any separate ISO tariffs, relating to Transmission Service and/or the New England Markets, provided that: (A) the ISO shall not have the authority to revise such terms and conditions in a manner that would abridge the rights granted to NEITC in Section 3.04(a) and to NEITC in Section 3.04(b); (B) the ISO shall not have the authority to eliminate Local Network Service or Local Point-to-Point Transmission Service provided under the Local Service Schedules; and (C) the ISO shall not have the authority to transfer to any third party the ISO's Section 205 rights to revise the terms and conditions of Transmission Service or the authority to enter into agreements with any group of stakeholders to submit filings under Section 205 of the Federal Power Act to change the terms and conditions of Transmission Service where such proposed changes are not supported by the ISO but are approved by a vote of the stakeholder group.

The ISO shall provide written notification of any proposed filing under this Section 3.04(c) to NEITC, the PTOs and stakeholders, which notification shall include a detailed description of the proposed filing, at least 30 days prior to the filing. The ISO shall consult with NEITC, the PTOs and stakeholders and will consider any comments NEITC, any PTO or stakeholder provides in developing its filing. The ISO shall retain the right to modify aspects of any filing authorized by this Section 3.04(c) after it provides written notification to NEITC, the PTOs and stakeholders and shall provide notification to NEITC, the PTOs and stakeholders of any material modification to such filings. In addition, the ISO shall consult with NEITC to determine whether the filing will have any adverse impact on NEITC's revenue requirements, or on the ability of NEITC to recover its revenue requirements, or have a material adverse impact on the ability of NEITC to implement an incentive rate plan then in effect. If NEITC concludes in its good faith judgment that the filing will have any of such effects, the ISO and NEITC will make every reasonable effort to resolve the concerns of NEITC, recognizing that the ISO has a similar obligation to affected PTOs. In the event that NEITC's concerns cannot be resolved, the ISO may, nevertheless, make a filing under Section 205 provided that, except as provided in the next sentence, such a filing will not become effective until such time as the Commission issues an order determining the proposal set forth in the filing to be consistent with the standard applicable under Section 205 of the Federal Power Act. The ISO may request that FERC permit a filing authorized by this Section 3.04(c) to go into effect on an interim basis, notwithstanding the conclusion of NEITC, provided that the ISO shall include in such a filing (and the transmittal

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letter for such a filing) any written statement provided by NEITC setting forth the basis for NEITC's concerns. If FERC grants the ISO's request to permit the filing to go into effect on an interim basis, the filing will become effective, subject to refund, on the date specified in FERC's order. Notwithstanding the foregoing, in Exigent Circumstances, the ISO shall have the unilateral authority, upon written notice to NEITC, the PTOs, the Participants Committee, and the individual Participants, to submit any filing under Section 205 of the Federal Power Act to modify any provision of the ISO Tariff as authorized in this Section 3.04(c), provided that such filing shall be subject to all conditions set forth in this Section 3.04(c) except for those conditions that would limit the ISO from submitting or implementing such an ISO unilateral filing on an expedited basis or that would require the consultation otherwise specified herein.

(d) Except as explicitly set forth in Section 3.04(e), with respect to certain items listed in Sections 3.04(a) and 3.04(b), the ISO shall have no authority to submit a filing under Section 205 of the Federal Power Act to modify any provision of the ISO OATT that implements any of the items listed in Sections 3.04(a) and 3.04(b). NEITC shall have no authority to submit a filing under Section 205 of the Federal Power Act to modify any provision of the ISO OATT that implements any of the items listed in Section 3.04(c). The ISO reserves its rights to intervene in, comment on or protest any filing made by NEITC, and to submit proposals for the consideration of NEITC and NEITC reserves its rights to intervene in, comment on or protest any filing made by the ISO, and to submit proposals for the consideration of the ISO.

(e) In the event the ISO determines that a change in the design of any provision of the ISO OATT that affects NEITC and that is described in Sections 3.04(a)(ii), (iii) or (iv) or 3.04(b) is required because the existing design of any rates or charges for Transmission Service is inconsistent with the design of the New England Markets, and such inconsistency will, if not remedied before relief would be available in a proceeding under Section 206 of the Federal Power Act, either: (i) substantially and adversely affect the efficiency or competitiveness of the New England Markets, or (ii) substantially and adversely affect the reliability of the ISO bulk power system, a senior officer of the ISO shall notify NEITC and affected PTO(s) of its determination. Upon receipt of such notification, NEITC and the ISO shall diligently work together with the affected PTO(s) to arrive at appropriate changes in the rates to alleviate the conditions that led to this notification being given, while protecting the rights of NEITC and affected PTO(s) to fully recover their revenue requirements and the amount of incentive payments associated with FERC-accepted or -approved incentive arrangements for NEITC or affected PTO(s). If NEITC, the affected PTO(s) and the ISO agree on a solution to this issue, NEITC and/or the affected PTO(s), as applicable, shall make a filing at FERC under Section 205 consistent with such agreement.

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If NEITC, the affected PTO(s) and the ISO cannot agree on a mutually acceptable Section 205 filing to address this issue within a period of thirty (30) days, and NEITC and/or the affected PTO(s) do not make a Section 205 filing within the thirty (30) day period, then the ISO shall have the authority to submit a filing under Section 205 of the Federal Power Act as permitted herein, provided that such a Section 205 filing shall not be submitted until NEITC and/or the affected PTO(s) have an opportunity to meet with representatives of the ISO Board of Directors if requested with reasonable notice, and the ISO may, with the approval of FERC, place a replacement for such rate design into effect, while the proceeding on the ISO's filing is pending before FERC, for a period no longer than fifteen (15) months, provided that such filing shall not propose a modification that adversely affects the rights of NEITC and/or the affected PTO(s) to fully recover its FERC-allowed revenue requirements and the amount of incentive payments associated with FERC-allowed incentive arrangements for NEITC and/or the affected PTO(s) or that would result in any costs previously approved or accepted for recovery under either a federal or state-jurisdictional rate thereafter becoming unrecoverable under either a federal or state-jurisdictional rate, and the replacement rate design proposal of the ISO is subject to refund and surcharge, as necessary to restore the status quo ante if FERC does not ultimately approve that proposal. To place its replacement rate design proposal into effect, the ISO shall bear the burden of persuading FERC that: (i) the ISO's replacement proposal is consistent with the standard applicable under Section 205 of the Federal Power Act; (ii) the ISO's determination regarding the inconsistency of the existing rate design with the design of the New England Markets and the impact of that inconsistency, as set forth in the first sentence of this subsection, is correct; and (iii) the ISO's proposal will not adversely affect the rights of NEITC and/or the affected PTOs to fully recover their FERC-allowed revenue requirements or the amount of incentive payments associated with FERC-allowed incentive arrangements for NEITC and/or affected PTO(s) or to fully recover costs previously approved or accepted for recovery under either a federal or state-jurisdictional rate. Notwithstanding the foregoing, in Exigent Circumstances, the ISO shall have the unilateral authority, upon written notice to NEITC, PTOs, the Participants Committee and the individual Participants, to submit a filing under Section 205 of the Federal Power Act to modify any provision of the ISO Tariff described in this Section 3.04(e), provided that such filing shall be subject to all conditions set forth in this Section 3.04(e) except for those conditions that would limit the ISO from submitting or implementing such an ISO unilateral filing on an expedited basis or that would require the consultation otherwise specified herein.

(f) In the event the ISO concludes that a filing to establish or to revise the terms and conditions listed in Section 3.04(c) is required and that providing the notification or consultation required under Section 3.04(c) for such filing would result in an unanticipated material adverse effect on the efficiency or competitiveness of the New England Markets or the reliability of the ISO bulk power system in the circumstances, the ISO: (i) shall provide such notification to NEITC, the PTOs and stakeholders or undertake such consultation with NEITC,

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the PTOs and stakeholders as is possible under the circumstances; and (ii) may submit a filing under Section 205 to establish or to revise the terms and conditions listed in Section 3.04(c) upon issuance of a written statement setting forth the circumstances that do not permit such notification or consultation.

(g) In the event NEITC concludes that a filing to establish or to revise the rates, terms and conditions listed in Sections 3.04(a) is required, or in the event NEITC and the PTOs, acting in accordance with the Disbursement Agreement , conclude(s) that a filing to establish or to revise the rates, terms and conditions listed in Section 3.04(b) is required, and that providing the notification or consultation required under Sections 3.04(a) or 3.04(b) for such filing would result in an unanticipated material under-recovery of NEITC's and/or the affected PTO(s)' revenue requirements or other material adverse financial effect on NEITC or a PTO, NEITC or NEITC and the affected PTO(s), as applicable: (i) shall provide such notification to the ISO and stakeholders or undertake such consultation with the ISO as is possible under the circumstances; and (ii) may make a Section 205 filing to establish or to revise the rates, terms and conditions listed in Sections 3.04(a) or 3.04(b) upon issuance of a written statement setting forth the circumstances that do not permit such notification or consultation.

(h) Cost Allocation Moratorium

(i) During the period commencing with the effective date for this provision and ending February 1, 2010 (the "Moratorium Period"), neither NEITC, nor NEITC and the PTOs acting in accordance with the Disbursement Agreement , as applicable, pursuant to Sections 3.04(a) and 3.04(b), respectively, nor the ISO, pursuant to Section 3.04(e), shall submit filings under Section 205 of the Federal Power Act to modify:

(A) the provisions and schedules of the ISO OATT governing the split between PTF and Non-PTF transmission facilities in effect prior to the Operations Date for purposes of allocating costs to Transmission Customers;

(B) the provisions and schedules of the ISO OATT establishing the methodology by which the costs of Transmission Upgrades and New Transmission Facilities and PTO Transmission Upgrades and PTO New Transmission Facilities related to generator interconnections are allocated under the ISO OATT; and

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(C) the provisions and schedules of the ISO OATT establishing the methodology by which the costs of New Transmission Facilities and Transmission Upgrades and PTO New Transmission Facilities and PTO Transmission Upgrades are allocated under the ISO OATT;

(ii) This agreement to forego submission of Section 205 filings during the Moratorium Period with respect to the items listed in Section 3.04(h)(i)(A) through (C) above shall not restrict in any way the rights of NEITC, and NEITC and the PTOs acting in accordance with the Disbursement Agreement, pursuant to and in accordance with Sections 3.04(a) and 3.04(b), respectively, to submit Section 205 filings to modify any elements of the rates applicable to Transmission Service other than those items listed in Section 3.04(h)(i)(A) through (C). Nothing in this Section 3.04(h) shall restrict in any way the rights of NEITC, and NEITC and the PTOs acting in accordance with the Disbursement Agreement, to submit Section 205 filings to establish incentive or performance-based rates in accordance with Section 3.04(a) or 3.04(b), respectively, or to submit Section 205 filings to establish formula or stated rates in accordance with Section 3.04(a) or 3.04(b), respectively, provided that such filings do not propose to modify the items listed in Section 3.04(h)(i)(A) through (C). Nothing in this Section 3.04(h) shall restrict in any way the rights of the ISO, pursuant to and in accordance with Section 3.04(e), to submit Section 205 filings to modify any elements of the rates applicable to Transmission Service, provided that such filings do not propose to modify the items listed in Section 3.04(h)(i)(A) through (C).

(iii) Notwithstanding Section 3.04(h)(i)(B) above, to the extent that the requirements for any New Transmission Facilities or Transmission Upgrades or PTO New Transmission Facilities or PTO Transmission Upgrades associated with new or existing generation set forth in the ISO OATT are modified during the Moratorium Period in a manner that creates a new or modified category of generator-related transmission costs, NEITC and the PTOs, acting in accordance with the arrangements among them under the Disbursement Agreement, shall have the authority, in accordance with Section 3.04(b), to submit Section 205 filings during the Moratorium Period to establish the methodology by which such new or modified generator-related transmission costs are allocated.

(iv) Nothing in this Section 3.04(h) shall supersede or alter the effect of any FERC orders concerning the allocation of costs for specific transmission facilities in the New England region.

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(v) Nothing in this Section 3.04(h) shall restrict in any way the rights of the ISO or NEITC during the Moratorium Period to submit a filing under Section 206 of the Federal Power Act to modify the provisions and schedules described in Section 3.04(h)(i) (A) through (C).

(vi) After the end of the Moratorium Period, NEITC and the PTOs, acting in accordance with the Disbursement Agreement , may exercise their rights in accordance with Section 3.04(b) to submit Section 205 filings to modify the provisions and schedules described in Section 3.04(h)(i)(A) through (C), provided that:

(A) NEITC and the PTOs, acting in accordance with the Disbursement Agreement, must provide the ISO, the Regional State Committee established by the states in the ISO region (the “Regional State Committee”), and stakeholders no less than 90 days advance notification of the proposed filing, including a detailed description of any proposed change to the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto). NEITC, the PTOs, the ISO and the Regional State Committee shall engage in a process of consultation and negotiation in order to attempt to reach consensus on such filing.

(B) At least 30 days prior to the proposed filing date the Regional State Committee may inform these other entities that the Committee opposes the proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto).

(C) If the Regional State Committee opposes the proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto), NEITC and the PTOs, acting in accordance with the Disbursement Agreement , may make the Section 206 filing to modify the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Effective Date (or the successors thereto); provided that: (1) such filing may not go into effect until FERC has approved the filing; (2) the Regional State Committee will have the right to provide an alternative proposal to change

the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto) which NEITC and the PTOs, acting in accordance with the Disbursement Agreement, will include in the Section 206 filing and which will be considered on an equal footing with the NEITC/PTO proposal in the FERC proceeding, and (3) such alternative proposal shall not adversely affect the rights of the NEITC or the PTOs to fully recover the FERC-allowed revenue requirements and the amount of incentive payments associated with FERC-allowed incentive arrangements for NEITC or result in any costs previously approved or accepted for recovery under either a federal or state-jurisdictional rate thereafter becoming unrecoverable under either a federal or state-jurisdictional rate.

(D) If, notwithstanding the requirements of Section 3.04(h)(vi)(C), the Regional State Committee submits an alternative proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto) that NEITC or any PTO believes causes an under-recovery of costs when used in conjunction with the other elements of the rate design for transmission rates filed by NEITC and the PTOs, acting in accordance with the Disbursement Agreement, (or the one already in effect if the filing does not propose to change the rate design), NEITC and the PTOs, acting in accordance with the Disbursement Agreement, will have the right: (1) to include in such filing an explanation of why they believe the Regional State Committee proposal causes an under-recovery of costs contrary to the requirements of Section 3.04(h)(vi)(C); and (2) to file a modified rate design that eliminates such under-recovery in the event that the alternative proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto) is approved by the FERC placed into effect coincident with the effective date of such proposal.

(E) Any requirements established by this Section 3.04(h)(vi) with respect to the Regional State Committee shall not subject NEITC or ISO-NE to the jurisdiction or authority of any agent or agency of any state participating in the Regional State Committee.

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(vii) After the end of the Moratorium Period, the ISO may exercise its rights in accordance with Section 3.04(e) to submit Section 205 filings to modify the provisions and schedules described in Section 3.04(h)(i)(A) through (C) if NEITC or the PTOs fail to alleviate the conditions specified in Section 3.04(e).

(i) The ISO shall have sole authority to submit Section 205 filings to recover its administrative, capital and other costs (including the collection of funds from Transmission Customers to support payment of FERC annual charges with respect to transmission service for which the ISO is the Transmission Provider as defined in FERC rules and orders) including the design of any charges therefore (the “ISO Administrative Charge”).

(j) Nothing in this Agreement shall restrict in any way the rights of the ISO or of NEITC to submit an application under Section 206 of the Federal Power Act for revisions to the rates, terms and conditions of service under the ISO OATT.

(k) Stakeholder Process for Regional Rate Filings.

(i) Absent unanticipated circumstances, every proposal to modify regional rates in accordance with Section 3.04(b) shall be presented to the appropriate stakeholder Technical Committee(s) for consideration and an advisory vote. The Technical Committee, at its next meeting following the one at which the initial presentation is made (which shall be no later than 30 days after any proposal is made), shall: (i) vote on the merits of the proposal as presented or with changes accepted by the proponent(s); or (ii) by motion and vote of 66-2/3%, defer action on any proposal presented if it reasonably determines that additional information should and could be provided to more adequately inform the members of such Technical Committee before a vote on the merits is taken. Any deferral shall be for no more than 30 days, after which the proponent(s) may move for an advisory vote upon the proposal at the next meeting of the Technical Committee (which shall be held within 30 days of the start of the deferral). At that time, the Technical Committee may vote on the merits of the proposal as presented or with changes approved by the Committee, or may vote to oppose the proposal on the grounds that sufficient information has still not been provided, but may not defer consideration of the proposal for any further period without the consent of the proponent(s). Failure of the Technical Committee to vote within the time frames set forth in this paragraph shall advance the process to the next step, and in no event shall a period of longer than 60 days be required for the proponent(s) to submit a proposal to modify regional rate design in accordance with Section 3.04(b) to the Participants Committee.

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(ii) Absent unanticipated circumstances and after the fulfillment of the procedures outlined in Section 3.04(k)(i), every proposal to modify regional rates in accordance with Section 3.04(b) shall be presented to the stakeholder Participants Committee for an advisory vote, along with a report of any action, failure to act or advisory vote taken by any Technical Committee(s). Such report shall be considered by the Participants Committee no later than the first regularly scheduled meeting following notification of that presentation. The Participants Committee shall: (i) vote on the merits of the proposal as presented or with changes accepted by the proponent(s) ; or (ii) by motion and vote defer action on any proposal if it reasonably determines that the proposal presented is materially different from the proposal presented to the Technical Committee, and was not voted on by the Technical Committee. Any deferral shall result in a repeat of the processes outlined above. Notwithstanding the foregoing, the Participants Committee may, at its discretion, consider and vote upon any proposal submitted to it and such a vote shall have the same effect as if the proposal had first been voted upon by a Technical Committee. The Participants Committee may not defer action on any item that has been voted on by a Technical Committee and presented to the Participants Committee for an advisory vote unless the proponent(s) consent to such deferral. If the Participant Committee has not scheduled a meeting to vote on the merits of a proposal to modify regional rates in accordance with Section 3.04(b) prior to date that the proponent(s) intend to submit such a proposal to the FERC, then the proponent(s) shall request that the Participants Committee schedule a special meeting to conduct an advisory vote on the merits of such proposal. In no event shall the proponent(s) be required to wait for a Participant Committee advisory vote for a period of longer than 90 days after initial notification of such proposal to stakeholders prior to submitting a proposal to modify regional rate design in accordance with Section 3.04(b) to the FERC.

(iii) An advisory vote by the Participants Committee on the merits of any proposal, whether in favor of or in opposition, terminates the stakeholder proceedings absent voluntary resubmission of the same or a modified proposal at a future time. The proponent(s) shall report the results of such advisory vote in any relevant filing made by such proponent(s) with the FERC. A failure by the Participants Committee to vote within the time frames outlined above terminates the Participant proceedings required under this Agreement absent voluntary resubmission of the same or a modified proposal by the proponent(s) at a future time.

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(iv) Nothing in this Section 3.04(k) shall limit the ability of NEITC and the PTOs, acting in accordance with the Disbursement Agreement, to submit a filing pursuant to Section 3.04(g) to modify regional rates in the event they conclude that a filing to modify regional rates is required due to unanticipated circumstances, provided that they shall provide such notification to the stakeholder Participant Committee or undertake such consultation with the stakeholder Technical Committee(s) and Participant Committee as is possible under the circumstances and shall provide the Participants Committee with a written statement setting forth the circumstances that do not permit the notification or consultation otherwise required by this Section 3.04(k).

(v) The process set forth in this Section 3.04(k) shall not apply to filings related to regional rates submitted to the FERC on an informational basis. The applicable process for review of such informational filings shall be set forth in the ISO OATT.

(l) Nothing in this Agreement shall restrict in any way NEITC's rights to become a PTO under the ISO OATT and, upon becoming a signatory to the Transmission Operating Agreement, this Agreement shall terminate in accordance with Section 10.05 of this Agreement.

### 3.05 **The ISO's Responsibilities.**

(a) In addition to its other obligations under this Agreement, in performing its obligations and responsibilities hereunder, and in accordance with Good Utility Practice, the ISO shall:

(i) maintain system reliability; and

(ii) in all material respects, act in accordance with applicable Laws and conform to, and implement, all applicable reliability criteria, policies, standards, rules, regulations, orders, license requirements and all other applicable NERC/NPCC Requirements, and other applicable reliability organizations' reliability rules, and all applicable requirements of federal or state laws or regulatory authorities.

(b) The ISO shall obtain and retain all necessary authorizations of FERC and other regulatory authorities to function as the New England RTO and shall possess the characteristics and perform the functions required for that purpose.

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3.06 **NEITC's Responsibilities.**

(a) NEITC shall, in accordance with Good Utility Practice:

(i) direct, physically operate, repair, and maintain its Transmission Facilities and Local Control Centers in accordance with this Agreement, applicable Law, and applicable Operating Procedures;

(ii) operate and maintain, or arrange for a third party, approved by NEITC, in its sole discretion, to operate and maintain, one or more suitable Local Control Centers (including any Local Control Centers maintained as back-up for a PTO's primary Local Control Centers). NEITC shall provide the ISO with reasonable notice of any change to its Local Control Center(s) and shall coordinate with the ISO to ensure that such a change will not adversely affect the reliable operation of the New England Transmission System. NEITC shall have the responsibility to ensure that its Local Control Center(s) will: operate its Transmission Facilities on a 24 hour basis, implement the instructions, orders and directions received from the ISO in the exercise of its Operating Authority in accordance with Section 3.02, and perform the following functions in accordance with applicable Operating Procedures:

- (A) switching and tagging;
- (B) on-line monitoring;
- (C) security analysis;
- (D) dispatch voltage and reactive power, provided that the ISO shall dispatch voltage and reactive power to the extent the Local Control Centers are unable to maintain normal voltage schedules;
- (E) coordinate the development of settings for dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other similar dynamic equipment that affects power flows;

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- (F) implementation of the NEITC Local Restoration Plan and development of modifications to such NEITC Local Restoration Plan, subject to the approval of the ISO in order to coordinate and promote the reliability of the Restoration Plans;
  - (G) operation and maintenance of communication systems and software;
  - (H) implementation of voltage reduction measures;
  - (I) implementation of Load Shedding;
  - (J) coordinate with the ISO and the other PTOs with respect to congestion management efforts and, to the extent applicable, demand-side management and distributed generation efforts, provided that a NEITC employee who is engaged in such coordination and who is not a Local Control Center employee shall be subject to the same standards of conduct and applicable provisions of the ISO Information Policy as a Local Control Center employee; and
  - (K) coordinate with other entities interconnected with the New England Transmission System.
- (iii) cooperate with the ISO's performance of the monitoring and audits in connection with all monitoring and compliance provisions detailed in Section 3.02(i) of this Agreement;
  - (iv) collaborate with the ISO with respect to:
    - (A) the development of Rating Procedures,
    - (B) the establishment of ratings for New Transmission Facilities;
    - (C) the establishment of ratings for Acquired Transmission Facilities that do not have an existing rating; and

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- (D) the establishment of any changes to existing ratings for Transmission Facilities in effect as of the Operations Date.

To the extent there is any disagreement between the ISO and NEITC concerning Rating Procedures or the rating of a Transmission Facility, such disagreement shall be the subject of good faith negotiations between NEITC and the ISO, provided that (x) NEITC's position concerning such Rating Procedures or Transmission Facility ratings shall govern until NEITC and the ISO agree on a resolution to such disagreement; and (y) nothing in this Section 3.06(a)(iv) shall limit the rights of the ISO or of NEITC to submit a filing under Section 206 of the Federal Power Act with respect to Transmission Facility ratings or Rating Procedures. During any collaboration or discussions concerning Transmission Facility ratings, NEITC shall continue to provide the ISO with up-to-date ratings information in accordance with the applicable Rating Procedures.

(v) undertake operating actions in accordance with any tariffs or rate schedules approved or accepted by FERC;

(vi) provide the ISO with the right to use a level of communications capacity (and maintain the equipment associated with this capacity in accordance with Good Utility Practice) on its telecommunication assets and equipment attached to or associated with Transmission Facilities in order to supply reliability-related data including meter, voice and data communications; to receive and send (for Regulation purposes) telemetry to and from existing generators and transmission substations; provide for the receipt of such information from generators and substations, and provide metering data and/or telemetry to the ISO (including providing the infrastructure for Regulation and Frequency Response Service), as reasonably necessary for the ISO to perform its obligations under this Agreement and the ISO OATT; provided that NEITC shall have the unfettered right to use communications capacity on its telecommunication assets and equipment attached to or associated with Transmission Facilities for other business purposes to the extent such capacity is not being used by the ISO; and provided further that: (1) as required by the Schedule 22 Large Generator Interconnection Agreement and Schedule 23 Small Generator Interconnection Agreement in the ISO OATT, NEITC shall include provisions in its Interconnection Agreements with generators providing for the installation and maintenance of sufficient communications capability to allow the ISO to exercise

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its Operating Authority with respect to such generators, and (2) the ISO may include the installation of additional communications capacity as an identified need in the regional transmission expansion plan, in which case such installation may be included within the NEITC obligation to build set forth in, and subject to the terms and conditions in Schedule 3.09(a).

(vii) notify the ISO prior to making changes to the operational status of NEITC Category B Facilities and provide information on the operational status of NEITC Category B Facilities comparable to that provided by the PTOs for their Category B Facilities;

(viii) operate or cause to be operated its NEITC Local Area Facilities in a manner that does not result in the violation of reliability standards applicable to the New England Transmission System;

(ix) provide the ISO with revenue metering data or cause the ISO to be provided with such revenue metering data;

(x) cooperate with actions taken by PTOs' Local Control Centers with respect to the Transmission Facilities;

(xi) in all material respects, comply with all applicable laws, regulations, orders and license requirements, and with all applicable requirements, and with all applicable NERC/NPCC Requirements, other applicable reliability organizations' local reliability rules, and all applicable requirements of federal or state laws or regulatory authorities.

(b) Operation of Transmission Facilities During A System Failure. Existing Operating Procedures for use during a System Failure shall be utilized by the ISO, NEITC and the PTOs. Any modifications to the Existing Operating Procedures for use during a System Failure or new Operating Procedures for use during a System Failure shall be developed by the ISO in the manner specified in Section 3.02(d). The procedures for use during a System Failure shall provide that, in situations where immediate action is required, NEITC's Local Control Center(s), if any, shall have the authority to take the following reliability actions at a minimum, provided that NEITC shall coordinate with the ISO as soon as practicable upon taking such action:

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- (i) Undertake those operational functions with respect to Transmission Facilities undertaken by the ISO under non-System Failure conditions;
  - (ii) Re-energize transmission facilities following breaker trips;
  - (iii) Implement emergency Load Shedding and voltage reduction measures and subsequent restoration;
  - (iv) Implement Voltage/VAR control;
  - (v) Adjust PARS settings;
  - (vi) Dispatch generation as necessary to preserve system reliability; in accordance with applicable NERC/NPCC Requirements and ISO directives; and
  - (vii) Take such other measures necessary, consistent with Good Utility Practice, to respond to a System Failure.

Nothing in this Section 3.06(b) shall limit the right of NEITC pursuant to Section 3.07 to take any action(s) that it deems necessary to prevent loss of human life, injury to persons and/or damage to property.

### 3.07 **Reserved Rights of NEITC.**

(a) Notwithstanding any other provision of this Agreement to the contrary, NEITC shall retain all of the rights set forth in this Section 3.07; provided, however, that such rights shall be exercised in a manner consistent with applicable NERC/NPCC Requirements and applicable regulatory standards. This Section 3.07 is not intended to reduce or limit any other rights of NEITC as a signatory to this Agreement or under the ISO OATT.

- (i) Nothing in this Agreement shall restrict any rights: (A) of NEITC if it is a party to a merger, acquisition or other restructuring transaction to make filings under Section 205 of the Federal Power Act with respect to NEITC's reallocation or redistribution of revenues or the assignment of such NEITC's rights or obligations, to the extent the Federal Power Act requires such filings; or (B) of NEITC to terminate its participation in this Agreement pursuant to Article X of this Agreement.

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(ii) Except as expressly provided in the grant of Operating Authority to the ISO, NEITC retains all rights that it otherwise has incident to its ownership of, and legal and equitable title to, its assets, including its Transmission Facilities and all land and land rights, including the right to build, acquire, sell, lease, merge, dispose of, retire, use as security, or otherwise transfer or convey all or any part of its assets, subject to NEITC's compliance with Section 2.06 of this Agreement. Subject to Article X, NEITC may, directly or indirectly, by merger, sale, conveyance, consolidation, recapitalization, operation of law, or otherwise, transfer all or any portion of the Transmission Facilities subject to this Agreement but only if such transferee or successors shall agree in writing to be bound by terms of this Agreement.

(iii) Any expansion or modification by NEITC of its Transmission Facilities, any facilities constructed by NEITC to connect the facilities of a current or proposed Transmission Customer to such Transmission Facilities, and/or any new transmission facilities constructed by NEITC pursuant to the ISO Planning Process shall be subject to NEITC's right to recover, pursuant to appropriate financial arrangements and tariffs or contracts, all costs prudently incurred or prudently committed to be incurred, plus a return on invested equity and other capital, associated with constructing and owning or financing such facilities, expansions or modifications to its Transmission Facilities, in accordance with Schedule 3.09(a) hereof.

(iv) The responsibilities granted to the ISO under this Agreement shall not affect the rights of NEITC to modify or expand its Transmission Facilities, nor confer upon the ISO any authority to direct NEITC to modify or expand its Transmission Facilities except as provided in Schedule 3.09(a), and NEITC shall retain all rights and responsibilities specifically assigned to NEITC pursuant to Schedule 3.09(a).

(v) NEITC shall have the right to adopt and implement, consistent with Good Utility Practice, procedures and to take such actions it deems necessary to protect its facilities from physical damage or to prevent injury or damage to persons or property.

(vi) NEITC retains the right to take whatever actions, consistent with Good Utility Practice, it deems necessary to fulfill its obligations under applicable Law.

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(vii) Nothing in this Agreement shall be construed as limiting in any way the rights of NEITC to make any filing with any applicable state or local regulatory authority.

(viii) NEITC may request that the ISO commit additional generators (including specific output levels), or NEITC may take other actions permitted under the ISO OATT and Market Rules (including self-scheduling), if NEITC determines that additional generation is needed to ensure local area reliability, provided that the ISO shall make the final determination whether to commit additional generation in accordance with applicable provisions of the ISO OATT and Market Rules.

(ix) Subject to Section 2.05, NEITC shall retain the right to enter into Interconnection Agreements with transmission owners, generators and other entities connecting with NEITC's transmission facilities (including Transmission Facilities) and to file such agreements for approval or acceptance by FERC.

(x) NEITC shall have the right to retain one or more subcontractors to perform any or all of its obligations under this Agreement. The retention of a subcontractor pursuant to the terms of this Section 3.07 shall not relieve NEITC of its primary liability for the performance of any of its obligations under this Agreement.

(b) Any and all other rights and responsibilities of NEITC related to the ownership or operation of its Transmission Facilities not expressly assigned to the ISO under this Agreement will remain with NEITC.

(c) Nothing in this Agreement shall be deemed to impair or infringe on any rights or obligations of NEITC under the Federal Power Act and FERC's rules and regulations thereunder, provided that any such rights are not inconsistent with the express terms of this Agreement. Nothing contained in this Agreement shall be construed to limit in any way the right of NEITC to take any position, including opposing positions, in any administrative or judicial proceeding or filing by NEITC or the ISO, notwithstanding that such proceeding or filing may be undertaken or made, explicitly or implicitly, pursuant to this Agreement.

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3.08 **Repair and Maintenance of Transmission Facilities.**

(a) **Planning, Scheduling, and Approval of Transmission Facility Outages.**

(i) NEITC shall submit to the ISO long-term plans for Transmission Facility outages, shall submit to the ISO schedules for Transmission Facility outages, and shall obtain ISO approval for Transmission Facility outages in accordance with, and to the extent required by, Market Rule 1.

(ii) Notwithstanding any of the foregoing, nothing in this Section 3.08 shall be construed to require NEITC to reschedule an outage of a Transmission Facility or to require NEITC to refrain from initiating switching and tagging procedures to take a Transmission Facility out of service or place it back into service to the extent NEITC determines that such outage or actions are necessary to prevent injury or damage to persons or property or to protect its facilities from physical damage, in accordance with Section 3.07(a)(v) of this Agreement.

(b) **Recovery of Transmission Outage Rescheduling Costs.** NEITC shall have the right to file a schedule to the ISO OATT that will provide for reimbursement to NEITC for any direct costs incurred by NEITC due to the ISO's rescheduling or revocation of a previously scheduled or approved Transmission Facility outage to the extent the ISO reschedules or revokes a previously scheduled or approved Transmission Facility outage in accordance with Market Rule 1.

(c) **Annual Assessment of Outage Coordination Efforts.** The ISO shall prepare and issue annual public reports on the scheduling and coordination of transmission outages. Each such annual report shall: (i) assess the accuracy of the ISO's estimation of congestion and RMR cost impacts and the accuracy of NEITC and other inputs used in such estimation; (ii) assess any long term impacts of the ISO's exercise of its authority to require the rescheduling of transmission maintenance outages and. (iii) include analyses and data which could allow NEITC to identify potential opportunities for incentives based on efficient coordination of outages and other operational measures that will reduce congestion costs or increase operational flexibility. The ISO shall provide a draft of each such annual report to NEITC and interested stakeholders prior to issuing a final report and shall consider the input of NEITC and interested stakeholders in preparing such reports, subject to any applicable restrictions set forth in the ISO Information Policy on file with FERC.

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(d) **Market Monitoring of Outage Scheduling.** The Market Monitoring Unit of the ISO shall monitor the outage scheduling activities of NEITC. The Market Monitoring Unit of the ISO shall have the right to request that NEITC provide information to the Market Monitoring Unit concerning NEITC's scheduling of Transmission Facility outages, including the rescheduling or cancellation of any Planned, Scheduled or Approved Outage, and NEITC shall provide such information to the Market Monitoring Unit in accordance with Section 11.07(c) of this Agreement.

(e) **Damage or Destruction of Transmission Facilities.**

(i) If, at any time during the Term, any of the Transmission Facilities are damaged or destroyed, then, NEITC shall determine, in its sole discretion, consistent with Good Utility Practice and applicable Law, whether or not (and if so, in what manner) to restore or cause the restoration of such damaged or destroyed Transmission Facilities to substantially the same condition, character or use as existed before the damage or destruction, if at all, provided that NEITC shall consult with the ISO prior to making such determination and shall comply with the requirements specified in Section 2.06.

(ii) Nothing in this Section 3.08(e) shall limit the authority of the ISO to direct NEITC to modify or expand its Transmission Facilities in accordance with the ISO Planning Process, subject to the terms and conditions of Schedule 3.09(a) hereof.

3.09 **Planning and Expansion.**

(a) NEITC shall perform all of its responsibilities, and exercise each of its rights, with respect to the planning and expansion of the New England Transmission System in accordance with the ISO OATT and Schedule 3.09(a) hereto. The ISO shall perform all of its responsibilities pursuant to the ISO Planning Process set forth in the ISO OATT. NEITC shall engage in planning for its Local Area Facilities in a manner that is consistent with applicable NERC/NPCC Requirements, Good Utility Practice and the ISO OATT. The ISO and NEITC shall perform all such responsibilities in accordance with applicable Laws and Good Utility Practice. Nothing in this Agreement shall be construed to impose on NEITC an obligation to build transmission facilities except as provided in Schedule 3.09(a) hereto.

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(b) The ISO shall utilize the Planning Procedures relating to the planning and expansion of the New England Transmission System. The Planning Procedures shall initially consist of the Planning Procedures in existence on the Operations Date (hereinafter “Existing Planning Procedures”). Such Existing Planning Procedures shall consist of those Planning Procedures listed in Schedule 3.09(b). The ISO shall develop any modifications to Planning Procedures (including Existing Planning Procedures) and any new Planning Procedures that it may deem necessary or appropriate in coordination with NEITC, the PTOs and other stakeholders.

**3.10 Invoicing, Collection and Disbursement of Customer Payments.**

(a) Invoicing. Except as provided in Section 3.10(a)(ii), the ISO will administer its current net settlement system, including invoicing of charges to Transmission Customers for Transmission Services on the Transmission Facilities as follows:

(i) The charges invoiced by the ISO shall include the following (each, an “Invoiced Amount”):

(A) any and all revenue requirements, rates, charges, fees and/or penalties for Transmission Service under the ISO OATT and related service agreements which have been filed with FERC pursuant to Section 3.04(b) and which are integrated as described therein and have been accepted by FERC, other than amounts billed directly by NEITC pursuant to Section 3.10(a)(ii) below; and

(B) any and all rates, charges, fees and/or penalties under interconnection agreements which have been filed with and accepted by FERC, other than amounts billed directly by NEITC pursuant to Section 3.10(a)(ii) below.

(ii) Payments relating to all services provided by NEITC pursuant to its Local Service Schedule, interconnection agreements that provide for payment to NEITC, and any other payments shall be invoiced by NEITC and shall not be invoiced by the ISO; provided that, notwithstanding the foregoing, NEITC and the ISO may enter into separate agreements such that the ISO provides invoicing services for such payments.

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(iii) The ISO shall remit or credit to NEITC, consistent with the ISO Tariff and the net settlement system, any and all payments received or collected from Transmission Customers for Invoiced Amounts in accordance with this Agreement and directions provided to the ISO under the Disbursement Agreement. NEITC and the PTOs shall designate (and notify the ISO of the identity of) a single authorized individual to provide such directions to the ISO in accordance with the Disbursement Agreement. This individual shall also respond to any ISO questions or requests for clarification concerning such directions; provided that the ISO shall be able to rely upon the direction of the designated individual unless and until it receives notification from the affected PTO(s) and NEITC or from a Governmental Authority of reversal of such direction by any Governmental Authority with jurisdiction over this Agreement.

(b) The ISO's Collection Obligations and Application of Financial Assurances Policies.

(i) If a Transmission Customer defaults on any payment of any Invoiced Amount (the "Owed Amounts"), the ISO shall take all necessary actions to execute or call upon any Financial Assurances held by the ISO attributable to such Transmission Customer.

(ii) In connection with a default on payment of an Invoiced Amount by a Transmission Customer, the ISO shall, upon the request of the designated individual identified in subsection (a)(iii) above, take those actions necessary to suspend Transmission Services to such defaulting Transmission Customer, including making a filing under Section 205 of the Federal Power Act to seek consent to suspend such Transmission Services; provided that the ISO need not suspend Transmission Services until FERC approval is first obtained. This provision shall not preclude the ISO from suspending service or making a filing under Section 205 of the FPA to seek to suspend Transmission Services or other services under the Tariff in any other circumstances.

(c) No Pledge of Invoiced Amounts. The ISO shall not create, incur, assume or suffer to exist any lien, pledge, security interest or other change or encumbrance, or any other type of preferential arrangement (including a banker's right of set off) against any Invoiced Amounts, any accounts receivables representing Invoiced Amounts, the settlement account maintained by the ISO into which payments on Invoiced Amounts are made and from which remittances are made to NEITC or any Financial Assurances.

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3.11 **Subcontractors.** NEITC acknowledges and agrees that, subject to the terms set forth herein, the ISO has the right to retain one or more subcontractors to perform any or all of its obligations under this Agreement. The retention of a subcontractor pursuant to the terms of this Section 3.11 shall not relieve the ISO of its primary liability for the performance of any of its obligations under this Agreement.

3.12 **No Impairment of the ISO's Other Legal Rights and Obligations.**

Nothing in this Agreement shall be deemed to impair or infringe on any rights or obligations of the ISO under the Federal Power Act and FERC's rules and regulations thereunder, including the ISO's rights and obligations to submit filings to recover its administrative, capital, and other costs, provided that any such rights are not inconsistent with the express terms of this Agreement. During the Term of this Agreement, the ISO shall:

(a) have the rights and obligations to design, develop, operate, maintain and administer the New England Markets and congestion pricing mechanisms (including the exclusive right to make Section 205 filings relating to the Market Rules in accordance with Section 3.04),

(b) have the rights to undertake actions relating to congestion pricing and management in accordance with this Agreement, ISO Market Rules, and applicable FERC orders.

Nothing in this Agreement shall be deemed to impair or infringe on such rights and obligations.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

4.01 **Representations and Warranties of NEITC.** NEITC represents and warrants to the ISO as follows:

(a) **Organization.** It is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) **Authorization.** It has all requisite power and authority to execute, deliver and perform this Agreement; the execution, delivery and performance by NEITC of this Agreement have been duly authorized by all necessary and appropriate action on the part of NEITC; and this Agreement has been duly and validly executed and delivered by NEITC and constitutes the legal, valid and binding obligations of NEITC, enforceable against NEITC in accordance with its terms.

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(c) No Breach. The execution, delivery and performance by NEITC of this Agreement will not result in a breach of any terms, provisions or conditions of any agreement to which NEITC is a party which breach has a reasonable likelihood of materially and adversely affecting NEITC's performance under this Agreement.

(d) Transmission Facilities. NEITC has listed on Schedules 2.01(a) and (b) all of the transmission facilities with a voltage level of 69 kV or greater that it owns in the New England Control Area as of the Effective Date and all of the transmission facilities leased to it with a voltage level of 69 kV or greater in the New England Control Area as of the Effective Date.

(e) **NO WARRANTY REGARDING NEITC'S TRANSMISSION FACILITIES.** IN CONNECTION WITH NEITC'S GRANT OF OPERATING AUTHORITY TO THE ISO OVER NEITC'S TRANSMISSION FACILITIES PURSUANT TO THE TERMS OF THIS AGREEMENT, NEITC'S TRANSMISSION FACILITIES ARE BEING MADE AVAILABLE PURSUANT TO THIS AGREEMENT TO THE ISO "AS IS, WHERE IS," AND NEITC IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SUCH TRANSMISSION FACILITIES, INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. THE FOREGOING PROVISION IS NOT INTENDED TO LIMIT OR CONDITION ANY OBLIGATIONS OF NEITC EXPRESSLY PROVIDED FOR ELSEWHERE IN THIS AGREEMENT.

4.02 **Representations and Warranties of the ISO.** The ISO represents and warrants to NEITC as follows:

(a) Organization. It is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Authorization. It has all requisite power and authority to execute, deliver and perform this Agreement; the execution, delivery and performance by the ISO of this Agreement have been duly authorized by all necessary and appropriate action on the part of the ISO; and this Agreement has been duly and validly executed and delivered by the ISO and constitutes the legal, valid and binding obligation of the ISO, enforceable against the ISO in accordance with its terms.

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(c) **No Breach.** The execution, delivery and performance by the ISO of this Agreement will not result in a breach of any of the terms, provisions or conditions of any agreement to which the ISO is a party which breach has a reasonable likelihood of materially and adversely affecting the ISO's performance under this Agreement.

## ARTICLE V

### **COVENANTS OF NEITC**

5.01 **Covenants of NEITC.** NEITC covenants and agrees that during (i) the Term, or (ii) the period expressly specified herein, as applicable, NEITC shall comply with all covenants and provisions of this Article V, except to the extent the ISO waives such covenants or performance is excused pursuant to Section 11.11(b).

5.02 **Financial Statements and Filings.** If NEITC's financial statements, permit applications or any other filing with any Governmental Authority are publicly available, NEITC shall, upon request by the ISO, provide the ISO information sufficient to allow the ISO to locate such financial statements, permit applications or other filings, including the date and place of the filing of the relevant documents.

5.03 **Expenses.** Except to the extent specifically provided herein, all costs and expenses incurred by NEITC in connection with the negotiation of this Agreement shall be borne by NEITC; provided that nothing herein shall prevent NEITC from recovering such expenses in accordance with applicable law.

5.04 **Consents and Approvals.**

(a) NEITC shall exercise Commercially Reasonable Efforts to promptly prepare and file all necessary documentation to effect all necessary applications, notices, petitions, filings and other documents, and shall exercise Commercially Reasonable Efforts to obtain (and will cooperate with each other in obtaining) any consent, acquiescence, authorization, order or approval of, or any exemption or nonopposition by, any Governmental Authority required to be obtained or made by NEITC in connection with this Agreement or the taking of any action contemplated by this Agreement.

(b) NEITC shall exercise Commercially Reasonable Efforts to obtain consents of all other third parties necessary to the performance of this Agreement by NEITC. NEITC shall promptly notify the ISO of any failure to obtain any such consents and, if requested by the ISO, shall provide copies of all such consents obtained by NEITC.

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(c) Nothing in this Section 5.04 shall require NEITC to pay any sums to a third party, including any Governmental Authority, excluding filing fees paid to any Governmental Authority in connection with a filing necessary or appropriate to further action.

5.05 **Notice and Cure.** NEITC shall notify the ISO in writing of, and contemporaneously provide the ISO with true and complete copies of any and all information or documents relating to, any event, transaction or circumstance, as soon as practicable after it becomes Known to NEITC, that causes or shall cause any covenant or agreement of NEITC under this Agreement to be breached or that renders or shall render untrue any representation or warranty of NEITC contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. NEITC shall use all Commercially Reasonable Efforts to cure such event, transaction or circumstance as soon as practicable after it becomes Known to NEITC. No notice given pursuant to this Section 5.05 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or shall in any way limit the ISO's right to seek indemnity under Article IX.

## ARTICLE VI

### **COVENANTS OF THE ISO**

6.01 **Covenants of the ISO.** The ISO covenants and agrees that during (i) the Term, or (ii) the period expressly specified herein, as applicable, the ISO shall comply with all covenants and provisions of this Article VI, except to the extent the Parties consent in writing to a waiver of such covenants or performance is excused pursuant to Section 11.11(b).

6.02 **Financial Statements and Filings.**

(a) To the extent not provided to stakeholders generally or made publicly available by the ISO, the ISO shall make available to NEITC: (i) quarterly unaudited financial statements within sixty (60) days after each quarter end and (ii) annual audited financial statements within one hundred twenty (120) days after each fiscal year end. In each instance, the financial statements made available by the ISO pursuant to (i) and (ii) above shall be prepared in accordance with Generally Accepted Accounting Principles and shall be true and correct in all material respects.

(b) If financial statements, permit applications or any other filing with any Governmental Authority are publicly available, the ISO shall, upon request by NEITC, provide NEITC information sufficient to allow NEITC to locate such financial statements, permit applications or other filings including the date and place of the filing of the relevant documents.

6.03 **Expenses.** Except to the extent specifically provided herein, all costs and expenses incurred by the ISO in connection with the negotiation of this Agreement shall be borne by the ISO; provided that nothing herein shall prevent the ISO from recovering such expenses in accordance with applicable law.

6.04 **Consents and Approvals.**

(a) The ISO shall exercise Commercially Reasonable Efforts to promptly prepare and file all necessary documentation to effect all necessary applications, notices, petitions, filings and other documents, and shall exercise Commercially Reasonable Efforts to obtain (and will cooperate with NEITC in obtaining) any consent, acquiescence, authorization, order or approval of, or any exemption or nonopposition by, any Governmental Authority required to be obtained or made by the ISO in connection with this Agreement or the taking of any action contemplated by this Agreement.

(b) The ISO shall exercise Commercially Reasonable Efforts to obtain consents of all other third parties necessary to performance of this Agreement by the ISO. The ISO shall promptly notify NEITC of any failure or anticipated failure to obtain any such consents and, if requested by NEITC, shall provide copies of all such consents obtained by the ISO.

(c) Nothing in this Section 6.04 shall require the ISO to pay any sums to a third party, including any Governmental Authority, excluding filing fees paid to any Governmental Authority in connection with a filing necessary or appropriate to discharge its obligations hereunder.

6.05 **Notice and Cure.** The ISO shall notify NEITC in writing of, and contemporaneously shall provide NEITC with true and complete copies of any and all information or documents relating to, any event, transaction or circumstance, as soon as practicable after it becomes Known to the ISO, that causes or shall cause any covenant or agreement of the ISO under this Agreement to be breached or that renders or shall render untrue any representation or warranty of the ISO contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. The ISO shall use all Commercially Reasonable Efforts to cure such event, transaction or circumstance as soon as practicable after it becomes Known to the ISO. No notice given pursuant to this Section 6.05 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or shall in any way limit any right of NEITC to seek indemnity under Article IX.

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## ARTICLE VII

### TAX MATTERS

7.01 **Responsibility for NEITC Taxes.** NEITC shall prepare and file all Tax Returns and other filings related to its Transmission Business and Transmission Facilities and pay any Tax liabilities related to its Transmission Business and Transmission Facilities. The ISO shall not be responsible for, or required to file, any Tax Returns or other reports for NEITC and shall have no liability for any Taxes related to NEITC's Transmission Business or Transmission Facilities. The ISO and NEITC hereby agree that, for tax purposes, the Transmission Facilities shall be deemed to be owned by NEITC.

7.02 **Responsibility for ISO Taxes.** The ISO shall prepare and file all Tax Returns and other filings related to its operations and pay any Tax liabilities related to its operations. NEITC shall not be responsible for, or required to, file any Tax Returns or other reports for the ISO and shall have no liability for any Taxes related to the ISO's operations.

## ARTICLE VIII

### RELIANCE; SURVIVAL OF AGREEMENTS

8.01 **Reliance; Survival of Agreements.** Notwithstanding any right of any Party (whether or not exercised) to investigate the accuracy of any of the matters subject to indemnification by any other Party contained in this Agreement, each of the Parties has the right to rely fully upon the representations, warranties, covenants and agreements of the other Party contained in this Agreement. The provisions of Sections 11.01, 11.07, 11.11 and 11.15 and Articles VII and IX shall survive the termination of this Agreement. With regard to Section 3.10 of this Agreement, the ISO will perform final billing consistent with Section 3.10 of this Agreement for all services provided until the Termination Date.

## ARTICLE IX

### INDEMNIFICATION; INSURANCE; LIMITATION OF LIABILITIES

9.01 **Indemnification.**

(a) Subject to Section 9.06(b) through 9.06(d), (i) NEITC shall release, indemnify, and hold harmless the ISO from and against any and all damages, losses, liabilities, obligations, claims, demands, suits, proceedings, recoveries, judgments, settlements, costs and expenses, court costs, attorney fees, and all other obligations (each, an "Indemnifiable Loss")

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asserted against the ISO by a Person that is not a Party to this Agreement (a “Third Party”) including but not limited to any action by a NEITC employee, to the extent alleged to result from, arise out of or be related to NEITC’s acts or omissions that give rise to such Indemnifiable Loss; and (ii) the ISO shall release, indemnify, and hold harmless NEITC from and against any Indemnifiable Loss asserted against NEITC by a Third Party, including but not limited to any action by an ISO employee, to the extent alleged to result from, arise out of or be related to the ISO’s acts or omissions that give rise to such Indemnifiable Loss, including an ISO directive and/or instructions to a Party.

(b) The indemnification by the ISO set forth in Section 9.01(a)(ii) above shall be limited to the extent that the liability of NEITC would be limited by any applicable Law and arises from a claim by (i) NEITC in its role as a Transmission Customer or (ii) a customer of NEITC.

(c) NEITC shall release, indemnify, and hold harmless the ISO from and against any Environmental Damages that the ISO becomes subject to as a result of its exercise of Operational Authority over the Transmission Facilities, to the extent such Environmental Damages arose prior to the Operations Date or did not result from the ISO’s acts or omissions.

(d) NEITC and/or the ISO each hereby (i) waives any defense or immunity it might otherwise have under applicable workers’ compensation laws or any other statute, or judicial decision, disallowing or limiting such indemnification and (ii) consents to a cause of action for indemnity and/or contribution in connection with such indemnification.

9.02 **Notice of Proceedings.** Each party entitled to receive indemnification under this Agreement (each, an “Indemnitee”) shall promptly notify the party who holds an indemnification obligation hereunder (in each case, the “Indemnifying Party”) of any Indemnifiable Loss in respect of which such Indemnitee is or may be entitled to indemnification pursuant to Section 9.01. Such notice shall be given as soon as reasonably practicable after the Indemnitee becomes aware of the Indemnifiable Loss and that any such claim or proceeding may give rise to an indemnification obligation hereunder. Such notice shall describe the nature of the loss or proceeding in reasonable detail and shall indicate, if practicable, the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The delay or failure of such Indemnitee to provide the notice required pursuant to this Section 9.02 shall not release the Indemnifying Party from any indemnification obligation which it may have to such Indemnitee except (a) to the extent that such failure or delay materially and adversely affects the Indemnifying Party’s ability to defend such action or increases the amount of the Indemnifiable Loss, and (b) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnitee in the defense of the claim, suit, action or proceeding during such period of failure or delay.

9.03 **Defense of Claims.**

(a) Unless and until the Indemnifying Party (i) acknowledges in writing its obligation within ten (10) calendar days of the Indemnitee's notice of a claim, suit, action or proceeding, and (ii) assumes control of the defense of such claim, suit, action or proceeding in accordance with Section 9.03(b), the Indemnitee shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Indemnitee in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

(b) Upon acknowledging in writing its obligation to indemnify an Indemnitee to the extent required pursuant to this Article IX and paying all reasonable costs incurred by such Indemnitee in its defense, including reasonable attorney's fees, the Indemnifying Party shall be entitled, at its option (subject to Section 9.03(d)), to assume and control the defense of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior reasonable approval of the Indemnitee.

(c) Neither the Indemnifying Party nor the Indemnitee shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other; provided, however, that such consent shall not be unreasonably withheld.

(d) Following the acknowledgment of the indemnification and the assumption of the defense by the Indemnifying Party pursuant to Section 9.03(b), the Indemnitee shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnitee, when and as incurred, unless: (i) the employment of counsel by such Indemnitee has been authorized in writing by the Indemnifying Party; (ii) the Indemnitee shall have reasonably concluded and specifically notified the Indemnifying Party that there may be a conflict of interest between the Indemnifying Party and the Indemnitee in the conduct of the defense of such action; (iii) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnitee to assume the defense of such action and shall have been so notified by the Indemnitee; (iv) the Indemnitee shall have reasonably concluded and specifically notified the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those

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available to the Indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon the Indemnitee beyond the scope of this Agreement; or (v) the Indemnifying Party shall not have taken reasonable steps necessary to defend diligently such action within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps. If clause (ii), (iii), (iv) or (v) of the preceding sentence shall be applicable, then counsel for the Indemnitee shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnitee and the reasonable fees and disbursements of such counsel shall constitute indemnifiable legal or other expenses hereunder.

(e) If the amount of any Indemnifiable Loss incurred by an Indemnitee, at any time subsequent to the making of an indemnity payment by an Indemnifying Party in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the Prime Rate) shall promptly be repaid by the Indemnitee to the Indemnifying Party. In the event that the claim, demand or suit giving rise to an Indemnifiable Loss is ultimately adjudicated, if a Final Order confirms that the Indemnitee was not entitled to indemnification hereunder, then the amount advanced by the Indemnifying Party in respect of such Indemnifiable Loss (together with interest thereon from the date of payment thereof at the Prime Rate) shall promptly be paid by the Indemnitee to the Indemnifying Party.

9.04 **Subrogation.** Upon payment of any indemnification by a party pursuant to this Article IX, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the Indemnitee may have relating thereto, and such Indemnitee shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

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9.05 **Insurance.**

(a) The ISO shall at all times, at its own cost and expense, carry and maintain or cause to be carried and maintained throughout the Term: (i) liability and errors and omissions insurance (including blanket coverage for contractual liability), insuring the ISO against liability for injury or death to persons, damage to property and environmental restoration, (ii) worker's compensation insurance, (iii) property insurance and (iv) directors' and officers' insurance. The amount of the insurance coverages and deductibles shall generally be comparable to other independent system operators or RTOs, taking into consideration the relative size of the ISO and its contractual and tariff liabilities as compared to the other system operators or RTOs administering similar market structures. In assessing the comparable coverages and deductibles, the ISO may rely on the advice of its insurance consultants.

(b) NEITC will maintain property insurance on its Transmission Facilities and liability insurance in accordance with good utility practice.

(c) All insurance required under this Section 9.05 by outside insurers shall be maintained with insurers qualified to insure the obligations or liabilities under this Agreement and having a Best's rating of at least B+ VIII (or an equivalent Best's rating from time to time of B+ VIII), or in the event that from time to time Best's ratings are no longer issued with respect to insurers, a comparable rating by a nationally recognized rating service or such other insurers as may be agreed upon by the Parties.

(d) NEITC shall be listed as an additional insured party on the liability and errors and omissions insurance required to be maintained by the ISO and the ISO shall be listed as an additional insured party on the liability insurance maintained by NEITC. Upon execution of this Agreement, and when requested thereafter, each Party shall furnish the other Party with certificates of all such insurance policies setting forth the amounts of coverage, policy numbers, and date of expiration for such insurance in conformity with the requirements of this Agreement.

(e) The insurance policies maintained by the ISO hereunder shall not be canceled, terminated or the terms thereof modified or amended without at least thirty (30) days' prior notice to NEITC.

(f) If any insurance policy required to be maintained by the ISO hereunder shall not be available to the ISO on a commercially reasonable basis (taking into account both terms and premiums), the ISO shall obtain a written report of an independent insurance advisor of recognized national standing, chosen by NEITC and reasonably acceptable to the ISO, confirming in reasonable detail that such insurance policy, in respect of amount or scope of coverage, is not available on a commercially reasonable basis from insurers of recognized standing. During any period with respect to which any insurance policy required by this

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Agreement is not commercially available, the ISO shall nevertheless maintain insurance that approximates such required insurance policy as closely as commercially practical, to the extent it is available on a commercially reasonable basis from insurers of recognized standing. If any insurance policy which was previously not held or discontinued because of its commercial unavailability later becomes available on a commercially reasonable basis, the ISO shall obtain or reinstate such insurance.

9.06 **Assumption of Liability.**

(a) (i) NEITC shall be liable to the ISO, and the ISO shall be liable to NEITC, for losses, liabilities, damages, diminution in value, obligations, claims, proceedings, fines, deficiencies and expenses (collectively, "Losses") caused by such Party's grossly negligent acts or omissions or willful misconduct (including the grossly negligent acts or omissions or willful misconduct of such Party's directors, Affiliates, members, officers, employees, agents, and contractors) in connection with the performance of such Party of its obligations under this Agreement; and (ii) neither Party shall be liable to the other Party for any incidental, indirect, special, exemplary, punitive or consequential damages, including lost revenues or profits, even if such damages are foreseeable or the damaged Party has advised such Party of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy. The foregoing limitations shall not apply to the right of the Parties to seek indemnification under this Agreement in accordance with Section 9.01.

(b) Nothing in this Agreement shall be deemed to affect the right of the ISO to recover its costs due to liability under this Article IX through the ISO Participants Agreement or the ISO Administrative Tariff.

(c) The ISO shall not be liable to NEITC with respect to any damages incurred by it that are directly attributable to the ISO's reliance on facility ratings established by NEITC.

(d) NEITC shall not be liable to the ISO by reason of this Agreement (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) for: any acts or omissions taken or done in compliance with, or good faith attempts to comply with, the directives and/or instructions of the ISO, except in cases of the gross negligence or willful misconduct of NEITC.

(e) Notwithstanding any of the foregoing, the ISO shall be liable in actual damages for failure to make payments or transfer sums under Section 3.10 of this Agreement if the ISO fails to discharge its obligation to prepare and send bills or to perform its obligations pursuant to Section 3.10 of this Agreement.

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## ARTICLE X

### **TERM; DEFAULT AND TERMINATION**

#### 10.01 **Term; Termination Date.**

(a) **Term.** Subject to the terms set forth in this Section 10.01, the initial term of this Agreement (the "**Initial Term**") shall commence on the Effective Date and shall continue for a period of five years from the Operations Date. Subject to the terms set forth in this Section 10.01, the Initial Term shall be extended automatically for additional two-year periods (each, an "**Additional Term**"). NEITC may withdraw from this Agreement effective at the end of the Initial Term or the end of any Additional Term by providing no less than 180 days' prior notice of such withdrawal to the ISO. Together, the Initial Term and the Additional Term(s), if any, shall constitute the term (the "**Term**") of this Agreement. This Agreement shall terminate automatically on February 1, 2013 if by that date: (i) no New Transmission Facility or Transmission Upgrade that the ISO has indicated that NEITC is to commence planning, designing or constructing is included as "Proposed" or "Planned" in the RSP Project List that is current as of February 1, 2013, and (ii) NEITC has not acquired an Acquired Transmission Facility; provided, however, that this Agreement shall terminate automatically, if not terminated automatically pursuant to the clauses (i) and (ii) above, on February 1, 2018 if a New Transmission Facility or Transmission Upgrade has not gone into service by that date.

(b) **NEITC Withdrawal During The Term.** Subject to Section 10.01(d), NEITC may withdraw from this Agreement at any time during the Term if any of the following shall have occurred:

(i) upon an ISO event of default in accordance with Section 10.03(a), provided that NEITC shall exercise this right in accordance with Section 10.03(b)(i).

(ii) one or more PTOs has given notice of withdrawal from the TOA pursuant to Sections 10.01(b)(ii) or (iii) thereof;

(iv) NEITC has obtained authorization from the FERC to join another RTO or other similar organization (such as an Independent System Operator) in connection with a merger with or acquisition by another entity other than a PTO.

(c) **Termination By the ISO.** The ISO may terminate its obligations under this Agreement and surrender its Operating Authority over the Transmission Facilities if any of the following shall have occurred:

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(i) the withdrawal of one or more PTOs from the Transmission Operating Agreement and the ISO has given notice to the PTOs that it is terminating the Transmission Operating Agreement pursuant to Section 10.01(c)(i) thereof.

(ii) FERC issues an order putting into effect material changes in the liability and indemnification protections afforded to the ISO under this Agreement or the ISO OATT, provided that: (A) withdrawal pursuant to this provision shall require notice to NEITC not less than 180 days prior to the Termination Date established pursuant to Section 10.01(d); and (B) the ISO shall be required to rescind such notice if FERC issues a subsequent order prior to the Termination Date so as to eliminate the material changes to such liability and indemnification protections.

(iii) FERC issues an order putting into effect an amendment or modification of this Agreement that materially adversely affects the ISO's ability to carry out its responsibilities under this Agreement, unless the ISO has agreed to such changes in accordance with Section 11.04, provided that: (A) withdrawal pursuant to this provision shall require notice to NEITC not less than 180 days prior to the Termination Date established pursuant to Section 10.01(d); and (B) the ISO shall be required to rescind such notice if FERC issues a subsequent order prior to the Termination Date so as to eliminate the material adverse effect to the ISO's ability to carry out its responsibilities under this Agreement.

(iv) upon a NEITC event of default in accordance with Section 10.04(a), provided that the ISO shall exercise this right in accordance with Section 10.04(b)(i).

(d) Actions Prior To Withdrawal or Termination. Upon submission of a written notice of termination or withdrawal by a Party, if NEITC has Transmission Facilities, the Party submitting such notice shall commence the development of a plan under which Operating Authority shall be transferred from the ISO to another entity. The Termination Date with respect to NEITC or the ISO shall not occur until both: (a) the ISO and NEITC and all affected PTOs have agreed upon a plan addressing the technical, operational and market issues associated with the transfer of Operating Authority in connection with such termination or withdrawal and such plan has been implemented, provided that: (i) if the Parties are unable to reach agreement on such plan any affected Party shall have the right to submit the matter to FERC for resolution without additional negotiation under Section 11.12; (ii) with respect to a withdrawal pursuant to Section 10.01(a), NEITC shall not be required to remain a Party to this Agreement for longer than one year after providing notice of withdrawal; and (iii) in the event of a default by the ISO,

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NEITC may require that the ISO immediately make arrangements for the orderly transfer of the ISO's invoicing and collection functions with respect to NEITC prior to the Termination Date in accordance with Section 10.03(b); and (b) all required regulatory approvals, if any, have been obtained for such withdrawal or termination, including any approvals required pursuant to Section 10.01(e).

(e) Approvals. Notwithstanding any other provision contained herein or in any other document to the contrary, any termination or withdrawal requested under this Section 10.01 shall be effective: (i) unless a party to this Agreement seeking to challenge the request demonstrates that the requested termination or withdrawal is contrary to the public interest under the Mobile-Sierra Doctrine and (ii) subject to the FERC's determination under Section 205 of the Federal Power Act that the termination or withdrawal is just, reasonable and not unduly discriminatory or preferential. If NEITC has Transmission Facilities at the time of termination or withdrawal, NEITC, on exercising its right to withdraw or terminate in accordance with this Section 10.01, shall file with the FERC, pursuant to Section 205 of the FPA, the tariffs and rate schedules applicable to transmission service over the Transmission Facilities to become effective upon such termination or withdrawal.

(f) Continuing Obligations. The withdrawing or terminating Party shall have the following continuing obligations following withdrawal from this Agreement:

(i) All financial obligations incurred and payments applicable to the time period prior to the Termination Date shall be honored by the terminating or withdrawing Party and the other Party in accordance with the terms of this Agreement, and each Party shall remain liable for all obligations arising hereunder prior to the Termination Date.

(ii) NEITC shall file a replacement transmission tariff to replace its rate schedule under the ISO OATT, unless FERC rules no longer require the filing of such a tariff.

#### 10.02 Release of Operating Authority.

(a) Upon the Termination Date, the ISO's right and obligation to exercise Operating Authority over the Transmission Facilities of NEITC shall promptly cease, and, in accordance with Section 10.01, the ISO shall be deemed to have released and returned, and NEITC (or its designee) shall have assumed, Operating Authority over such Transmission Facilities on the Termination Date.

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(b) After the Termination Date, the ISO shall take Commercially Reasonable Efforts to assist NEITC or its designee in resuming performance of the functions comprising Operating Authority.

### 10.03 Events of Default of the ISO.

(a) Events of Default of the ISO. Subject to the terms and conditions of this Section 10.03, the occurrence of any of the following events shall constitute an event of default of the ISO under this Agreement:

(i) Failure by the ISO to perform any material obligation set forth in this Agreement and continuation of such failure for longer than thirty (30) days after the receipt by the ISO of written notice of such failure from NEITC; provided, however, that if the ISO is diligently pursuing a remedy during such thirty (30) day period, said cure period shall be extended for an additional thirty (30) days or as otherwise agreed by NEITC;

(ii) If there is a dispute between the ISO and NEITC as to whether the ISO has failed to perform a material obligation, the cure period(s) provided in Section 10.03(a)(i) above shall run from the point at which a finding of failure to perform has been made by a Governmental Authority;

(iii) Any attempt (not including consideration of strategic options or entering into exploratory discussions) by the ISO to transfer an interest in, or assign its obligations under, this Agreement, except as otherwise permitted hereunder;

(iv) Failure of the ISO (if it has received the necessary corresponding funds from ISO customers) to pay when due any and all amounts payable to NEITC by the ISO as part of the settlement process pursuant to Section 3.10 within three (3) Business Days;

(v) Failure of the ISO to pay when due any other amounts payable to NEITC by the ISO pursuant to this Agreement within thirty (30) days of the due date;

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(vi) The exercise of Operating Authority or other responsibilities under this Agreement in a manner that results in a material amount of damage to or the destruction of the Transmission Facilities due to the willful misconduct or gross negligence of the ISO or the repeated and persistent exercise by the ISO of its Operating Authority in a manner that subjects Transmission Facilities to the significant risk of a material amount of damage, provided that exercise by the ISO of its Operating Authority over any Transmission Facility both in accordance with the Operating Procedures and within the ratings established by NEITC for such Transmission Facility shall not be considered to subject such Transmission Facility to risk of damage and further provided that nothing in this Section 10.03(a)(vi) shall be deemed to excuse the ISO from complying with its obligations under this Agreement or to limit the other events of default specified in this Section 10.03(a).

(vii) With respect to the ISO, (A) the filing of any petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws, (B) assignment by the ISO for the benefit of creditors; or (C) allowance by the ISO of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within thirty (30) days after such appointment.

(b) Remedies for Default. If an event of default by the ISO occurs, NEITC shall have the right to avail itself of any or all of the following remedies, all of which shall be cumulative and not exclusive:

(i) To terminate its participation in this Agreement in accordance with Section 10.01(b); provided that if the ISO contests such allegation of an ISO event of default, this Agreement shall remain in effect pending resolution of the dispute, but any applicable notice period shall run during the pendency of the dispute;

(ii) To demand that the ISO shall immediately make arrangements for the orderly transfer of Operating Authority over the Transmission Facilities and assist NEITC or NEITC's designee in resuming performance of the functions comprising Operating Authority, provided that: (A) NEITC shall not be liable for the reimbursement of the ISO for any costs and expenses incurred by the ISO in

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connection therewith; (B) the ISO and NEITC shall agree upon a plan addressing the technical and operational issues associated with such transfer of Operating Authority, and such plan has been implemented; and (C) if the Parties are unable to reach agreement on such plan, either Party shall have the right to submit the matter to FERC for resolution without additional negotiation under Section 11.12;

(iii) To demand that the ISO shall terminate any right of the ISO, immediately make arrangements for the orderly transfer of the ISO's invoicing and collection functions with respect to NEITC and assist NEITC or NEITC's designee in resuming performance of the functions the later of 20 days from the date of making such demand or the start of the next billing cycle.

(iv) To make any payment or perform or comply with any agreement that the ISO shall be obligated to pay, perform or comply with under this Agreement and the amount of reasonable expenses (including attorneys' fees and any other reasonable professionals' fees and expenses) of NEITC incurred in connection with such payment or the performance of or compliance with any such agreement shall be payable by the ISO upon demand;

(v) To obtain such specific performance and/or an injunction to prevent breaches of this Agreement and to enforce specifically the terms and conditions hereof; and/or

(vi) To obtain damages pursuant to the indemnity provisions of Sections 9.01 and 9.06 and for non-performance of invoicing/payment obligations under Section 3.10 of this Agreement.

#### 10.04 **Events of Default of NEITC.**

(a) **Events of Default of NEITC.** Subject to the terms and conditions of this Section 10.04, the occurrence of any of the events listed below shall constitute an event of default of NEITC under this Agreement (in each instance, a "**NEITC Default**"):

(i) Failure by NEITC to perform any material obligation set forth in this Agreement and continuation of such failure for longer than thirty (30) days after the receipt by NEITC of written notice of such failure from the ISO, provided, however, that if NEITC is diligently pursuing a remedy during such thirty (30) day period, said cure period shall be extended for an additional thirty (30) days or as otherwise agreed by the ISO and NEITC;

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(ii) If there is a dispute between NEITC and the ISO as to whether NEITC has failed to perform a material obligation, the cure period(s) provided in Section 10.04(a)(i) above shall run from the point at which a finding of failure to perform has been made by a Governmental Authority;

(iii) With respect to NEITC, (A) the filing of any petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws, (B) assignment by NEITC for the benefit of creditors; or (C) allowance by NEITC of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within thirty (30) days after such appointment; or

(iv) Failure of NEITC to pay when due any amounts payable to the ISO by NEITC pursuant to this Agreement within thirty (30) days of the due date.

(b) Remedies for Default. If an event of default by NEITC occurs, the ISO shall have the following remedies, all of which shall be cumulative and not exclusive:

(i) terminate this Agreement with respect to NEITC in accordance with Section 10.01(c); provided that if NEITC contests such allegation of an NEITC event of default, this Agreement shall remain in effect pending resolution of the dispute, but any applicable notice period shall run during the pendency of the dispute;

(ii) such specific performance and/or an injunction to prevent breaches of this Agreement and to enforce specifically the terms and conditions hereof; or

(iii) obtain damages pursuant to the indemnity provisions of Sections 9.01 and 9.06.

(c) Notwithstanding anything to the contrary herein, nothing in this Section 10.04 shall be deemed to give the ISO or any ISO agent or designee the right to exercise any functions other than those enumerated as Operating Authority in Section 3.02 or the right to take physical control of any NEITC facilities.

#### 10.05 Transitions.

(a) Disbursement Agreement. Because NEITC has been determined by the Federal Energy Regulatory Commission in Docket No, EL07-21-000 to meet the independence

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and capability requirements for an ITC set forth in Attachment M to the ISO OATT, upon issuance of a final order from the FERC accepting this Agreement for filing under Section 205 of the Federal Power Act, NEITC shall promptly execute a signature page for the Disbursement Agreement and deliver it to the parties thereto and shall become a party to the Disbursement Agreement.

(b) Transmission Operating Agreement. On the date on which (1) a New Transmission Facility is placed into service or (2) NEITC's acquisition of Acquired Transmission Facilities is consummated, whichever occurs earlier, NEITC shall execute and deliver to the ISO a counterpart of the Transmission Operating Agreement as an Additional PTO (as defined therein), and if the Transmission Operating Agreement at that time prohibits an Independent Transmission Company from becoming a party to the Transmission Operating Agreement then NEITC will relinquish its status as an Independent Transmission Company under, and as defined in, the Transmission Operating Agreement. Upon such execution and delivery, this Agreement shall terminate automatically, and the Parties will have no obligations under Section 10.01(d) in connection with that transition.

## ARTICLE XI

### MISCELLANEOUS

11.01 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing and any such communication or notice shall become effective (a) upon personal delivery thereof, including by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by facsimile, upon receipt thereof; provided that such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to the relevant party and copy party hereto at its address set forth in Schedule 11.01 or at such other address as such party or copy party may from time to time designate by written notice to the other party hereto; further provided that a notice given in connection with this Section 11.01 but received on a day other than a Business Day, or after business hours in the situs of receipt, will be deemed to be received on the next Business Day.

11.02 Supersession of Prior Agreements. With respect to the subject matter hereof, this Agreement (together with all schedules and exhibits attached hereto) constitutes the entire agreement and understanding among the Parties with respect to all subjects covered by this Agreement and supersedes all prior discussions, agreements and understandings among the Parties with respect to such matters.

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11.03 **Waiver.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by a Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, shall be cumulative and not alternative.

11.04 **Amendment; Limitations on Modifications of Agreement.**

(a) This Agreement shall only be subject to modification or amendment by agreement of the Parties and the acceptance of any such amendment by FERC.

(b) In light of the foregoing, the Parties agree that they shall not rely to their detriment on any purported amendment, waiver or other modification of any rights under this Agreement unless the requirements of this Section 11.04 are satisfied and further agree not to assert equitable estoppel or any other equitable theory to prevent enforcement of this provision in any court of law or equity, arbitration or other proceeding.

(c) Absent the agreement of the Parties to any proposed change hereof or an amendment hereof pursuant to Section 11.04(a), the standard of review for changes to the following sections of this Agreement (or changes to any schedules associated with such sections) proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review under the Mobile-Sierra Doctrine: 2.01, 2.04, 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, 3.07, 3.09, 3.10, 3.12, 4.01(e), 9.01, 9.06, 10.02, 10.03, 10.04, 11.04(a) - (d), 11.06, 11.15, and Article I, as it applies to the foregoing sections. Absent the agreement of the Parties to any proposed change hereof or an amendment hereof pursuant to Section 11.04(a), with respect to changes to the remaining provisions of this Agreement proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting sua sponte, the standard of review shall be that provided under Section 206 of the Federal Power Act.

(d) Notwithstanding the Parties' rights under Section 3.04 hereof, neither the ISO nor NEITC shall propose to modify or amend the ISO OATT nor any other tariff, rate schedule, procedure, protocol, or agreement applicable to the ISO or NEITC in any manner that would limit, alter, or adversely affect the rights and responsibilities of the other Party under this Agreement or that would otherwise be inconsistent with the provisions of this Agreement unless: (i) NEITC and the ISO have entered into a prior written agreement to make corresponding modifications to this Agreement in accordance with this Section 11.04, or (ii) if corresponding modifications to the provisions of this Agreement enumerated in Section 11.04(c) above are required, the proposing Party also requests FERC to find (or FERC has already so found) that the corresponding modifications are required under the "public interest" standard of review under the

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Mobile-Sierra Doctrine or (iii) if corresponding modifications to the provisions of this Agreement are required, the proposing Party also requests FERC to find (or FERC has already so found) that the corresponding modifications are required under the standard of review under Section 206 of the Federal Power Act.

(e) The Parties shall notify stakeholders of proposed amendments to this Agreement by posting such amendments on the ISO website prior to the filing of such amendments with FERC and shall consider stakeholder input concerning such proposed amendments.

**11.05 No Third Party Beneficiaries.** Except as provided in Article IX, it is not the intention of this Agreement or of the Parties to confer a third party beneficiary status or rights of action upon any Person or entity whatsoever other than the Parties and nothing contained herein, either express or implied, shall be construed to confer upon any Person or entity other than the Parties any rights of action or remedies either under this Agreement or in any manner whatsoever.

**11.06 No Assignment; Binding Effect.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned by a Party-, (including by operation of law) law (an "Assignment")-, without the prior written consent of the other Party in its sole discretion and any attempt at Assignment in contravention of this Section 11.06 shall be void, provided, however, that NEITC may assign its rights and interests hereunder as security in connection with any financing for the construction or operation of NEITC's Transmission Facilities (a "Collateral Assignment") without prior written consents or approvals. NEITC may assign or transfer any or all of its rights, interests and obligations hereunder upon the transfer of its assets through sale, reorganization, or other transfer, provided that:

(a) NEITC's successors and assigns shall agree to be bound by the terms of this Agreement except that NEITC's successors and assigns shall not be required to be bound by any obligations hereunder to the extent that NEITC has agreed to retain such obligations; and

(b) notwithstanding (a), NEITC shall assign or transfer to any new owner of Transmission Facilities subject to this Agreement all of the rights, responsibilities and obligations associated with the physical operation of such Transmission Facilities as well as all of the rights, responsibilities and obligations associated with the ISO's Operating Authority with respect to such Transmission Facilities, further provided that the new owner shall have the right to retain one or more subcontractors to perform any or all of its responsibilities or obligations under this Agreement.

Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective permitted successors and assigns. No Assignment shall be effective until NEITC receives all required regulatory approvals for such Assignment.

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11.07 **Further Assurances; Information Policy; Access to Records.**

(a) Each Party agrees, upon the other Party's request, to make Commercially Reasonable Efforts to execute and deliver such additional documents and instruments, provide information, and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and of the transactions contemplated hereby.

(b) The ISO shall, upon NEITC's request, make available to NEITC any and all information within the ISO's custody or control that is necessary for NEITC to perform its responsibilities and obligations or enforce its rights under this Agreement, provided that such information shall be made available to NEITC only to the extent permitted under the ISO Information Policy and subject to any applicable restrictions in the ISO Information Policy, including provisions of the ISO Information Policy governing the confidential treatment of non-public information, and provided further that any NEITC employee or employee of NEITC's Local Control Center shall comply with such ISO Information Policy and any applicable standards of conduct to prevent the disclosure of such information to any unauthorized Person. Any dispute concerning what information is necessary for NEITC to perform its responsibilities and obligations or enforce its right under this Agreement shall be subject to dispute resolution under Section 11.12 of this Agreement.

(c) NEITC shall, upon the ISO's request, make available to the ISO any and all information within NEITC's custody or control that is necessary for the ISO to perform its responsibilities and obligations or enforce its rights under this Agreement, provided that such information shall be made available to the ISO only to the extent permitted under the ISO Information Policy and subject to any applicable restrictions in the ISO Information Policy, including provisions of the ISO Information Policy governing the confidential treatment of non-public information, and provided further that any ISO employee shall comply with such ISO Information Policy and any applicable standards of conduct to prevent the disclosure of such information to any unauthorized Person. Any dispute concerning what information is necessary for the ISO to perform its responsibilities and obligations or enforce its right under this Agreement shall be subject to dispute resolution under Section 11.12 of this Agreement.

(d) If, in order to properly prepare its Tax Returns, other documents or reports required to be filed with Governmental Authorities or its financial statements or to fulfill its obligations hereunder, it is necessary that the ISO or NEITC be furnished with additional information, documents or records not referred to specifically in this Agreement, and such information, documents or records are in the possession or control of the other Party, the other Party shall use its best efforts to furnish or make available such information, documents or records (or copies thereof) at the ISO's or NEITC's request, cost and expense. Any information obtained by the ISO or NEITC in accordance with this paragraph shall be subject to any applicable provisions of the ISO Information Policy.

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(e) Notwithstanding anything to the contrary contained in this Section 11.07:

(i) no Party shall be obligated by this Section 11.07 to undertake studies or analyses that such Party would not otherwise be required to undertake or to incur costs outside the normal course of business to obtain information that is not in such Party's custody or control at the time a request for information is made pursuant to this Section 11.07;

(ii) if NEITC and the ISO are in an adversarial relationship in litigation or arbitration (other than with respect to litigation or arbitration to enforce this Section 11.07), the furnishing of information, documents or records by the ISO or NEITC in accordance with this Section 11.07 shall be subject to applicable rules relating to discovery;

(iii) no Party shall be compelled to provide any privileged and/or confidential documents or information that are attorney work product or subject to the attorney/client privilege; and

(iv) no Party shall be required to take any action that impairs or diminishes its rights under this Agreement or otherwise lessens the value of this Agreement to such Party.

11.08 **Business Day.** Notwithstanding anything herein to the contrary, if the date on which any payment is to be made pursuant to this Agreement is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such scheduled date and, provided such payment is made on such succeeding Business Day, no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

11.09 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware including all matters of construction, validity and performance without regard to the conflicts-of-laws provisions thereof.

11.10 **Consent to Service of Process.** Each of the Parties hereby consents to service of process by registered mail, Federal Express or similar courier at the address to which notices to it are to be given, it being agreed that service in such manner shall constitute valid service upon such Party or its successors or assigns in connection with any such action or proceeding; provided, however, that nothing in this Section 11.10 shall affect the right of any Party or its successors and permitted assigns to serve legal process in any other manner permitted by applicable Law or affect the right of any such Party or its successors and assigns to bring any action or proceeding against the other Party or its property in the courts of other jurisdictions.

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11.11 **Specific Performance; Force Majeure.**(a) **Specific Performance.** The Parties specifically acknowledge that a breach of this Agreement, whether or not an Event of Default, and notwithstanding any cure period in Section 10.03(a) or 10.04(a), would cause the non-breaching Party to suffer immediate and irreparable harm due to the unique relationship of the Parties. The Parties hereto shall be entitled to seek specific performance and/or an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and conditions hereof in any court of competent jurisdiction, such remedy being in addition to any other remedy to which a Party may be entitled at law or in equity.

(b) **Force Majeure.** A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials (not including as a result of non-payment), act of the public enemy or terrorists, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes (not including a lack of funds or other financial causes) beyond such Party's reasonable control, including any order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities. A Party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except that the settlement of any labor disturbance shall be in the sole judgement of the affected Party.

11.12 **Dispute Resolution.** The Parties agree that any dispute arising under this Agreement shall be the subject of good-faith negotiations among the Parties and affected market participants, if any. Each Party and each affected market participant shall designate one or more representatives with the authority to negotiate the matter in dispute to participate in such negotiations. The Parties and affected market participants shall engage in such good-faith negotiations for a period of not less than 60 calendar days, unless: (a) a Party or market participant identifies exigent circumstances reasonably requiring expedited resolution of the dispute by FERC or a court or agency with jurisdiction over the dispute; or (b) the provisions of this Agreement otherwise provide a Party the right to submit a dispute directly to FERC for resolution. Any other dispute that is not resolved through good-faith negotiations may, by a Party or any market participant, be submitted for resolution by FERC or a court or agency with jurisdiction over the dispute upon the conclusion of such negotiations. A Party or market participant may request that any dispute submitted to FERC for resolution be subject to FERC settlement procedures. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to arbitration or any other form of alternative dispute resolution upon the agreement of the Parties and all affected market participants to participate in such an alternative dispute resolution process.

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11.13 **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (d) the court holding such provision to be illegal, invalid or unenforceable may in lieu of such provision add as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as it deems appropriate.

11.14 **Headings and Table of Contents.** The headings of the sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

11.15 **Liabilities; No Joint Venture.**

(a) The obligations and liabilities of the ISO and NEITC arising out of or in connection with this Agreement shall be several, and not joint, and each Party shall be responsible for its own debts, including Taxes. No Party shall have the right or power to bind any other Party to any agreement without the prior written consent of such other Party. The Parties do not intend by this Agreement to create nor does this Agreement constitute a joint venture, association, partnership, corporation or an entity taxable as a corporation or otherwise. No express or implied term, provision or condition of this Agreement shall be deemed to constitute the parties as partners or joint venturers.

(b) To the extent any Party has claims against the other Party, such Party may only look to the assets of the other Party for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees, affiliates, or agents of such other Party who, each Party acknowledges and agrees, have no liability, personal or otherwise, by reason of their status as directors, members, officers, employees, affiliates, or agents of that Party, with the exception of fraud or willful misconduct.

11.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. The parties hereto agree that any document or signature delivered by facsimile transmission shall be deemed an original executed document for all purposes hereof.

11.17 **Conditions Precedent.** Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be effective as set forth in Section 11.18 with respect to any Party unless all of the conditions precedent set forth in this Section 11.17 shall have been satisfied or waived.

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(a) Required Regulatory Approvals. All final required regulatory approvals shall have been obtained and be in full force and effect and shall not be subject to the satisfaction of any condition or conditions that, if accepted, would: (i) in the case of NEITC, in the reasonable judgment of NEITC, in the aggregate have a material adverse effect on the value of its Transmission Facilities, its expected level of transmission revenues, or its electric utility business, revenues, or financial condition, unless NEITC waives said condition, provided however, that with respect to any required regulatory approval obtained from a Governmental Authority of a State, the condition set forth in this clause shall apply only if NEITC operates its Transmission Business within such State; and (ii) in the case of the ISO, in its reasonable judgment, have a material adverse effect on the ISO's ability to perform its obligations under this or any other agreement to which it is subject, unless the ISO waives such condition.

(b) Board Consent. The board of directors of each Party, in its sole discretion, shall have authorized and approved such Party's executing, delivering and performing this Agreement.

(c) Additional Conditions Precedent. Additional conditions precedent are listed on Schedule 11.17(c).

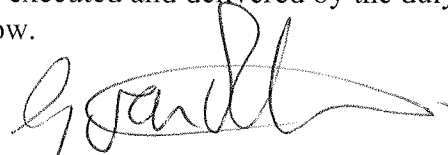
#### 11.18 Effective Dates

(a) Except for Sections 2.01-2.05, 2.07, 3.01-3.06, 3.08, 3.10, 4.01(e), Articles V, VI and IX, this Agreement shall be effective upon the date last signed below (the "Effective Date").

(b) The Sections and Articles excepted in subsection (a), above, shall become effective upon the earlier of the date on which the ISO lists an NEITC regulated transmission project as "Proposed" on an RSP Project List or the date on which NEITC acquires Acquired Transmission Facilities.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date written below.



**For ISO New England Inc.**


Name: G van Wehe

Title: President + CEO

Date: 3/23/2010

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**For New England Independent Transmission  
Company, L.L.C.**

Name: 

Title: Chairman

Date: March 23, 2010

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Issued by: Raymond W. Hepper, ISO-NE Issuing Officer  
Stephen A. Conant, NEITC Issuing Officer  
Issued on: March 26, 2010

Effective: March 23, 2010

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## **Schedule 1.01**

### **Schedule of Definitions**

**Acquired Transmission Facilities.** Any transmission facility acquired within the New England Control Area by NEITC after the Operations Date that meets the classification standards set forth in Section 2.02(a).

**Additional Term.** “Additional Term” shall have the meaning ascribed thereto in Section 10.01(a) of this Agreement.

**Affiliate.** Any person or entity which controls, is controlled by, or is under common control by another person or entity. For purposes of this definition, "control" shall mean the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

**Agreement.** This Operating Agreement between the ISO and New England Independent Transmission Company, LLC, as it may be amended from time to time.

**Ancillary Service.** Those services that are necessary to support the transmission of electric capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with Good Utility Practice.

**Approved Outages.** “Approved Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

**ATC.** Available Transfer Capability.

**Best's.** The A.M. Best Company.

**Business Day.** Any day other than a Saturday or Sunday or an ISO holiday, as posted by the ISO on its website.

**Commercially Reasonable Efforts.** A level of effort which, in the exercise of prudent judgment in the light of facts or circumstances known or which should reasonably be known at the time a decision is made, can be expected by a reasonable person to accomplish the desired result in a manner consistent with Good Utility Practice and which takes the performing party's interests into consideration. "Commercially Reasonable Efforts" will not be deemed to require a Person to undertake unreasonable measures or measures that have a significant adverse economic affect on such Person, including the payment of sums in excess of amounts that would be expended in the ordinary course of business for the accomplishment of the stated purpose.

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Commission. The Federal Energy Regulatory Commission.

Control Area. An electric power system or combination of electric power systems, bounded by metering, to which a common automatic generation control scheme is applied in order to:

(a) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(b) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

(c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice and applicable NERC/NPCC Requirements; and

(d) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

Coordination Agreement. An agreement between the ISO and the operator(s) of one or more neighboring Control Areas addressing issues including interchange scheduling, operational arrangements, emergency procedures, energy for emergency and reliability needs, the exchange of information among Control Areas, and other aspects of the coordinated operation of the Control Areas.

Disbursement Agreement. The Rate Design and Funds Disbursement Agreement among NEITC and the PTOs, as amended and restated from time to time.

Effective Date. “Effective Date” shall have the meaning ascribed thereto in Section 11.18(a) of this Agreement.

Elective Transmission Upgrade. A Transmission Upgrade constructed by any Person which is not required to be constructed pursuant to any applicable requirement of this Agreement, but which may be subject to applicable requirements set forth in the ISO OATT and this Agreement.

Elective Transmission Upgrade Applicant. “Elective Transmission Upgrade Applicant” shall have the meaning ascribed thereto in Section 2.05 of this Agreement.

Environment. Soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

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Environmental Damages. “Environmental Damages” shall mean any cost, damages, expense, liability, obligation or other responsibility arising from or under Environmental Law consisting of or relating to:

(a) any environmental matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products);

(b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial or inspection costs and expenses arising under Environmental Law;

(c) financial responsibility under Environmental Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment or other remediation or response actions (“Cleanup”) required by applicable Environmental Law (whether or not such Cleanup has been required or requested by any Governmental Authority or any other Person) and for any natural resource damages; or

(d) any other compliance, corrective, investigative, or remedial measures required under Environmental Law.

Environmental Laws. Any Law now or hereafter in effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the Environment, health or safety or to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

Excluded Assets. “Excluded Assets” shall have the meaning ascribed thereto in Section 2.04 of this Agreement.

Exigent Circumstances. “Exigent Circumstances” shall mean circumstances such that the ISO determines in good faith that (i) failure to immediately implement a proposed Tariff filing authorized under Sections 3.04(c) and 3.04(e) of this Agreement would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures set forth in Sections 3.04(c) and 3.04(e) of this Agreement would not allow for timely redress of the ISO’s concerns.

Existing Operating Procedures. “Existing Operating Procedures” shall have the meaning ascribed thereto in Section 3.02(d) of this Agreement.

External Transactions. Interchange transactions between the New England Transmission System and neighboring Control Areas.

FACTS. Flexible AC Transmission Systems.

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FERC. The Federal Energy Regulatory Commission.

Final Order. An order issued by a Governmental Authority in a proceeding after all opportunities for rehearing are exhausted (whether or not any appeal thereof is pending) that has not been revised, stayed, enjoined, set aside, annulled or suspended, with respect to which any required waiting period has expired, and as to which all conditions to effectiveness prescribed therein or otherwise by law, regulation or order have been satisfied.

Financial Assurances. “Financial Assurances” shall have the meaning ascribed thereto in Section 3.10(b) of this Agreement.

FPA. The Federal Power Act.

FTR. A Financial Transmission Right, as defined in the ISO OATT.

Generally Accepted Accounting Principles. The widely accepted set of rules, conventions, standards, and procedures for reporting financial information, as established by the Financial Accounting Standards Board.

Generating Unit. A device for the production of electricity.

Good Utility Practice. Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority. The government of any nation, state or other political subdivision thereof, including any entity exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government, not including NEITC or the ISO.

Hazardous Materials. Any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

Indemnifiable Loss. “Indemnifiable Loss” shall have the meaning ascribed thereto in Section 9.01(a)(i) of this Agreement.

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Indemnifying Party. “Indemnifying Party” shall have the meaning ascribed thereto in Section 9.02 of this Agreement.

Indemnitee. “Indemnitee” shall have the meaning ascribed thereto in Section 9.02 of this Agreement.

Initial Term. “Initial Term” shall have the meaning ascribed thereto in Section 10.01(a) of this Agreement.

Interconnection Agreement. An agreement or agreements for the interconnection of any entity to the Transmission Facilities of NEITC.

Interconnection Standard. The applicable interconnection standards set forth in the ISO OATT.

Invoiced Amount. “Invoiced Amount” shall have the meaning ascribed thereto in Section 3.10(a)(i) of the Agreement.

ISO. ISO New England Inc., the RTO for New England authorized by the Federal Energy Regulatory Commission to exercise the functions required pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations.

ISO Administrative Charge. “ISO Administrative Charge” shall have the meaning ascribed thereto in Section 3.04(h) of this Agreement.

ISO Control Center. The primary control center established by the ISO for the exercise of its Operating Authority and the performance of functions as an RTO.

ISO Information Policy. The information policy set forth in the ISO OATT.

ISO-NE. ISO New England Inc.

ISO OATT. The ISO Open Access Transmission Tariff, as in effect from time to time.

ISO Participants Agreement. The agreement among the ISO and stakeholder participants addressing, *inter alia*, the stakeholder process for the ISO.

ISO Planning Process. The process set forth in the ISO OATT, for the coordinated planning and expansion of the New England Transmission System with provision for the participation of all state regulatory authorities with jurisdiction over retail rates in the ISO region acceptable to those authorities, which process shall be subject to certain terms and conditions set forth in Schedule 3.09(a).

ISO System Plan. The “Regional System Plan” as defined in the ISO OATT.

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ISO Tariff. The ISO Transmission, Markets and Services Tariff, as amended from time to time, on file with FERC.

Large Generating Facility. “Large Generating Facility” shall have the meaning ascribed thereto in the ISO OATT.

Law. Any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

Load Shedding. The systematic reduction of system demand by temporarily decreasing load.

Local Control Center. The control center(s) established by NEITC in accordance with Section 3.06(a) of this Agreement that are separate from the ISO Control Center and perform certain functions in accordance with this Agreement.

Local Networks. “Local Networks” shall have the meaning ascribed thereto in Section 3.03(e) of this Agreement.

Local Network Service. Network Transmission Service solely over the facilities of NEITC (including facilities leased to NEITC or to which NEITC has contractual entitlements) provided under a FERC-accepted or -approved Local Service Schedule.

Local Point-to-Point Transmission Service. Point-to-point Transmission Service solely over the facilities of NEITC (including facilities leased to NEITC or to which NEITC has contractual entitlements) provided under a FERC-accepted or -approved Local Service Schedule.

Local Service. Transmission Service solely over the facilities of NEITC (including facilities leased to NEITC or to which NEITC has contractual entitlements) provided under a FERC-accepted or -approved Local Service Schedule.

Local Service Schedule. An NEITC-specific rate schedule to the ISO OATT setting forth rates, charges, terms and conditions applicable only to service provided over the Transmission Facilities of NEITC.

Market Monitoring Unit. Any market monitoring unit established by the ISO, including any internal market monitoring unit of the ISO and any independent market monitoring unit of the ISO.

Market Participant Service Agreement. The agreement among the ISO and market participants addressing, *inter alia*, the requirements for participating in the New England Markets.

Market Rules. The rules describing how the New England Markets are administered.

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Merchant Facility. A transmission facility constructed by an entity that assumes all market risks associated with the recovery of costs for the facility and whose costs are not recovered through traditional cost-of-service based rates, but instead are recovered either through negotiated agreements with customers or through market revenues.

Mobile-Sierra Doctrine. The “Mobile-Sierra Doctrine” shall mean the public interest standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

Moratorium Period. “Moratorium Period” shall have the meaning ascribed thereto in Section 3.04(h)(i) of this Agreement.

NEITC Category A Facilities. Those transmission facilities listed in Schedule 2.01(a) of the Agreement, as that list may be modified from time to time in accordance with the terms of this Agreement.

NEITC Category B Facilities. Those transmission facilities listed in Schedule 2.01(b) of the Agreement, as that list may be modified from time to time in accordance with the terms of this Agreement.

NEITC Local Area Facilities. “Local Area Facilities” shall have the meaning ascribed thereto in Section 2.01 of this Agreement.

NEITC Local Restoration Plan. The restoration plan developed by NEITC with respect to the Transmission Facilities.

NERC. The North American Electric Reliability Corporation.

NERC/NPCC Requirements. NPCC criteria, guides, and procedures, NERC reliability standards, and NERC operating policies and planning standards (until such time as they are replaced by NERC reliability standards) and any successor documents.

New England Control Area. The Control Area consisting of the interconnected electric power system or combination of electric power systems in the geographic region consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut and Rhode Island.

New England Markets. Markets or programs (including congestion pricing and design and implementation of FTRs) for the purchase of energy, capacity, ancillary services, demand response services or other related products or services that are offered in the New England Control Area and that are administered by the ISO pursuant to rules, rates, or agreements on file from time to time with the Commission.

New England Transmission System. The system comprised of the transmission facilities over which the ISO has operational jurisdiction, including the Transmission Facilities of NEITC and

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the PTOs and the transmission system of any ITC formed pursuant to Attachment M to the ISO OATT.

New Transmission Facility. Any new transmission facility constructed within the New England Transmission System that is owned by NEITC and that goes into commercial operation after the Effective Date. For the avoidance of doubt, in the case of a high-voltage, direct-current system, a New Transmission Facility shall include the transmission cable and the AC/DC converter stations as a single project.

Non-PTF. “Non-PTF” shall have the meaning ascribed thereto in the ISO OATT.

NPCC. The Northeast Power Coordinating Council.

OASIS. The Open Access Same-Time Information System of the ISO.

Operating Authority. “Operating Authority” shall have the meaning ascribed thereto in Section 3.02 of this Agreement and shall include the responsibilities set forth in Section 3.05.

Operating Limits. The transfer limits for a transmission interface or generation facility.

Operating Procedures. The operating manuals, procedures, and protocols relating to the exercise of Operating Authority over the Transmission Facilities, as such manuals, procedures, and protocols may be modified from time to time in accordance with this Agreement.

Operations Date. February 1, 2005.

Order 2000. FERC’s Order No. 2000, *i.e.*, *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *petitions for review dismissed sub nom.*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 . (D.C. Cir. 2001).

Owed Amounts. “Owed Amounts” shall have the meaning ascribed thereto in Section 3.10(c) of this Agreement.

PARS. Phase angle regulators.

Participant. A participant in the New England Markets, Transmission Customer, or other entity that has entered into the ISO Participants Agreement.

Participants Committee. “Participants Committee” shall mean the stakeholder participants committee established pursuant to the ISO Participants Agreement.

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Party or Parties. A “Party” shall mean the ISO or NEITC, as the context requires. “Parties” shall mean NEITC and the ISO.

Person. An individual, partnership, joint venture, corporation, business trust, limited liability company, trust, unincorporated organization, government or any department or agency thereof, or any other entity.

Planned Outages. “Planned Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

Planning Procedures. The manuals, procedures and protocols for planning and expansion of the New England Transmission System, as such manuals, procedures, and protocols may be modified from time to time in accordance with this Agreement.

Prime Rate. The interest rate that commercial banks charge their most creditworthy borrowers, as published in the most recent Wall Street Journal in its “Monday Rates” column.

PTF. “PTF” shall have the meaning ascribed thereto in the ISO OATT.

PTO or Participating Transmission Owner. “PTO” shall have the meaning ascribed thereto in the opening paragraph of the TOA. “Participating Transmission Owner” shall have the same meaning as “PTO.”

PTO Administrative Committee or PTO AC. “PTO Administrative Committee” or “PTO AC” shall have the meaning ascribed thereto in Section 11.04 of the TOA.

PTO Local Restoration Plan. The restoration plan developed by each PTO with respect to such PTO’s Transmission Facilities.

PTO New Transmission Facilities. “PTO New Transmission Facilities” shall have the meaning ascribed to “Transmission Facilities” in the TOA.

PTO Transmission Upgrades. “PTO Transmission Upgrades” shall have the meaning ascribed to “Transmission Upgrades” in the TOA.

Rating Procedures. “Rating Procedures” shall have the meaning ascribed thereto in Section 3.02(d) of this Agreement.

Regulation and Frequency Response Service. An Ancillary Service as defined in the ISO OATT.

Reliability Authority. “Reliability Authority” shall have the meaning established by NERC, as such definition may change from time to time, provided such definition of Reliability Authority shall not be inconsistent with the specific rights and responsibilities of the ISO and the PTOs under this Agreement.

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Restoration Plans. The System Restoration Plan, all PTO Local Restoration Plans and the NEITC Local Restoration Plan.

RMR. Reliability must run resources.

RSP Project List. “RSP Project List” shall have the meaning ascribed thereto in the ISO OATT.

RTO. An independent entity that complies with Order No. 2000 and FERC’s corresponding regulations (or an entity that complies with all such requirements except for the scope and regional configuration requirements), as determined by the FERC.

Schedule 22 Large Generator Interconnection Agreement. The interconnection agreement included in Schedule 22 of the ISO OATT.

Schedule 23 Small Generator Interconnection Agreement. The interconnection agreement included in Schedule 23 of the ISO OATT.

Scheduled Outages. “Scheduled Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

Small Generating Facility. “Small Generating Facility” shall have the meaning ascribed thereto in the ISO OATT.

System Failure. Widespread telecommunication, hardware or software failure or systemic the ISO hardware or software failures that makes it impossible to receive or process bid information, dispatch resources, or exercise Operating Authority over the Transmission Facilities.

Tax or Taxes. All taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state or local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

Tax Return. Any return, report, information return, or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes.

Technical Committees. “Technical Committee” shall mean the stakeholder technical committees established pursuant to the ISO Participants Agreement.

Term. “Term” shall have the meaning ascribed thereto in Section 10.01(a)(i) of this Agreement.

Third Party. “Third Party” shall have the meaning ascribed thereto in Section 9.01(a) of this Agreement.

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Termination Date. “Termination Date” shall have the meaning ascribed thereto in Section 10.01(c) of this Agreement.

TOA. The Transmission Operating Agreement entered into by the ISO and the PTOs, effective February 1, 2005, as it may be amended from time to time.

Transmission Business. The business activities of each PTO related to the ownership, operation and maintenance of its Transmission Facilities.

Transmission Customer. Any entity taking Transmission Service under the ISO OATT.

Transmission Facilities. “Transmission Facilities” shall have the meaning ascribed thereto in Section 2.01 of this Agreement.

Transmission Owner. “Transmission Owner” shall have the meaning ascribed thereto in the ISO OATT.

Transmission Provider. The ISO, in its capacity as the provider of transmission services over the Transmission Facilities of the PTOs in accordance with FERC’s Order No. 2000 and FERC’s RTO regulations.

Transmission Service. The non-discriminatory, open access, wholesale transmission services provided to customers by the ISO in accordance with the ISO OATT.

Transmission Upgrade. Any upgrade to an existing Transmission Facility owned by NEITC that goes into commercial operation after the Effective Date.

TTC. Total Transfer Capability.

VAR. Volt-Amps Reactive.

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**Schedule 3.02(d)**

**LIST OF EXISTING OPERATING PROCEDURES**

- 1. ISO New England Manual No. 6 -- Financial Transmission Rights**
- 2. ISO New England Manual 11 – Market Operations**
- 3. ISO New England Manual 20 – Installed Capacity**
- 4. ISO New England Manual 27 – Tariff Accounting**
- 5. ISO New England Manual 28 – Market Rule 1 Accounting**
- 6. ISO New England Manual 29 – Billing**
- 7. ISO New England Manual 35 – Definitions and Abbreviations**
- 8. ISO New England Manual 37- Forward Reserve**
- 9. ISO New England Manual – ISO-NE Load Response Program**
- 10. ISO New England Operating Procedure No. 1 “Central Dispatch Operating Responsibility and Authority of ISO New England, the Local Control Centers and Market Participants”**
- 11. ISO New England Operating Procedure No. 2 “Maintenance Of Communications, Computers, Metering, and Computer Support Equipment”**
- 12. ISO New England Operating Procedure No. 3 “Transmission Outage Scheduling”**
- 13. ISO New England Operating Procedure No. 4 “Action During a Capacity Deficiency”**
- 14. ISO New England Operating Procedure No. 5 “Generation Maintenance and Outage Scheduling”**
- 15. ISO New England Operating Procedure No. 6 “System Restoration”**
- 16. ISO New England Operating Procedure No. 7 “Action In An Emergency”**
- 17. ISO New England Operating Procedure No. 8 “Operating Reserve and Regulation”**
- 18. ISO New England Operating Procedure No. 9 “Scheduling and Dispatch of External Transactions”**

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19. **ISO New England Operating Procedure No. 10 “Analysis and Reporting of Power System Emergencies”**
  20. **ISO New England Operating Procedure No. 11 “Black Start Capability Testing Requirements”**
  21. **ISO New England Operating Procedure No. 12 “Voltage and Reactive Control”**
  22. **ISO New England Operating Procedure No. 13 “Standards For Voltage Reduction and Load Shedding Capability”**
  23. **ISO-NE Operating Procedure No. 14 “Technical Requirements for Generation, Dispatchable and Interruptible Loads”**
  24. **ISO New England Operating Procedure No. 16 “Transmission System Data”**
  25. **ISO New England Operating Procedure No. 17 “Load Power Factor Correction”**
  26. **ISO New England Operating Procedure No. 18 “Metering and Telemetry Criteria”**
  27. **ISO New England Operating Procedure No. 19 “Transmission Operations”**
  28. **ISO New England Operating Procedure No. 20 “Cold Weather Event Operations”**
  29. **ISO New England Compliance Procedure**
  30. **ISO New England Compliance and Enforcement Process For Enhanced NPCC Reliability and NERC Standards**
  31. **Master/Local Control Center Procedure #1 “Nuclear Plant Transmission Operations”**
  32. **Master/Local Control Center Procedure #2 “Abnormal Conditions Alert”**
  33. **Master/Local Control Center Procedure No. 3 “Test Procedure For Local Control Center Satellite Phone Communications”**
  34. **Master/Local Control Center Procedure #4 “Rules for Generator Unit Control Modes, Limits and Dispatch Terminology”**
  35. **Master/Local Control Center Procedure #5 “Procedure for Millstone Point Station Generation Reduction”**

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- 36. Master/Local Control Center Procedure #6 “Procedure for Evacuation of ISO New England Control Room”**
  - 37. Master/Local Control Center Procedure #7 “Processing Transmission Outage Applications”**
  - 38. Master/Local Control Center Procedure #8 “Coordination of Generation Voltage Regulator Outages”**
  - 39. Master/Local Control Center Procedure #9 “Operation of the Chester Static VAR Compensator (SVC)”**
  - 40. Master/Local Control Center Procedure #10 “Generator Governor Control and Operation”**
  - 41. Common Operating Instructions for Hydro-Québec TransÉnergie and the New England Asset Owners for the  $\pm$  450Kv DC Lines Radisson - Nicolet – Sandy Pond (Phase II) and  $\pm$  450Kv DC Lines Des Cantons - Monroe (Phase I)**
  - 42. Common System Dispatch Instructions for Hydro-Québec TransÉnergie and ISO New England Inc. for the  $\pm$  450Kv DC Lines Radisson - Nicolet – Sandy Pond (Phase II) and  $\pm$  450 kV DC Lines Des Cantons - Monroe (Phase I)**

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### **Schedule 3.09(a)**

#### **Planning and Expansion – NEITC Rights and Obligations**

##### **1. NEITC’s Rights and Obligations to Build and Associated Conditions Including Cost Recovery:**

1.1 The following provisions shall apply to any New Transmission Facility or Transmission Upgrade designated in the ISO System Plan other than a Merchant Transmission Facility except as provided in Section 1.3 of this Schedule:

(a) Subject to the requirements of applicable law, government regulations and approvals, including requirements to obtain any necessary federal, state or local siting, construction and operating permits; the availability of required financing; the ability to acquire necessary rights-of-way; and satisfaction of the other conditions set forth in this Section 1.1, NEITC shall have the obligation to own and construct (or cause to be constructed) any New Transmission Facility or Transmission Upgrade that has been categorized as “Planned” in the RSP Project List and that has been designated in that list by the ISO, to the extent consistent with the ISO’s obligations to the PTOs under the TOA, for construction and operation by NEITC and as necessary and appropriate for system reliability or economic efficiency. NEITC may enter into appropriate contracts to fulfill any obligations associated with the ownership and construction of such New Transmission Facilities or Transmission Upgrades.

(b) (i) NEITC’s assumption of an obligation to build New Transmission Facilities and Transmission Upgrades under Section 1.1(a) shall be subject to the right of NEITC to recover, pursuant to appropriate financial arrangements and tariffs or contracts, all prudently incurred costs associated with a New Transmission Facility or Transmission Upgrade that has been included in the ISO System Plan, plus a return on invested equity and other capital as determined by the Commission.

(ii) If NEITC incurs costs associated with a New Transmission Facility or Transmission Upgrade that NEITC is obligated to construct pursuant to Section 1.1(a) above and that has been categorized as “In Service” on an RSP Project List, NEITC shall have the right, by filing in accordance with Section 3.04 of this Agreement, to recover all of its costs associated with such New Transmission Facility or Transmission Upgrade that are prudently incurred or prudently committed to be incurred, including costs prudently incurred or prudently committed to be incurred by NEITC in connection with the planning, design, engineering, permitting, procuring and other preparation for construction, and/or construction of the New Transmission Facility or Transmission Upgrade, plus a return on invested equity and other capital as determined by the Commission, provided that this Section 1.1(b)(ii) is not intended to limit NEITC from filing with FERC to seek recovery of costs associated with construction work in progress

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in connection with a New Transmission Facility or Transmission Upgrade that has been categorized as “Planned” on an RSP Project List.

(c) If a New Transmission Facility or Transmission Upgrade is included in an RSP Project List as “Proposed” and the ISO has indicated that NEITC is to commence planning, designing or constructing such New Transmission Facility or Transmission Upgrade, then NEITC, once it incurs costs in order to implement the ISO System Plan (and satisfy its obligation to build hereunder) by commencing to plan, design or construct such New Transmission Facility or Transmission Upgrade, shall be permitted to recover all of its prudently incurred costs as set forth in Section 1.1(b) even if the ISO subsequently determines that the New Transmission Facility or Transmission Upgrade is no longer required and removes it from the RSP Project List, notwithstanding any contrary FERC policy or rule relating generally to the recovery of the costs of abandoned plant.

(d) If a New Transmission Facility or Transmission Upgrade categorized in an RSP Project List as “Planned” is not constructed because any of the conditions set forth in this Section 1.1 have not been satisfied or for any other reason, the ISO shall submit a report to the FERC addressing such non-construction, which report shall include a report from NEITC when it is responsible for the planning, design or construction of such New Transmission Facility or Transmission Upgrade.

1.2 NEITC shall promptly seek siting and any other required regulatory approvals for projects for which NEITC is designated as the appropriate entity to construct and own or finance facilities included in the ISO System Plan. If requested by NEITC, the ISO shall undertake reasonable efforts (consistent with its technical judgment) to assist NEITC in obtaining required regulatory approvals for New Transmission Facilities or Transmission Upgrades categorized in the RSP Project List as “Planned.” The assistance may include the provision of testimony, witnesses, and similar assistance. The ISO shall not, in any manner, be precluded from similarly assisting, at its discretion, other projects that address a need identified by the ISO in the ISO System Plan.

1.3 The ISO shall ensure that the ISO Planning Process includes opportunities for state regulatory authorities to provide their views to the ISO with respect to need for the New Transmission Facility or Transmission Upgrade.

## **2. NEITC Obligations:**

2.1 NEITC shall support the planning process as described in the ISO OATT and any interregional planning coordination. As requested by the ISO, such support may include conducting any necessary studies, including system impact studies and facilities studies for NEITC’s Transmission Facilities, assisting in the performance of such studies or any additional

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studies, and supplying any information and data reasonably required to prepare a ISO System Plan or to perform transmission enhancement and expansion studies.

2.2 NEITC shall make reasonable efforts to provide information and support in response to the ISO's requests within the ISO's requested time frames and shall comply with all deadlines set forth in the ISO Planning Process, as specified in the ISO OATT.

2.3 NEITC shall comply with the ISO's Planning Procedures (which are supplemental to the ISO Planning Process, as specified in the ISO OATT), provided that any modifications to existing Planning Procedures and any new Planning Procedures shall be developed in accordance with the process set forth for the development of new or modified Planning Procedures in Section 3.09(b) to the TOA.

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**Schedule 3.09(b)**

**LIST OF EXISTING PLANNING PROCEDURES**

**ISO New England Planning Procedure No. 3**

Reliability Standards for the New England Area Bulk Power Supply System

**ISO New England Planning Procedure No. 4**

Procedure for Pool-Supported PTF Cost Review

**ISO New England Planning Procedure No. 4-1**

Cost Responsibility For Transmission Upgrades With Multiple Needs

**ISO New England Planning Procedure No. 5**

Procedure for Reporting Notice of Intent to Construct, Retire or Change Facilities in Accordance with Section I.3.9 of the ISO New England Tariff (Proposed Plan Application Procedure)

**ISO New England Planning Procedure No. 5-1**

Procedure For Review Of Governance Participant's Proposed Plans (Section I.3.9 Applications: Requirements, Procedures And Forms)

**ISO New England Planning Procedure No. 5-3**

Guidelines for Conducting and Evaluating Proposed Plan Application Analyses

**ISO New England Planning Procedure No. 5-4**

Subordinate Proposed Plan Application Policy

**ISO New England Planning Procedure No. 5-5**

Special Protection Systems Application Guidelines

**ISO New England Planning Procedure No. 5-6**

Scope Of Study For System Impact Studies Under The Minimum Interconnection Standard

**ISO New England Planning Procedure No. 6**

Procedures for the Establishment and Study of New England Interconnection

**ISO New England Planning Procedure No. 8**

Construction Sequencing

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**Schedule 11.01**

**NOTICES**

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**Schedule 11.17(c)**

**Additional Conditions Precedent**

**OPERATING AGREEMENT**

**with**

**NEW ENGLAND INDEPENDENT TRANSMISSION  
COMPANY, L.L.C.**

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**OPERATING AGREEMENT**

**TABLE OF CONTENTS**

ARTICLE I. DEFINITIONS; INTERPRETATIONS .....2

    1.01. Definitions; Interpretations.....2

ARTICLE II. TRANSMISSION FACILITIES .....4

    2.01. Transmission Facilities.....4

    2.02. New and Acquired Transmission Facilities and Transmission Upgrades .....6

    2.03. Merchant Facilities .....6

    2.04. Excluded Assets.....6

    2.05. Connection with Non-Parties .....8

    2.06. Review of Transmission Plans .....11

    2.07. Condemnation.....11

ARTICLE III. OPERATING AUTHORITY.....11

    3.01. Grant of Operating Authority .....11

    3.02. Definition of ISO Operating Authority .....12

    3.03. Transmission Services and OATT Administration .....16

    3.04. Application Authority.....20

    3.05. The ISO’s Responsibilities.....31

    3.06. NEITC’s Responsibilities.....32

    3.07. Reserved Rights of NEITC.....36

    3.08. Repair and Maintenance of Transmission Facilities .....38

---

3.09. Planning and Expansion .....	39
3.10. Invoicing, Collection and Disbursement of Customer Payments.....	40
3.11. Subcontractors .....	41
3.12. No Impairment of the ISO’s Other Legal Rights and Obligations.....	41
ARTICLE IV. REPRESENTATIONS AND WARRANTIES .....	42
4.01. Representations and Warranties of NEITC .....	42
4.02. Representations and Warranties of the ISO.....	43
ARTICLE V. COVENANTS OF NEITC.....	43
5.01. Covenants of NEITC .....	43
5.02. Financial Statements and Filings.....	43
5.03. Expenses.....	43
5.04. Consents and Approvals.....	43
5.05. Notice and Cure.....	44
ARTICLE VI. COVENANTS OF THE ISO.....	44
6.01. Covenants of the ISO .....	44
6.02. Financial Statements and Filings.....	44
6.03. Expenses.....	45
6.04. Consents and Approvals.....	45
6.05. Notice and Cure.....	46
ARTICLE VII. TAX MATTERS .....	35
7.01. Responsibility for NEITC Taxes.....	35

---

7.02. Responsibility for ISO Taxes .....	35
ARTICLE VIII. RELIANCE; SURVIVAL OF AGREEMENTS.....	35
8.01. Reliance; Survival of Agreements.....	35
ARTICLE IX. INDEMNIFICATION; INSURANCE; ASSUMPTION OF LIABILITIES.....	47
9.01. Indemnification.....	47
9.02. Notice of Proceedings.....	47
9.03. Defense of Claims .....	48
9.04. Subrogation .....	49
9.05. Insurance .....	49
9.06. Assumption of Liability.....	50
ARTICLE X. TERM; DEFAULT AND TERMINATION.....	52
10.01. Term; Termination Date .....	52
10.02. Release of Operating Authority .....	54
10.03. Events of Default of the ISO .....	55
10.04. Events of Default of NEITC.....	57
10.05 Transitions .....	58
ARTICLE XI. MISCELLANEOUS .....	58
11.01. Notices .....	58
11.02. Supersession of Prior Agreements.....	59
11.03. Waiver .....	59
11.04. Amendment; Limitations on Modifications of Agreement .....	59

---

11.05. No Third Party Beneficiaries.....	61
11.06. No Assignment; Binding Effect .....	61
11.07. Further Assurances; Information Policy; Access to Records .....	61
11.08. Business Day .....	63
11.09. Governing Law .....	63
11.10. Consent to Service of Process .....	63
11.11. Specific Performance; Force Majeure .....	63
11.12. Dispute Resolution .....	64
11.13. Invalid Provisions.....	64
11.14. Headings and Table of Contents.....	64
11.15. Liabilities; No Joint Venture .....	64
11.16. Counterparts .....	65
11.17. Conditions Precedent.....	65
11.18. Effective Dates .....	66

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**Schedules**

Schedule 1.01. Schedule of Definitions

Schedule 2.01(a). NEITC Category A Facilities. [reserved]

Schedule 2.01(b). NEITC Category B Facilities [reserved]

Schedule 3.02(d). List of Existing Operating Procedures

Schedule 3.09(a). Planning and Expansion – NEITC Rights and Obligations

Schedule 3.09(b). List of Existing Planning Procedures

Schedule 11.01. Notices

Schedule 11.17(c). Additional Conditions Precedent

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**OPERATING AGREEMENT**  
**WITH NEW ENGLAND INDEPENDENT TRANSMISSION COMPANY, L.L.C.**

This Operating Agreement (this "Agreement"), dated as of [date], is made and entered into by New England Independent Transmission Company, L.L.C., a Connecticut limited liability company ("NEITC"), and ISO New England Inc. ("ISO"), a Delaware corporation (NEITC and the ISO are collectively referred to herein as the "Parties").

WHEREAS, NEITC has been determined by the Federal Energy Regulatory Commission to meet the independence and capability requirements for an independent transmission company ("ITC") set forth in Attachment M to the ISO OATT and consistent with FERC's requirements;

WHEREAS, NEITC has presented itself to the ISO as willing and able to develop transmission projects that would address system reliability and economic efficiency once they have been identified as part of the Regional System Planning process, including but not limited to a proposal to develop the "Green Line" project, a high voltage direct current ("HVDC") transmission system linking AC/DC converter stations in Wiscasset, Maine, and the city of Boston, Massachusetts, via an underwater transmission cable that will be approximately 140-miles long and will be capable of transmitting 660 MW of energy;

WHEREAS, the ISO is a regional transmission organization ("RTO") authorized by the Federal Energy Regulatory Commission ("FERC") to exercise the functions required of RTOs pursuant to FERC's Order No. 2000 ("Order 2000") and FERC's RTO regulations;

WHEREAS, in accordance with the requirements of Order 2000, the ISO will be the transmission provider under the ISO Open Access Transmission Tariff (the "ISO OATT") of non-discriminatory, open access transmission services over the transmission facilities of NEITC ("Transmission Service");

WHEREAS, the ISO OATT will be designed to provide for the payment by transmission customers for Transmission Service at rates designed to recover the revenue requirements of NEITC in supporting the provision of such transmission service by the ISO under the ISO OATT;

WHEREAS, the ISO will be responsible for system planning within the ISO region subject to certain rights and obligations of NEITC, all as set forth in this Agreement;

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WHEREAS, the functions to be performed by the ISO and Order 2000 require that the ISO have the requisite operational authority over NEITC's transmission facilities;

WHEREAS, in accordance with the terms set forth herein, NEITC desires for the ISO to exercise, and the ISO desires to exercise, Operating Authority (as defined in Section 3.02 of this Agreement) over the NEITC Transmission Facilities (as defined in this Agreement) consistent with the requirements of Order 2000;

WHEREAS, NEITC will among other things, continue to own, physically operate, and maintain its transmission facilities; and

WHEREAS, references to the PTOs in this Agreement are not intended to impose additional requirements or obligations on the PTOs in addition to those in the TOA;

NOW, THEREFORE, in consideration of the promises, and the mutual representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, NEITC and the ISO agree as follows:

## ARTICLE I

### **DEFINITIONS; INTERPRETATIONS**

1.01 **Definitions; Interpretations.** Each of the capitalized terms and phrases used in this Agreement (including the foregoing recitals) and not otherwise defined herein shall have the meaning specified in Schedule 1.01. In this Agreement, unless otherwise provided herein:

- (a) words denoting the singular include the plural and vice versa;
- (b) words denoting a gender include all genders;
- (c) references to a particular part, clause, section, paragraph, article, exhibit, schedule, appendix or other attachment shall be a reference to a part, clause, section, paragraph, or article of, or an exhibit, schedule, appendix or other attachment to, this Agreement;
- (d) the exhibits, schedules and appendices attached hereto are incorporated herein by reference and shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein;

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(e) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, amendments, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in this Agreement;

(f) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time;

(g) a definition of or reference to any document, instrument or agreement includes any amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used;

(h) a reference to any Person (as hereinafter defined) includes such Person's successors and permitted assigns in that designated capacity;

(i) any reference to "days" shall mean calendar days unless "Business Days" (as hereinafter defined) are expressly specified;

(j) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day);

(k) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to this Agreement as a whole and not to any particular article, section, subsection, paragraph or clause hereof;

(l) a reference to "include" or "including" means including without limiting the generality of any description preceding such term, and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned; and

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(m) neither this Agreement nor any other agreement, document or instrument referred to herein or executed and delivered in connection herewith shall be construed against any Person as the principal draftsman hereof or thereof.

## ARTICLE II

### **TRANSMISSION FACILITIES**

2.01 **Transmission Facilities.** As to NEITC, the transmission facilities over which the ISO shall exercise Operating Authority in accordance with the terms set forth herein shall be:

(a) those facilities of NEITC listed in Schedule 2.01(a) (hereinafter “NEITC Category A Facilities”), as such list of facilities may be added to or deleted from in accordance with Sections 2.01(d) and 2.02 below;

(b) those facilities of NEITC listed in Schedule 2.01(b) (hereinafter “NEITC Category B Facilities”), as such list of facilities may be added to or deleted from, in accordance with Sections 2.01(d) and 2.02 below; and

(c) those transmission facilities of NEITC within the New England Transmission System with a voltage level of less than 69 kV and all transformers that have no NEITC Category A Facilities or NEITC Category B Facilities connected to the lower voltage side of the transformer that are not listed on Schedule 2.01(a) and Schedule 2.01(b) (hereinafter “NEITC Local Area Facilities”), provided that any excluded facilities of NEITC listed on Schedule 4.01(d) shall not be NEITC Local Area Facilities.

(d) The transmission facilities included on any of the lists of the NEITC Category A Facilities or the NEITC Category B Facilities contained in Schedule 2.01(a) and Schedule 2.01(b), respectively, may be redesignated on another of those two lists, deleted from such list, or redesignated as a NEITC Local Area Facility without the necessity of an amendment to this Agreement, but only in the following manner:

(i) at the direction of a Governmental Authority with jurisdiction over the Transmission Facilities in question, provided that the ISO and NEITC shall be provided prior written notice of such changes;

(ii) as agreed between the ISO and NEITC; or

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(iii) where the operational characteristics of a transmission facility have been materially modified (including a change from a radial transmission facility to a looped transmission facility that contributes to the parallel carrying capability of the New England Transmission System) in accordance with Section 2.01(e); provided that any such changes shall also be subject to ISO review consistent with Section 2.06.

(e) All transmission facilities to be redesignated as NEITC Category A Facilities, NEITC Category B Facilities, or Local Area Facilities or deleted from the lists in Schedule 2.01(a) and Schedule 2.01(b) in accordance with Section 2.01(d)(iii), and all transmission facilities to be added to the lists in Schedule 2.01(a) and Schedule 2.01(b) in accordance with Section 2.02 shall be classified in accordance with the following standards:

(i) NEITC Category A Facilities shall consist of: all transmission lines with a voltage level of 115 kV and above, except for those 115 kV transmission facilities specifically designated as NEITC Category B Facilities in accordance with Section 2.01(e)(ii); all transmission interties between Control Areas; all transformers that have NEITC Category A Facilities connected to the lower voltage side of the transformer; all transformers that require an NEITC Category A Facility to be taken out of service when the transformer is taken out of service; and all breakers and disconnects connected to, and all shunts, relays, reclosing and associated equipment, dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other equipment specifically installed to support the operation of such transmission lines, interties, and transformers.

(ii) NEITC Category B Facilities shall consist of: all 115 kV radial transmission lines and all 69 kV transmission lines that are not interties between Control Areas; all transformers that have any NEITC Category B Facilities and no NEITC Category A Facilities connected to the lower voltage side of the transformer except to the extent such transformers are designated as NEITC Category A Facilities in accordance with Section 2.01(e)(i); and all breakers and disconnects connected to, and all shunts, relays, reclosing and associated equipment, dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other equipment specifically installed to support the operation of such NEITC Category B Facilities.

(iii) NEITC Local Area Facilities shall consist of all transmission facilities with a voltage level of less than 69 kV and all transformers that have no NEITC Category A Facilities or NEITC Category B Facilities connected to the lower voltage side of the transformer.

(iv) To the extent there is any dispute between the ISO and NEITC as owner of a transmission facility concerning classification of such transmission facility under these standards, such disagreement shall be subject to the dispute resolution provisions of this Agreement, provided that the ISO's classification of a transmission facility under the standards shall govern pending resolution of the dispute.

(f) Collectively, all NEITC Category A Facilities, NEITC Category B Facilities, and NEITC Local Area Facilities shall hereinafter be referred to as the "Transmission Facilities," provided that "Transmission Facilities" shall not include Excluded Assets as defined in Section 2.04 of this Agreement or Merchant Facilities. The ISO shall maintain on its OASIS a posting of the current versions of Schedule 2.01(a) and Schedule 2.01(b), in each instance, reflecting each such change promptly after such change is made.

(g) The classifications set forth in this Section 2.01 are for operational purposes. Rate treatment of Transmission Facilities shall be governed by the ISO OATT, provided that filings for rate treatment under the ISO OATT shall be subject to Section 3.04 of this Agreement.

2.02 **New and Acquired Transmission Facilities and Transmission Upgrades.**

(a) Any New Transmission Facility, any Transmission Upgrade, and any Acquired Transmission Facility shall be considered a "Transmission Facility" under this Agreement once it is placed into commercial operation by NEITC, unless otherwise agreed by the ISO and NEITC, shall be added to Schedule 2.01 by amendment of this Agreement, and shall be subject to the Operating Authority of the ISO in accordance with the terms of this Agreement.

(b) Any Merchant Facility interconnected to or within the New England Transmission System shall not be the subject of this Agreement. Any Merchant Facility interconnected to or within the New England Transmission System constructed and placed in commercial operation after the Operations Date shall be subject to the authority of the ISO under a separate agreement in accordance with Section 2.03 and any applicable provisions of the ISO OATT.

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2.03 **Merchant Facilities.** The terms and conditions under which NEITC, an Affiliate of NEITC or any other entity grants authority over any Merchant Facilities to the ISO shall not be governed by this Agreement, it being understood that NEITC shall enter into operating agreements relating to its Merchant Facilities directly with the ISO in accordance with applicable provisions of the ISO OATT. Nothing in this Agreement is intended to limit or expand the right of NEITC, the Affiliate of NEITC, or any other entity to propose, construct, or own Merchant Facilities interconnected to the New England Transmission System. No Merchant Facility may become an Acquired Transmission Facility.

2.04 **Excluded Assets.** The “Excluded Assets” of NEITC shall consist of those assets and/or facilities of NEITC set forth in Section 2.04(a) and (b). These Excluded Assets are expressly excluded from the definition of Transmission Facilities under this Agreement, and the ISO shall not have Operating Authority over NEITC’s Excluded Assets. Nothing in this Section 2.04 is intended to address the rate treatment of the Transmission Facilities or any other asset of NEITC. Rate treatment of Transmission Facilities shall be governed by the ISO OATT, provided that filings for rate treatment under the ISO OATT shall be subject to Section 3.04 of this Agreement:

(a) Excluded Assets are any assets, facilities, and/or portions of facilities owned by NEITC that are connected with or associated with Transmission Facilities to the extent specifically excluded pursuant to the following items (i) through (vii) of this Section 2.04(a):

(i) proceeds from the use or disposition of Transmission Facilities;

(ii) any payment, refund or credit (1) relating to Taxes in respect of the Transmission Facilities, (2) arising under any contracts or tariffs of NEITC and relating to services provided prior to the beginning of the Term, or (3) arising under any contract or tariff that provides for rates that are subject to regulation by an agency other than FERC.

(iii) any rights, ownership, title or interest NEITC may have with respect to telecommunications assets and equipment, provided that the ISO shall continue to have the right to use such telecommunication assets and equipment attached to or associated with Transmission Facilities solely to the extent needed for the exercise of the ISO’s Operating Authority and further provided that such use right shall not be assignable by the ISO;

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(iv) any existing contracts or contract rights of NEITC related in any manner to Transmission Facilities unless NEITC agrees to assign or transfer such contracts to the ISO;

(v) any assets, property rights, licenses, permits or facilities that are used for or in (1) the distribution, generation, trading or marketing of electricity (except for facilities specifically defined as Transmission Facilities that are used for such activities), (2) gas transportation, gas, water, petroleum, chemical, real estate development, or cable business, or (3) any other activity unrelated to the transmission of electricity located on, or making use of, the Transmission Facilities;

(vi) any causes of action or claims related to Transmission Facilities, provided, that, upon the written agreement of NEITC and the ISO to the assumption by the ISO of the management of such claims under mutually agreed terms and conditions, the ISO may manage NEITC's causes of action or claims against a third party relating to such Transmission Facilities, and provided further that the ISO shall have the right to pursue causes of action or claims against third parties to the extent necessary for the ISO to fulfill its responsibilities for invoicing, collection and disbursement of customer payments in accordance with Section 3.10; and

(vii) any asset or facility for which Operating Authority may not be lawfully transferred or assigned.

(b) Excluded assets are any assets or facilities of NEITC that are not specifically defined as Transmission Facilities, including without limitation the facilities or portions of facilities described in items (i) through (xii) of this Section 2.04(b):

(i) all cash, cash equivalents, bank deposits, accounts receivable, and any income, sales, payroll, property or other Tax receivables;

(ii) proceeds from the use or disposition of any facilities or assets owned by NEITC;

(iii) certificates of deposit, shares of stock, securities, bonds, debentures, and evidences of indebtedness;

(iv) any rights or interest in trade names, trademarks, service marks, patents, copyrights, domain names or logos;

(v) any payment, refund or credit (1) relating to Taxes, (2) arising under any contracts or tariffs of NEITC and relating to services provided prior to the beginning of the Term, or (3) arising under any contract or tariff that provides for rates that are subject to regulation by an agency other than FERC;

(vi) any facilities, including transmission facilities, located outside the New England Transmission System;

(vii) any rights, ownership, title or interest NEITC may have with respect to telecommunications assets and equipment;

(viii) any existing contracts or contract rights of NEITC unless NEITC agrees to assign or transfer such contracts to the ISO;

(ix) any assets, property rights, licenses, permits or facilities that are used for or in (1) the distribution, generation, trading or marketing of electricity or (2) gas transportation, gas, water, petroleum, chemical, real estate development, or cable business, or (3) any other activity unrelated to the transmission of electricity whether or not located on, or making use of, the Transmission Facilities;

(x) any causes of action or claims;

(xi) any asset or facility for which Operating Authority may not be lawfully transferred or assigned; and

(xii) any interests of any kind in NEITC's real property, provided that nothing in this Section 2.04 shall restrict NEITC from conveying interests in real property in any future written agreement into which the ISO and NEITC may, in their sole discretion, enter.

## 2.05 **Connection with Non-Parties.**

(a) NEITC shall connect its Transmission Facilities with the facilities of any entity that is not a Party, including the facilities of a current or proposed Transmission Customer, and shall install (or cause to be installed) and construct (or cause to be constructed) any transmission facilities required to connect the facilities of a non-Party to the Transmission Facilities to the extent such connection or construction is required by applicable law, including

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the Federal Power Act and any applicable regulations issued by FERC and provided that the construction of any such transmission facilities shall be subject to the conditions associated with NEITC's obligation to build set forth in Schedule 3.09(a). Any such connection shall be subject further to: (1) the receipt of any necessary regulatory approvals, (2) compliance with the procedures set forth in the ISO OATT for review of the reliability and operational impacts of a proposed interconnection (including the procedures for interconnection of a Generating Unit under the Interconnection Standard); and (3) execution of an Interconnection Agreement with such entity containing provisions for the safe and reliable operation of each interconnection with respect to such entity's facilities in accordance with Good Utility Practice, applicable NERC/NPCC Requirements, and applicable Law (including the Federal Power Act); provided that

(i) Except as provided in 2.05(a)(ii) below, NEITC shall engage in good faith negotiations as to the terms and conditions of such Interconnection Agreement with any such non-Party, but, except as may be required pursuant to regulations issued by FERC, NEITC shall not be required to enter into any Interconnection Agreement containing terms and conditions unacceptable to NEITC and shall reserve the right to resolve any disputes, and/or make any filings with FERC, with respect thereto.

(ii) With respect to the interconnection of a Large Generating Facility or a Small Generating Facility to any Transmission Facility, the Interconnection Agreement shall be a three-party agreement among NEITC, the ISO, and the interconnecting non-Party based on the Schedule 22 Large Generator Interconnection Agreement or Schedule 23 Small Generator Interconnection Agreement, respectively, in the ISO OATT. With respect to the interconnection of other Generating Units to any Transmission Facility of NEITC, the ISO shall be a party to Interconnection Agreements if and to the extent that FERC regulations require the ISO to be a party. Either the ISO or the PTOs (working with NEITC as a party to the Disbursement Agreement), may propose amendments to the Schedule 22 Large Generator Interconnection Agreement or Schedule 23 Small Generator Interconnection Agreement under Section 205 of the Federal Power Act and shall include in such proposal the views of the ISO and NEITC and PTOs, as applicable, provided that the standard applicable under Section 205 of the Federal Power Act shall apply only to the NEITC and/or PTOs' position on any financial obligations of the PTOs and/or NEITC (as applicable) or the interconnecting non-Party, and any provisions related to

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physical impacts of the interconnection on the Transmission Facilities or other assets. If NEITC, the ISO and the interconnecting non-Party agree to the terms and conditions of a specific Large Generator Interconnection Agreement or Small Generator Interconnection Agreement, as applicable, or any amendments to such an Interconnection Agreement, then NEITC and the ISO shall jointly file the executed Interconnection Agreement, or amendment thereto, with FERC under Section 205 of the Federal Power Act. To the extent NEITC, the ISO and such interconnecting non-Party cannot agree to proposed variations from the Schedule 22 or 23 Interconnection Agreement applicable to a Large Generating Facility or Small Generating Facility, respectively, or cannot otherwise agree to the terms and conditions of the Interconnection Agreement, or any amendments to such an Interconnection Agreement, then NEITC and the ISO shall jointly file an unexecuted Interconnection Agreement, or amendment thereto, with FERC under Section 205 of the Federal Power Act and shall identify the areas of disagreement in such filing, provided that, in the event of disagreement on terms and conditions of the Interconnection Agreement related to the costs of upgrades to the Transmission Facilities, the anticipated schedule for the construction of such upgrades, any financial obligations of NEITC, and any provisions related to physical impacts of the interconnection on the Transmission Facilities or other assets, then the standard applicable under Section 205 of the Federal Power Act shall apply only to NEITC's position on such terms and conditions.

The costs of interconnection facilities shall be allocated in the manner specified in the ISO OATT.

(b) NEITC shall also connect its Transmission Facilities with the facilities of any entity that is not a Party upon satisfaction of the "Elective Transmission Upgrade" provisions of the ISO OATT, provided that NEITC shall only connect the facilities of such entity (the "Elective Transmission Upgrade Applicant") upon satisfaction of the following conditions:

(i) The Elective Transmission Upgrade Applicant shall enter into an Interconnection Agreement with the affected PTO(s) and NEITC and, to the extent necessary and appropriate, enter into support agreements with the affected PTO(s) and NEITC, provided that the Elective Transmission Upgrade Applicant may request, upon providing the security, credit assurances, and/or deposits required by the affected PTO, the filing with the Commission by NEITC and/or affected PTOs of unexecuted Interconnection Agreements and support agreements.

(ii) The Elective Transmission Upgrade Applicant shall obtain all necessary legal rights and approvals for the construction and maintenance of the upgrade and shall cooperate with NEITC in obtaining all necessary legal rights and approvals for the construction and maintenance of additions or modifications, if any, required in conjunction with the upgrade.

(iii) The Elective Transmission Upgrade Applicant shall be responsible for 100% of all of the costs of said upgrade and of any additions to or modifications of the Transmission Facilities that are required to accommodate the Elective Transmission Upgrade. A request for rate treatment of an Elective Transmission Upgrade, if any, shall be determined by FERC in the appropriate proceeding.

2.06 **Review of Transmission Plans.** NEITC shall submit to the ISO in such form, manner and detail as the ISO may reasonably prescribe: (i) any new or materially changed plans for retirements of or changes in the capacity of such Transmission Facilities rated 69 kV or above or plans for construction of New Transmission Facilities or Transmission Upgrades rated 69 kV or above; and (ii) any new or materially changed plan for any other action to be taken by NEITC which may have a significant effect on the stability, reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant. The ISO shall provide notification of any such NEITC submissions to the appropriate Technical Committee(s). Unless prior to the expiration of ninety (90) days, the ISO notifies NEITC in writing that it has determined that implementation of the plan will have a significant adverse effect upon the reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant, NEITC shall be free to proceed. If the ISO notifies NEITC that implementation of such plan has been determined to have a significant adverse effect upon the reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant, NEITC shall not proceed to implement such plan unless NEITC takes such action or constructs such facilities as the ISO determines to be reasonably necessary to avoid such adverse effect.

2.07 **Condemnation.** If, at any time, any Governmental Authority commences any process to acquire any Transmission Facilities or any other interest in Transmission Facilities then held by NEITC through condemnation or otherwise through the power of eminent domain, (i) NEITC shall provide the ISO with written notice of such process, (ii) NEITC shall, at its cost, direct any litigation or proceeding regarding such condemnation or eminent domain matter, (iii) NEITC shall have the right to settle any such proceeding without the consent of the ISO, and (iv) any award in condemnation or eminent domain shall be paid to NEITC without any claim to such award by the ISO.

### **ARTICLE III** **OPERATING AUTHORITY**

3.01 **Grant of Operating Authority.** (a) Subject to the terms set forth in this Agreement, including Article III and Article X hereof, NEITC hereby authorizes the ISO, through its officers, employees, consultants, independent contractors and other personnel, to exercise Operating Authority over the Transmission Facilities, including provision of Transmission Service over the Transmission Facilities under the ISO OATT, and the ISO hereby agrees to assume and exercise Operating Authority over the Transmission Facilities in accordance with this Agreement.

(b) The grant by NEITC to the ISO and the assumption by the ISO of Operating Authority over the Transmission Facilities are solely for the purposes of allowing the ISO to fulfill the functions of an RTO as specified herein (including provision of Transmission Service under the ISO OATT) and do not constitute an assumption by the ISO of any liabilities with respect to the Transmission Facilities except as otherwise specifically provided herein (including as provided in Article IX of the Agreement).

(c) Nothing herein or elsewhere contained shall be construed as requiring or effecting a transfer of NEITC's responsibility (or the assumption thereof by the ISO) for the physical control of the Transmission Facilities, including the physical operation, repair, maintenance and replacement of such Transmission Facilities, or as conveying to the ISO: (x) any right, ownership, title or interest in or to the Transmission Facilities; (y) any right of access to NEITC's real property, except as specified in Section 3.02(i); or (z) any rights or authority with respect to NEITC's Excluded Assets, except as specifically provided herein.

3.02 **Definition of ISO Operating Authority.** Consistent with the provisions of this Agreement, including Section 3.02(a) below, "Operating Authority" shall mean those functions set forth in Sections 3.02, 3.03, and 3.08 and those responsibilities set forth in Section 3.05, and shall not include those rights, responsibilities and functions set forth in Sections 3.06 and 3.07. Subject to the first sentence of this Section 3.02, the ISO shall exercise such Operating Authority in accordance with applicable Operating Procedures as specified in Section 3.02(d) below.

(a) The ISO shall perform the following functions with respect to the Transmission Facilities, consistent with applicable NERC/NPCC Requirements and other applicable regulatory standards, including (as needed) issuing instructions to, or coordinating with, any NEITC's Local Control Center(s):

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(i) centrally dispatch generation (and dispatchable and interruptible load) and implement real-time balancing, including meeting NERC control performance criteria;

(ii) determine Operating Limits based on forecasted or real-time system conditions and in accordance with the facility ratings established by NEITC in collaboration with the ISO pursuant to Section 3.06;

(iii) take such actions as may be necessary to plan and maintain short-term (including real-time) reliability and system security (including curtailment of external transactions in accordance with FERC-accepted or -approved Market Rules and the applicable transmission tariff or transmission agreement);

(iv) consistent with the ISO Information Policy, exchange security information with NEITC, applicable PTOs, non-PTO transmission operators and other neighboring systems and regional entities; and

(v) provide for an ISO Control Center and an independent Back-up Control Center, as the ISO deems necessary to comply with applicable NERC/NPCC Requirements and any applicable regulatory requirement.

(b) The ISO shall receive, confirm and schedule External Transactions for the New England Transmission System; enter into Coordination Agreements and operating arrangements with the operators of neighboring Control Areas; coordinate system operation and emergency procedures with neighboring Control Areas; and administer any NEITC Interconnection Agreements with neighboring Control Areas and scheduling provisions of the tariff(s) applicable to External Transactions, in accordance with the terms of those agreements and tariffs;

(c) The ISO shall act as the Reliability Authority for the New England Transmission System. The ISO may intercede and direct appropriate near-term operational actions in order to protect reliability, provided that nothing in this Section 3.02(c) shall require NEITC to undertake an action contrary to applicable Law or shall limit the right of NEITC pursuant to Section 3.07 to take any action(s) that it deems necessary to prevent loss of human life, injury to persons and/or damage to property.

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(d) The ISO shall utilize the Operating Procedures relating to the exercise of Operating Authority over the Transmission Facilities. The Operating Procedures shall initially consist of the Operating Procedures in existence on the Operations Date (hereinafter “Existing Operating Procedures”). Such Existing Operating Procedures shall consist of those Operating Procedures listed in Schedule 3.02(d). The ISO shall develop any modifications to Operating Procedures (including Existing Operating Procedures) and any new Operating Procedures that it may deem necessary or appropriate: (i) in coordination with NEITC (or its Local Control Centers, as applicable) and other transmission owners so as to ensure that NEITC’s (or its Local Control Centers’) knowledge of their Transmission Facilities is given due consideration in the development or modification of the transmission-related portions of such Operating Procedures and (ii) in consultation with other stakeholders. The ISO shall have the authority to modify Operating Procedures or develop new Operating Procedures without such coordination or consultation when the ISO does not have sufficient time to undertake such coordination or consultation due to emergent and unanticipated circumstances. In the event that the ISO and NEITC disagree about modifications to the transmission-related portions of Operating Procedures or any new Operating Procedures related to the operation of the Transmission Facilities, NEITC will have the opportunity to submit the dispute for resolution in accordance with the dispute resolution provisions set forth in Section 11.12 herein. Pending such resolution, the ISO shall have the authority, as the system operator with ultimate authority for the real-time operation of the New England Transmission System, to implement any such new Operating Procedures or modified Operating Procedures. Notwithstanding anything in the foregoing, Operating Procedures related to the establishment of ratings for New Transmission Facilities and Acquired Transmission Facilities or related to changes to existing ratings of the Transmission Facilities (collectively “Rating Procedures”) shall be developed and placed into effect pursuant to Section 3.06(a)(v).

To the extent NEITC will be required to physically operate its Transmission Facilities in accordance with any operational documents in effect as of the Operations Date or as subsequently developed or amended by the ISO (other than the Operating Procedures), the ISO shall develop such operational documents and amendments thereto in coordination with NEITC and with the PTOs (or their Local Control Centers, as applicable) whose Transmission Facilities will be operated in accordance with such documents, provided that stakeholders shall have the right to consult in the development of such documents, subject to any limitations associated with the confidential nature of such documents consistent with confidentiality, that the ISO will have the right to place such operating documents into effect in the event of a dispute concerning such documents, and that NEITC shall have the right to submit any such dispute for resolution in accordance with the dispute resolution provisions set forth in Section 11.12 herein. Any such coordination among NEITC, the PTOs and the ISO pursuant to this Section 3.02(d) shall be subject to applicable standards of conduct consistent with FERC Order No. 889.

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(e) The ISO shall seek agreement with NEITC, where time limitations do not make it impracticable to do so, on real-time operational decisions affecting the Transmission Facilities not otherwise specified in the Operating Procedures developed in accordance with Section 3.02(d). In the absence of such agreement, or if time limitations do not permit reaching agreement, the ISO shall implement its operational decision. If such ISO decision is disputed, the ISO's position shall control pending resolution of the dispute.

(f) The ISO shall develop, maintain, and, if needed, implement the System Restoration Plan for the New England Transmission System. NEITC shall develop any NEITC Local Restoration Plan (and modifications thereto) for the Transmission Facilities in consultation with the ISO and the ISO shall incorporate into the System Restoration Plan the NEITC Local Restoration Plan and any modifications developed thereto, provided that any modifications to the NEITC Local Restoration Plan are subject to the ISO's approval in order to coordinate and promote the reliability of the Restoration Plans.

(g) The ISO shall coordinate voltage and reactive dispatch of facilities to the extent normal schedules are unable to be maintained by Local Control Centers.

(h) The ISO shall direct the implementation of emergency procedures, including Load Shedding and voltage reduction, in coordination with the Local Control Centers.

(i) The ISO shall have the authority to perform the following tasks in relation to compliance with current or future NEITC responsibilities:

(i) perform all compliance and monitoring responsibilities of the ISO, including the issuance of sanction letters, with respect to existing or successor NERC or NPCC compliance programs associated with standards, criteria and measurements for which NEITC is responsible and accountable to the ISO. To the extent that the ISO receives a sanction letter from NERC or NPCC that is substantially related to the actions of NEITC, the ISO may issue a sanction letter to NEITC;

(ii) perform all compliance and monitoring responsibilities of the ISO associated with Operating Procedures relating to standards, criteria and measurements that NEITC is responsible for and accountable to the ISO. Such responsibilities shall include audits of NEITC for compliance with Operating Procedures to the extent the ISO determines such audits are necessary, and the issuance of sanction letters;

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(iii) perform periodic audits of each Local Control Center's and NEITC's performance of the functions listed in Sections 3.06(a)(i), (ii), (v), (vi), (vii), (viii) and (ix) in accordance with applicable Operating Procedures and applicable reliability standards, including audits to monitor compliance of the Local Control Center (and NEITC employees interacting with the Local Control Centers) with the ISO Information Policy and applicable standards of conduct consistent with FERC Order No. 889 in performing these functions. Such Local Control Center audits shall generally be conducted no more frequently than once every three years, provided that the ISO shall have the authority to conduct an audit more frequently if it determines that circumstances so require.

All audits conducted pursuant to this Section 3.02(i) shall be conducted by the ISO or by an independent third party, with expenses of the ISO (or the third-party auditor) borne by the ISO and recovered through its administrative tariff. NEITC shall bear its own expenses in complying with the audit. Such audits shall be conducted during normal business or operational hours and with reasonable notice. The general scope of each audit and the general process for conducting the audit will be discussed with NEITC in advance. Nothing in this Section 3.02(i) shall imply that a sanction letter shall include any financial or other penalties. Nothing in this Section 3.02(i) shall limit the right of the ISO to separately file proposals at FERC to assess financial or other penalties against any entity or shall limit the right of NEITC to comment on or protest any such proposals.

(j) In addition to the functions set forth in Sections 3.02(a) - (i), Operating Authority shall also consist of the following functions that the ISO shall perform with respect to NEITC Category A Facilities; provided, however, that the ISO (in the absence of NEITC's consent) is not authorized to perform such functions with respect to any NEITC Category B Facilities or Local Area Facilities, unless the outages of such facilities reasonably could be expected to result in a violation of reliability criteria:

- (i) monitor and control, in accordance with the facility ratings established by NEITC in collaboration with the ISO pursuant to Section 3.06, on a real-time basis, power flows on the system, voltage and system frequency; and
- (ii) coordinate with the Local Control Centers on the settings for dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other similar dynamic equipment that affects power flows, and approve or direct changes to such settings.

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(k) If at any time, any Party provides notice to the other Party that it believes NERC and NPCC documents that are not NERC/NPCC Requirements have been modified so as to expand the scope of the functions to be performed by the ISO or NEITC, the Parties shall consider in good faith changes to this Agreement that will allow the Parties to follow such guidelines; provided, however, that, the Parties shall have no obligation to agree to such changes. If the Parties cannot agree to such changes, the dispute resolution procedures of Section 11.12 shall be utilized. Nothing in this Section 3.02(k) shall be construed to excuse any Party from complying with applicable NERC/NPCC Requirements.

**3.03 Transmission Services and OATT Administration.**

(a) The ISO shall administer the ISO OATT in the manner specified in this Section 3.03. The ISO's OATT administration responsibilities shall include those enumerated below:

(i) The ISO shall receive, post on OASIS as required by Commission regulations, and respond to requests by Large Generating Facilities and Small Generating Facilities to be interconnected under the ISO OATT, all Transmission Service requests and requests under the Local Service Schedules. Except as provided in Section 3.03(a)(ii), the ISO shall perform the system impact studies and facilities studies (and execute and administer agreements for such studies) in connection with such requests to the Administered Transmission System. Notwithstanding the foregoing, (A) the ISO shall consult with NEITC prior to completion of system impact studies and facilities studies in connection with requests that affect the Transmission Facilities and distribution facilities and shall include in any such studies NEITC's reasonable estimates of the costs of upgrades to the Transmission Facilities needed to implement the conclusions of such studies and NEITC's reasonable anticipated schedule for the construction of such upgrades; (B) nothing in this Agreement shall preclude the ISO from entering into a separate agreement(s) with NEITC for such studies, pursuant to the ISO's supervision and the ISO's authority to require modifications to such studies, to perform system impact studies and facilities studies; (C) except as provided in Section 3.03(a)(ii) with respect to interconnection of Generating Units that would not have an impact on facilities used for the provision of regional transmission service, nothing in this Agreement shall preclude the performance of studies related to the interconnection of Generating Units by a third party consultant to the extent permitted by applicable procedures in the ISO OATT (including

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procedures governing the treatment of confidential information) and provided that such studies performed by any third party consultant must include NEITC's reasonable estimates of the costs of upgrades to such Transmission Facilities needed to implement the conclusions of such studies and NEITC's reasonable anticipated schedule for the construction of such upgrades; and (D) NEITC shall, upon request by the ISO, conduct any necessary studies related to the Transmission Facilities, including system impact studies and facilities studies, and shall assist in the performance of any such studies, including the provision of information and data in accordance with Section 11.07 of this Agreement.

(ii) The ISO shall forward to NEITC applications for Local Service. The ISO shall review applications for Local Service or requests for the interconnection of Large Generating Facilities and Small Generating Facilities to be interconnected to a Transmission Facility to determine whether the service or interconnection would have an impact on facilities used for the provision of regional transmission service. If so, and the interconnection is to a Transmission Facility, the ISO will perform a system impact study and facilities study, as necessary to address the impacts on facilities used for the provision of regional transmission service. NEITC shall be responsible for reviewing and responding to requests for Local Service not having an impact on facilities used for the provision of regional transmission service and for interconnections not having an impact on facilities used for the provision of regional transmission service, and shall perform all system impact studies and facilities studies regarding such requests; provided, however, that NEITC shall consult with the ISO prior to completion of such system impact studies and facilities studies and further provided that the ISO will use reasonable efforts to assist NEITC and interconnecting party in resolving disputes arising regarding the performance of such studies. NEITC shall provide the ISO with information necessary to evaluate any such dispute in accordance with Section 11.07 of this Agreement, and shall include provisions in each of its study agreements providing for reimbursement of the ISO's costs incurred in these efforts.

(iv) The ISO shall calculate the TTC and ATC for all interties on the New England Transmission System and determine the TTC and ATC calculation methodologies for interties on the New England Transmission System (consistent with applicable NERC/NPCC Requirements and applicable regulatory standards),

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provided that modifications to calculation methodologies as they exist on the Operations Date shall be developed by the ISO in consultation with the PTOs, NEITC and other interested stakeholders. To the extent that TTC and ATC on a NEITC's Local Network must be calculated in connection with the provision of Local Service, then NEITC shall calculate such TTC and ATC.

(v) The ISO shall operate and maintain the OASIS (or a successor system) as required by FERC, including posting of TTC/ATC for interties on the New England Transmission System; provided, however, that such system shall conform to the requirements for such systems as specified by FERC. NEITC shall provide updates to the NEITC-specific Local Service pages on the OASIS site, subject to the ISO's review of such updates. The ISO shall have the authority to direct any changes to such NEITC-specific Local Service pages that it deems appropriate to conform to FERC requirements and the terms and conditions of the ISO OATT.

(vi) The ISO shall procure and act as supplier of last resort of Ancillary Services (including arranging for the sale and purchase of emergency capacity and energy with neighboring Control Areas), in accordance with the ISO OATT and FERC-accepted or -approved Market Rules.

(vii) The ISO shall provide regional Transmission Service to Transmission Customers over the Transmission Facilities in accordance with the rates, terms and conditions of the ISO OATT, subject to Section 3.03(c) with respect to Local Service.

(viii) The ISO shall track inadvertent energy and administer inadvertent energy payback/accounting with neighboring Control Areas in accordance with the terms and conditions of the Interconnection Agreements or Coordination Agreements with neighboring Control Areas and applicable tariff provisions.

(ix) The ISO shall make informational filings with the Commission that are required of an RTO, provided that NEITC shall provide the ISO with all necessary information to make such filings, in such manner as the ISO shall reasonably prescribe and in accordance with Section 11.07 of this Agreement.

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(b) Notwithstanding Section 3.03(a), retail load customers requesting to interconnect with the Transmission Facilities of NEITC shall submit service requests to NEITC. Such service requests submitted to the ISO shall be forwarded to NEITC. NEITC shall execute and administer the agreements, and shall be responsible for billing, collections, dispute resolution and the performance of system impact studies and facilities studies, in coordination with the ISO as necessary, in connection with such requests.

(c) Local Service. NEITC authorizes the ISO to act as its agent in the performance of its Transmission Service and OATT administration duties with regard to Local Service, including all ISO responsibilities with respect to Local Service and Local Area Facilities as set forth in Section 3.03(a) above. NEITC agrees to perform all tasks and undertake all responsibilities necessary and appropriate to facilitate the provision of Local Service in accordance with its Local Service Schedule. NEITC shall, in accordance with Section 11.07 of this Agreement, provide the ISO with information and data requested by the ISO to perform its Transmission Service and OATT administration duties with regard to Local Service. NEITC shall maintain its Local Service Schedule in accordance with FERC regulations governing filed rate schedules, shall provide the ISO with copies of proposed changes to its Local Service Schedules when filed with the FERC, and shall notify the ISO when FERC approves or accepts changes to such Local Service Schedules. NEITC shall be responsible for sending all invoices for Local Service to Transmission Customers and pursuing collections for outstanding payments due for Local Service. The ISO, by the execution of this Agreement, shall not assume any liability in connection with the provision of Local Service other than the liability which may result from an act or omission of the ISO related to the ISO's rights and responsibilities under this Agreement, including an ISO directive and/or instruction to a Party. Nothing in this Section 3.03(c) shall affect the relative rights and responsibilities of the Parties pursuant to Article IX of this Agreement.

(d) Transmission Service Agreements. The ISO and NEITC shall enter into all agreements for Transmission Service over the Transmission Facilities; provided that:

(i) A pro forma regional transmission service agreement (or service agreements) shall be attached to the ISO OATT and such pro forma service agreement(s) shall set forth the respective rights and responsibilities of the Transmission Customer, the ISO, the PTOs and NEITC. The ISO shall have the authority, pursuant to Section 205 of the Federal Power Act, to amend the pro forma service agreement(s) or the Market Participant Service Agreement ("MPSA") or executed service agreements related to the terms and conditions of

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regional Transmission Service. NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall have the authority, pursuant to Section 205 of the Federal Power Act, to amend the pro forma service agreement(s) related to the terms and conditions of Local Service and NEITC shall have the authority, pursuant to Section 205 of the Federal Power Act, to amend executed service agreements related to the terms and conditions of Local Service over its Transmission Facilities.

(ii) The ISO shall be responsible for filing with the FERC, or electronically reporting to the FERC as applicable, all new agreements for Transmission Service over the Transmission Facilities. Such filings with respect to Local Service will be made by the ISO as agent for NEITC. In the event of any dispute between the ISO or NEITC and a Transmission Customer concerning the terms and conditions of such service agreements, the ISO shall file an unexecuted copy of the pro forma service agreement set forth in the ISO OATT and shall include in such filing any statement provided by NEITC, affected PTO(s) and the Transmission Customers concerning their respective positions on any proposed changes or additions to the pro forma service agreement.

(e) Local Networks. A “Local Network” shall consist of those networks of Transmission Facilities identified on Attachment E of the ISO OATT as of the Operations Date. The Local Networks shall only be changed to reflect the effectuation of a merger, acquisition, or consolidation and reorganization, to add a new PTO from outside of the New England Control Area, or to reflect the withdrawal from the ISO of a PTO.

### 3.04 Application Authority.

(a) NEITC shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise:

(i) the revenue requirements for all Transmission Facilities used for the provision of Transmission Service (including Transmission Facilities leased to NEITC or to which NEITC has contractual entitlements);

(ii) any rates or charges for transmission services that are based solely on the revenue requirements of the Transmission Facilities (including Transmission Facilities leased to NEITC or to which NEITC has contractual entitlements) under NEITC’s FERC-accepted or -approved Local Service Schedule to the ISO OATT;

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(iii) any terms and conditions for Local Network Service or Local Point-to-Point Transmission Service under NEITC's Local Service Schedule to the ISO OATT;

(iv) any rates or charges for the recovery of NEITC's investment in a New Transmission Facility or Transmission Upgrade that enters commercial service after the Effective Date of this Agreement and the construction of which was not required under an ISO System Plan or categorized as "Proposed," "Planned," or "Under Construction" in the RSP Project List; provided, however, that if the ISO OATT utilizes a formula-type transmission rate, the revenue requirement for such Transmission Facility shall not be rolled into such rate without a FERC order expressly permitting such roll-in;

(v) any rates or charges, and terms and conditions related thereto, that implement an incentive or performance-based rate proposal made by NEITC, applicable only to service provided by NEITC under its Local Service Schedule; and

(vi) subject to the provisions of Section 2.05, any terms and conditions of Interconnection Agreements with any entities connecting with the Transmission Facilities, provided that such Interconnection Agreements shall not include any operating arrangements and Coordination Agreements that the ISO may enter into with operators of neighboring Control Areas in accordance with provisions of the TOA.

NEITC shall not have the authority to revise such rates, terms and conditions in a manner that would abridge the rights granted to the ISO in Section 3.04(c). NEITC shall provide written notification to the ISO and stakeholders of any filing described in sub-paragraph (ii) through (iv), above, which notification shall include a detailed description of the filing, at least 30 days in advance of a filing. NEITC shall consult with interested stakeholders upon request. NEITC shall retain the right to modify aspects of any filing authorized by this Section 3.04(a) after it provides written notification to the ISO and stakeholders, and shall provide notification to the ISO and stakeholders of any material modification to such filings.

With respect to any filing described in sub-paragraph (ii) through (vi), above, NEITC shall include in any filing a statement that, in the good faith judgment of NEITC, the proposal will not be inconsistent with the design of the New England Markets, as accepted or approved by FERC. In the event the ISO believes that a proposed filing described in sub-paragraph (ii) through (iv),

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above, would have such an inconsistency, it shall so advise NEITC and NEITC and the ISO shall consult in good faith to resolve any ISO concerns, but, if such disagreement cannot be resolved, NEITC may submit a filing under Section 205, provided that NEITC's filing (including the transmittal letter for such filing) to FERC shall include any written statement provided by the ISO setting forth the basis for the ISO's concerns.

NEITC shall consult with the ISO to determine whether the ISO will need to make any software modifications in order to implement any filing authorized by this Section 3.04(a) and when any needed software modifications could reasonably be expected to be implemented. NEITC's filing to FERC (and the transmittal letter for such a filing) shall include any written statement provided by the ISO setting forth the basis for any software-related implementation concerns raised by the ISO. The ISO shall make Commercially Reasonable Efforts to implement any needed software modifications by the effective date accepted by the FERC for a filing authorized by this Section 3.04(a), provided that, if the ISO has exercised such Commercially Reasonable Efforts, a failure to implement needed software modifications by the FERC-accepted effective date shall not constitute an event of default by the ISO under this Agreement or subject the ISO to financial damages, and further provided that the ISO shall run retroactive settlements consistent with the FERC-accepted effective date for a filing authorized by this Section 3.04(a) once such software modifications have been implemented.

(b) NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise:

(i) the rates and charges for Transmission Service pursuant to which the revenue requirements for the Transmission Facilities and all PTO Transmission Facilities used for the provision of Transmission Service are recovered; including the design of any rates or charges for: (A) regional Transmission Service on the New England Transmission System involving the use of the Transmission Facilities and more than one PTO's PTO Transmission Facilities (as defined in the TOA); (B) Transmission Service between the New England Transmission System and any other transmission system; (C) Transmission Service through the New England Transmission System between other transmission systems; (D) the recovery of any portion of the revenue requirements of NEITC and the PTOs attributable to the elimination of any rates or charges (e.g., border charges) for any such Transmission Service; (E) the methodology by which the costs of Transmission Upgrades and of PTO

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Transmission Upgrades related to generator interconnections are allocated under the ISO OATT and (F) the methodology by which the costs of New Transmission Facilities and Transmission Upgrades and PTO New Transmission Facilities and PTO Transmission Upgrades are allocated under the ISO OATT; *provided, however,* that if the costs of Transmission Facilities are to be recovered on a New England-wide basis, the recovery shall be through an integrated rate that, when received by the ISO for billing under Section 3.10 of this Agreement, includes the costs of the PTOs Transmission Facilities as well.

(ii) the methodology for the recovery and allocation of the line losses on the New England Transmission System, if and to the extent that the calculation of locational marginal prices for energy is not designed to recover such losses; and

(iii) any rates or charges, and terms and conditions related thereto, that implement an incentive or performance-based rate proposal, applicable to the entire New England Transmission System.

NEITC, and the PTOs as appropriate under the Disbursement Agreement, shall not have the authority to revise such rates or charges in a manner that would abridge the rights granted to the ISO in Section 3.04(c). NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall provide written notification of any proposed filing under this Section 3.04(b) to the ISO and stakeholders, which notification shall include a detailed description of the proposed filing, at least 30 days prior to the filing. NEITC and the PTOs, acting in accordance with the Disbursement Agreement, shall retain the right to modify aspects of any filing authorized by this Section 3.04(b) after written notification is provided to the ISO and stakeholders, and shall provide notification to the ISO and stakeholders of any material modification to such filings. If less than all of the PTOs support the filing, or if NEITC does not support the filing, NEITC and the PTOs will advise the ISO and stakeholders of that fact and the dissenting entities shall advise the ISO and stakeholders of their concerns.

The PTOs, NEITC and the ISO shall make every reasonable effort to agree upon the proposed filing under Section 3.04(b). In the event they are unable to agree on such filing, and the ISO in its good faith judgment concludes that the filing will:

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(A) be inconsistent with the design of the New England Markets, including the congestion pricing methodology for the ISO region, as accepted or approved by FERC;

(B) have a material adverse effect on the efficiency or competitiveness of the New England Markets, or on the ability of the ISO to provide transmission access on a not unduly discriminatory or preferential basis; or

(C) have a material adverse effect on the reliability of the ISO bulk power system;

then, except as provided in the next sentence, the filing will not become effective until such time as FERC issues an order determining the proposal set forth in the filing to be consistent with the standard applicable under Section 205 of the Federal Power Act, and such a filing (including the transmittal letter for such a filing) shall include any written statement provided by the ISO setting forth the basis for the ISO's concerns. In the case of a filing described in sub-paragraph (iii), above, NEITC and the PTOs, acting in accordance with the Disbursement Agreement, may request that FERC permit the filing to go into effect on an interim basis, notwithstanding the conclusion of the ISO. If FERC grants the request to permit the filing to go into effect on an interim basis, the filing will become effective, subject to refund, on the date specified in FERC's order.

NEITC shall consult with the ISO to determine whether the ISO will need to make any software modifications in order to implement any filing authorized by this Section 3.04(b) and when any needed software modifications could reasonably be expected to be implemented. The filing to FERC (and the transmittal letter for such a filing) shall include any written statement provided by the ISO setting forth the basis for any software-related implementation concerns raised by the ISO. The ISO shall make Commercially Reasonable Efforts to implement any needed software modifications by the effective date accepted by the FERC for a filing authorized by this Section 3.04(b), provided that, if the ISO has exercised such Commercially Reasonable Efforts, a failure to implement needed software modifications by the FERC-accepted effective date shall not constitute an event of default by the ISO under this Agreement or subject the ISO to financial damages, and further provided that the ISO shall run retroactive settlements consistent with the FERC-accepted effective date for a filing authorized by this Section 3.04(b) once such software modifications have been implemented.

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(c) The ISO shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise:

(i) any terms and conditions of the ISO Tariff, and any separate ISO tariffs, relating to Transmission Service and/or the New England Markets, provided that: (A) the ISO shall not have the authority to revise such terms and conditions in a manner that would abridge the rights granted to NEITC in Section 3.04(a) and to NEITC in Section 3.04(b); (B) the ISO shall not have the authority to eliminate Local Network Service or Local Point-to-Point Transmission Service provided under the Local Service Schedules; and (C) the ISO shall not have the authority to transfer to any third party the ISO's Section 205 rights to revise the terms and conditions of Transmission Service or the authority to enter into agreements with any group of stakeholders to submit filings under Section 205 of the Federal Power Act to change the terms and conditions of Transmission Service where such proposed changes are not supported by the ISO but are approved by a vote of the stakeholder group.

The ISO shall provide written notification of any proposed filing under this Section 3.04(c) to NEITC, the PTOs and stakeholders, which notification shall include a detailed description of the proposed filing, at least 30 days prior to the filing. The ISO shall consult with NEITC, the PTOs and stakeholders and will consider any comments NEITC, any PTO or stakeholder provides in developing its filing. The ISO shall retain the right to modify aspects of any filing authorized by this Section 3.04(c) after it provides written notification to NEITC, the PTOs and stakeholders and shall provide notification to NEITC, the PTOs and stakeholders of any material modification to such filings. In addition, the ISO shall consult with NEITC to determine whether the filing will have any adverse impact on NEITC's revenue requirements, or on the ability of NEITC to recover its revenue requirements, or have a material adverse impact on the ability of NEITC to implement an incentive rate plan then in effect. If NEITC concludes in its good faith judgment that the filing will have any of such effects, the ISO and NEITC will make every reasonable effort to resolve the concerns of NEITC, recognizing that the ISO has a similar obligation to affected PTOs. In the event that NEITC's concerns cannot be resolved, the ISO may, nevertheless, make a filing under Section 205 provided that, except as provided in the next sentence, such a filing will not become effective until such time as the Commission issues an order determining the proposal set forth in the filing to be consistent with the standard applicable under Section 205 of the Federal Power Act. The ISO may request that FERC permit a filing authorized by this Section 3.04(c) to go into effect on an interim basis, notwithstanding the conclusion of NEITC, provided that the ISO shall include in such a filing (and the transmittal

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letter for such a filing) any written statement provided by NEITC setting forth the basis for NEITC's concerns. If FERC grants the ISO's request to permit the filing to go into effect on an interim basis, the filing will become effective, subject to refund, on the date specified in FERC's order. Notwithstanding the foregoing, in Exigent Circumstances, the ISO shall have the unilateral authority, upon written notice to NEITC, the PTOs, the Participants Committee, and the individual Participants, to submit any filing under Section 205 of the Federal Power Act to modify any provision of the ISO Tariff as authorized in this Section 3.04(c), provided that such filing shall be subject to all conditions set forth in this Section 3.04(c) except for those conditions that would limit the ISO from submitting or implementing such an ISO unilateral filing on an expedited basis or that would require the consultation otherwise specified herein.

(d) Except as explicitly set forth in Section 3.04(e), with respect to certain items listed in Sections 3.04(a) and 3.04(b), the ISO shall have no authority to submit a filing under Section 205 of the Federal Power Act to modify any provision of the ISO OATT that implements any of the items listed in Sections 3.04(a) and 3.04(b). NEITC shall have no authority to submit a filing under Section 205 of the Federal Power Act to modify any provision of the ISO OATT that implements any of the items listed in Section 3.04(c). The ISO reserves its rights to intervene in, comment on or protest any filing made by NEITC, and to submit proposals for the consideration of NEITC and NEITC reserves its rights to intervene in, comment on or protest any filing made by the ISO, and to submit proposals for the consideration of the ISO.

(e) In the event the ISO determines that a change in the design of any provision of the ISO OATT that affects NEITC and that is described in Sections 3.04(a)(ii), (iii) or (iv) or 3.04(b) is required because the existing design of any rates or charges for Transmission Service is inconsistent with the design of the New England Markets, and such inconsistency will, if not remedied before relief would be available in a proceeding under Section 206 of the Federal Power Act, either: (i) substantially and adversely affect the efficiency or competitiveness of the New England Markets, or (ii) substantially and adversely affect the reliability of the ISO bulk power system, a senior officer of the ISO shall notify NEITC and affected PTO(s) of its determination. Upon receipt of such notification, NEITC and the ISO shall diligently work together with the affected PTO(s) to arrive at appropriate changes in the rates to alleviate the conditions that led to this notification being given, while protecting the rights of NEITC and affected PTO(s) to fully recover their revenue requirements and the amount of incentive payments associated with FERC-accepted or -approved incentive arrangements for NEITC or affected PTO(s). If NEITC, the affected PTO(s) and the ISO agree on a solution to this issue, NEITC and/or the affected PTO(s), as applicable, shall make a filing at FERC under Section 205 consistent with such agreement.

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If NEITC, the affected PTO(s) and the ISO cannot agree on a mutually acceptable Section 205 filing to address this issue within a period of thirty (30) days, and NEITC and/or the affected PTO(s) do not make a Section 205 filing within the thirty (30) day period, then the ISO shall have the authority to submit a filing under Section 205 of the Federal Power Act as permitted herein, provided that such a Section 205 filing shall not be submitted until NEITC and/or the affected PTO(s) have an opportunity to meet with representatives of the ISO Board of Directors if requested with reasonable notice, and the ISO may, with the approval of FERC, place a replacement for such rate design into effect, while the proceeding on the ISO's filing is pending before FERC, for a period no longer than fifteen (15) months, provided that such filing shall not propose a modification that adversely affects the rights of NEITC and/or the affected PTO(s) to fully recover its FERC-allowed revenue requirements and the amount of incentive payments associated with FERC-allowed incentive arrangements for NEITC and/or the affected PTO(s) or that would result in any costs previously approved or accepted for recovery under either a federal or state-jurisdictional rate thereafter becoming unrecoverable under either a federal or state-jurisdictional rate, and the replacement rate design proposal of the ISO is subject to refund and surcharge, as necessary to restore the status quo ante if FERC does not ultimately approve that proposal. To place its replacement rate design proposal into effect, the ISO shall bear the burden of persuading FERC that: (i) the ISO's replacement proposal is consistent with the standard applicable under Section 205 of the Federal Power Act; (ii) the ISO's determination regarding the inconsistency of the existing rate design with the design of the New England Markets and the impact of that inconsistency, as set forth in the first sentence of this subsection, is correct; and (iii) the ISO's proposal will not adversely affect the rights of NEITC and/or the affected PTOs to fully recover their FERC-allowed revenue requirements or the amount of incentive payments associated with FERC-allowed incentive arrangements for NEITC and/or affected PTO(s) or to fully recover costs previously approved or accepted for recovery under either a federal or state-jurisdictional rate. Notwithstanding the foregoing, in Exigent Circumstances, the ISO shall have the unilateral authority, upon written notice to NEITC, PTOs, the Participants Committee and the individual Participants, to submit a filing under Section 205 of the Federal Power Act to modify any provision of the ISO Tariff described in this Section 3.04(e), provided that such filing shall be subject to all conditions set forth in this Section 3.04(e) except for those conditions that would limit the ISO from submitting or implementing such an ISO unilateral filing on an expedited basis or that would require the consultation otherwise specified herein.

(f) In the event the ISO concludes that a filing to establish or to revise the terms and conditions listed in Section 3.04(c) is required and that providing the notification or consultation required under Section 3.04(c) for such filing would result in an unanticipated material adverse effect on the efficiency or competitiveness of the New England Markets or the reliability of the ISO bulk power system in the circumstances, the ISO: (i) shall provide such notification to NEITC, the PTOs and stakeholders or undertake such consultation with NEITC,

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the PTOs and stakeholders as is possible under the circumstances; and (ii) may submit a filing under Section 205 to establish or to revise the terms and conditions listed in Section 3.04(c) upon issuance of a written statement setting forth the circumstances that do not permit such notification or consultation.

(g) In the event NEITC concludes that a filing to establish or to revise the rates, terms and conditions listed in Sections 3.04(a) is required, or in the event NEITC and the PTOs, acting in accordance with the Disbursement Agreement, conclude(s) that a filing to establish or to revise the rates, terms and conditions listed in Section 3.04(b) is required, and that providing the notification or consultation required under Sections 3.04(a) or 3.04(b) for such filing would result in an unanticipated material under-recovery of NEITC's and/or the affected PTO(s)' revenue requirements or other material adverse financial effect on NEITC or a PTO, NEITC or NEITC and the affected PTO(s), as applicable: (i) shall provide such notification to the ISO and stakeholders or undertake such consultation with the ISO as is possible under the circumstances; and (ii) may make a Section 205 filing to establish or to revise the rates, terms and conditions listed in Sections 3.04(a) or 3.04(b) upon issuance of a written statement setting forth the circumstances that do not permit such notification or consultation.

(h) Cost Allocation Moratorium

(i) During the period commencing with the effective date for this provision and ending February 1, 2010 (the "Moratorium Period"), neither NEITC, nor NEITC and the PTOs acting in accordance with the Disbursement Agreement, as applicable, pursuant to Sections 3.04(a) and 3.04(b), respectively, nor the ISO, pursuant to Section 3.04(e), shall submit filings under Section 205 of the Federal Power Act to modify:

(A) the provisions and schedules of the ISO OATT governing the split between PTF and Non-PTF transmission facilities in effect prior to the Operations Date for purposes of allocating costs to Transmission Customers;

(B) the provisions and schedules of the ISO OATT establishing the methodology by which the costs of Transmission Upgrades and New Transmission Facilities and PTO Transmission Upgrades and PTO New Transmission Facilities related to generator interconnections are allocated under the ISO OATT; and

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(C) the provisions and schedules of the ISO OATT establishing the methodology by which the costs of New Transmission Facilities and Transmission Upgrades and PTO New Transmission Facilities and PTO Transmission Upgrades are allocated under the ISO OATT;

(ii) This agreement to forego submission of Section 205 filings during the Moratorium Period with respect to the items listed in Section 3.04(h)(i)(A) through (C) above shall not restrict in any way the rights of NEITC, and NEITC and the PTOs acting in accordance with the Disbursement Agreement, pursuant to and in accordance with Sections 3.04(a) and 3.04(b), respectively, to submit Section 205 filings to modify any elements of the rates applicable to Transmission Service other than those items listed in Section 3.04(h)(i)(A) through (C). Nothing in this Section 3.04(h) shall restrict in any way the rights of NEITC, and NEITC and the PTOs acting in accordance with the Disbursement Agreement, to submit Section 205 filings to establish incentive or performance-based rates in accordance with Section 3.04(a) or 3.04(b), respectively, or to submit Section 205 filings to establish formula or stated rates in accordance with Section 3.04(a) or 3.04(b), respectively, provided that such filings do not propose to modify the items listed in Section 3.04(h)(i)(A) through (C). Nothing in this Section 3.04(h) shall restrict in any way the rights of the ISO, pursuant to and in accordance with Section 3.04(e), to submit Section 205 filings to modify any elements of the rates applicable to Transmission Service, provided that such filings do not propose to modify the items listed in Section 3.04(h)(i)(A) through (C).

(iii) Notwithstanding Section 3.04(h)(i)(B) above, to the extent that the requirements for any New Transmission Facilities or Transmission Upgrades or PTO New Transmission Facilities or PTO Transmission Upgrades associated with new or existing generation set forth in the ISO OATT are modified during the Moratorium Period in a manner that creates a new or modified category of generator-related transmission costs, NEITC and the PTOs, acting in accordance with the arrangements among them under the Disbursement Agreement, shall have the authority, in accordance with Section 3.04(b), to submit Section 205 filings during the Moratorium Period to establish the methodology by which such new or modified generator-related transmission costs are allocated.

(iv) Nothing in this Section 3.04(h) shall supersede or alter the effect of any FERC orders concerning the allocation of costs for specific transmission facilities in the New England region.

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(v) Nothing in this Section 3.04(h) shall restrict in any way the rights of the ISO or NEITC during the Moratorium Period to submit a filing under Section 206 of the Federal Power Act to modify the provisions and schedules described in Section 3.04(h)(i) (A) through (C).

(vi) After the end of the Moratorium Period, NEITC and the PTOs, acting in accordance with the Disbursement Agreement , may exercise their rights in accordance with Section 3.04(b) to submit Section 205 filings to modify the provisions and schedules described in Section 3.04(h)(i)(A) through (C), provided that:

(A) NEITC and the PTOs, acting in accordance with the Disbursement Agreement, must provide the ISO, the Regional State Committee established by the states in the ISO region (the “Regional State Committee”), and stakeholders no less than 90 days advance notification of the proposed filing, including a detailed description of any proposed change to the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto). NEITC, the PTOs, the ISO and the Regional State Committee shall engage in a process of consultation and negotiation in order to attempt to reach consensus on such filing.

(B) At least 30 days prior to the proposed filing date the Regional State Committee may inform these other entities that the Committee opposes the proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto).

(C) If the Regional State Committee opposes the proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto), NEITC and the PTOs, acting in accordance with the Disbursement Agreement , may make the Section 206 filing to modify the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Effective Date (or the successors thereto); provided that: (1) such filing may not go into effect until FERC has approved the filing; (2) the Regional State Committee will have the right to provide an alternative proposal to change

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the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto) which NEITC and the PTOs, acting in accordance with the Disbursement Agreement, will include in the Section 206 filing and which will be considered on an equal footing with the NEITC/PTO proposal in the FERC proceeding, and (3) such alternative proposal shall not adversely affect the rights of the NEITC or the PTOs to fully recover the FERC-allowed revenue requirements and the amount of incentive payments associated with FERC-allowed incentive arrangements for NEITC or result in any costs previously approved or accepted for recovery under either a federal or state-jurisdictional rate thereafter becoming unrecoverable under either a federal or state-jurisdictional rate.

(D) If, notwithstanding the requirements of Section 3.04(h)(vi)(C), the Regional State Committee submits an alternative proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto) that NEITC or any PTO believes causes an under-recovery of costs when used in conjunction with the other elements of the rate design for transmission rates filed by NEITC and the PTOs, acting in accordance with the Disbursement Agreement, (or the one already in effect if the filing does not propose to change the rate design), NEITC and the PTOs, acting in accordance with the Disbursement Agreement, will have the right: (1) to include in such filing an explanation of why they believe the Regional State Committee proposal causes an under-recovery of costs contrary to the requirements of Section 3.04(h)(vi)(C); and (2) to file a modified rate design that eliminates such under-recovery in the event that the alternative proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto) is approved by the FERC placed into effect coincident with the effective date of such proposal.

(E) Any requirements established by this Section 3.04(h)(vi) with respect to the Regional State Committee shall not subject NEITC or ISO-NE to the jurisdiction or authority of any agent or agency of any state participating in the Regional State Committee.

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(vii) After the end of the Moratorium Period, the ISO may exercise its rights in accordance with Section 3.04(e) to submit Section 205 filings to modify the provisions and schedules described in Section 3.04(h)(i)(A) through (C) if NEITC or the PTOs fail to alleviate the conditions specified in Section 3.04(e).

(i) The ISO shall have sole authority to submit Section 205 filings to recover its administrative, capital and other costs (including the collection of funds from Transmission Customers to support payment of FERC annual charges with respect to transmission service for which the ISO is the Transmission Provider as defined in FERC rules and orders) including the design of any charges therefore (the “ISO Administrative Charge”).

(j) Nothing in this Agreement shall restrict in any way the rights of the ISO or of NEITC to submit an application under Section 206 of the Federal Power Act for revisions to the rates, terms and conditions of service under the ISO OATT.

(k) Stakeholder Process for Regional Rate Filings.

(i) Absent unanticipated circumstances, every proposal to modify regional rates in accordance with Section 3.04(b) shall be presented to the appropriate stakeholder Technical Committee(s) for consideration and an advisory vote. The Technical Committee, at its next meeting following the one at which the initial presentation is made (which shall be no later than 30 days after any proposal is made), shall: (i) vote on the merits of the proposal as presented or with changes accepted by the proponent(s); or (ii) by motion and vote of 66-2/3%, defer action on any proposal presented if it reasonably determines that additional information should and could be provided to more adequately inform the members of such Technical Committee before a vote on the merits is taken. Any deferral shall be for no more than 30 days, after which the proponent(s) may move for an advisory vote upon the proposal at the next meeting of the Technical Committee (which shall be held within 30 days of the start of the deferral). At that time, the Technical Committee may vote on the merits of the proposal as presented or with changes approved by the Committee, or may vote to oppose the proposal on the grounds that sufficient information has still not been provided, but may not defer consideration of the proposal for any further period without the consent of the proponent(s). Failure of the Technical Committee to vote within the time frames set forth in this paragraph shall advance the process to the next step, and in no event shall a period of longer than 60 days be required for the proponent(s) to submit a proposal to modify regional rate design in accordance with Section 3.04(b) to the Participants Committee.

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(ii) Absent unanticipated circumstances and after the fulfillment of the procedures outlined in Section 3.04(k)(i), every proposal to modify regional rates in accordance with Section 3.04(b) shall be presented to the stakeholder Participants Committee for an advisory vote, along with a report of any action, failure to act or advisory vote taken by any Technical Committee(s). Such report shall be considered by the Participants Committee no later than the first regularly scheduled meeting following notification of that presentation. The Participants Committee shall: (i) vote on the merits of the proposal as presented or with changes accepted by the proponent(s) ; or (ii) by motion and vote defer action on any proposal if it reasonably determines that the proposal presented is materially different from the proposal presented to the Technical Committee, and was not voted on by the Technical Committee. Any deferral shall result in a repeat of the processes outlined above. Notwithstanding the foregoing, the Participants Committee may, at its discretion, consider and vote upon any proposal submitted to it and such a vote shall have the same effect as if the proposal had first been voted upon by a Technical Committee. The Participants Committee may not defer action on any item that has been voted on by a Technical Committee and presented to the Participants Committee for an advisory vote unless the proponent(s) consent to such deferral. If the Participant Committee has not scheduled a meeting to vote on the merits of a proposal to modify regional rates in accordance with Section 3.04(b) prior to date that the proponent(s) intend to submit such a proposal to the FERC, then the proponent(s) shall request that the Participants Committee schedule a special meeting to conduct an advisory vote on the merits of such proposal. In no event shall the proponent(s) be required to wait for a Participant Committee advisory vote for a period of longer than 90 days after initial notification of such proposal to stakeholders prior to submitting a proposal to modify regional rate design in accordance with Section 3.04(b) to the FERC.

(iii) An advisory vote by the Participants Committee on the merits of any proposal, whether in favor of or in opposition, terminates the stakeholder proceedings absent voluntary resubmission of the same or a modified proposal at a future time. The proponent(s) shall report the results of such advisory vote in any relevant filing made by such proponent(s) with the FERC. A failure by the Participants Committee to vote within the time frames outlined above terminates the Participant proceedings required under this Agreement absent voluntary resubmission of the same or a modified proposal by the proponent(s) at a future time.

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(iv) Nothing in this Section 3.04(k) shall limit the ability of NEITC and the PTOs, acting in accordance with the Disbursement Agreement, to submit a filing pursuant to Section 3.04(g) to modify regional rates in the event they conclude that a filing to modify regional rates is required due to unanticipated circumstances, provided that they shall provide such notification to the stakeholder Participant Committee or undertake such consultation with the stakeholder Technical Committee(s) and Participant Committee as is possible under the circumstances and shall provide the Participants Committee with a written statement setting forth the circumstances that do not permit the notification or consultation otherwise required by this Section 3.04(k).

(v) The process set forth in this Section 3.04(k) shall not apply to filings related to regional rates submitted to the FERC on an informational basis. The applicable process for review of such informational filings shall be set forth in the ISO OATT.

(l) Nothing in this Agreement shall restrict in any way NEITC's rights to become a PTO under the ISO OATT and, upon becoming a signatory to the Transmission Operating Agreement, this Agreement shall terminate in accordance with Section 10.05 of this Agreement.

### 3.05 **The ISO's Responsibilities.**

(a) In addition to its other obligations under this Agreement, in performing its obligations and responsibilities hereunder, and in accordance with Good Utility Practice, the ISO shall:

(i) maintain system reliability; and

(ii) in all material respects, act in accordance with applicable Laws and conform to, and implement, all applicable reliability criteria, policies, standards, rules, regulations, orders, license requirements and all other applicable NERC/NPCC Requirements, and other applicable reliability organizations' reliability rules, and all applicable requirements of federal or state laws or regulatory authorities.

(b) The ISO shall obtain and retain all necessary authorizations of FERC and other regulatory authorities to function as the New England RTO and shall possess the characteristics and perform the functions required for that purpose.

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3.06 **NEITC's Responsibilities.**

(a) NEITC shall, in accordance with Good Utility Practice:

(i) direct, physically operate, repair, and maintain its Transmission Facilities and Local Control Centers in accordance with this Agreement, applicable Law, and applicable Operating Procedures;

(ii) operate and maintain, or arrange for a third party, approved by NEITC, in its sole discretion, to operate and maintain, one or more suitable Local Control Centers (including any Local Control Centers maintained as back-up for a PTO's primary Local Control Centers). NEITC shall provide the ISO with reasonable notice of any change to its Local Control Center(s) and shall coordinate with the ISO to ensure that such a change will not adversely affect the reliable operation of the New England Transmission System. NEITC shall have the responsibility to ensure that its Local Control Center(s) will: operate its Transmission Facilities on a 24 hour basis, implement the instructions, orders and directions received from the ISO in the exercise of its Operating Authority in accordance with Section 3.02, and perform the following functions in accordance with applicable Operating Procedures:

- (A) switching and tagging;
- (B) on-line monitoring;
- (C) security analysis;
- (D) dispatch voltage and reactive power, provided that the ISO shall dispatch voltage and reactive power to the extent the Local Control Centers are unable to maintain normal voltage schedules;
- (E) coordinate the development of settings for dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other similar dynamic equipment that affects power flows;

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- (F) implementation of the NEITC Local Restoration Plan and development of modifications to such NEITC Local Restoration Plan, subject to the approval of the ISO in order to coordinate and promote the reliability of the Restoration Plans;
  - (G) operation and maintenance of communication systems and software;
  - (H) implementation of voltage reduction measures;
  - (I) implementation of Load Shedding;
  - (J) coordinate with the ISO and the other PTOs with respect to congestion management efforts and, to the extent applicable, demand-side management and distributed generation efforts, provided that a NEITC employee who is engaged in such coordination and who is not a Local Control Center employee shall be subject to the same standards of conduct and applicable provisions of the ISO Information Policy as a Local Control Center employee; and
  - (K) coordinate with other entities interconnected with the New England Transmission System.
- (iii) cooperate with the ISO's performance of the monitoring and audits in connection with all monitoring and compliance provisions detailed in Section 3.02(i) of this Agreement;
  - (iv) collaborate with the ISO with respect to:
    - (A) the development of Rating Procedures,
    - (B) the establishment of ratings for New Transmission Facilities;
    - (C) the establishment of ratings for Acquired Transmission Facilities that do not have an existing rating; and

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- (D) the establishment of any changes to existing ratings for Transmission Facilities in effect as of the Operations Date.

To the extent there is any disagreement between the ISO and NEITC concerning Rating Procedures or the rating of a Transmission Facility, such disagreement shall be the subject of good faith negotiations between NEITC and the ISO, provided that (x) NEITC's position concerning such Rating Procedures or Transmission Facility ratings shall govern until NEITC and the ISO agree on a resolution to such disagreement; and (y) nothing in this Section 3.06(a)(iv) shall limit the rights of the ISO or of NEITC to submit a filing under Section 206 of the Federal Power Act with respect to Transmission Facility ratings or Rating Procedures. During any collaboration or discussions concerning Transmission Facility ratings, NEITC shall continue to provide the ISO with up-to-date ratings information in accordance with the applicable Rating Procedures.

(v) undertake operating actions in accordance with any tariffs or rate schedules approved or accepted by FERC;

(vi) provide the ISO with the right to use a level of communications capacity (and maintain the equipment associated with this capacity in accordance with Good Utility Practice) on its telecommunication assets and equipment attached to or associated with Transmission Facilities in order to supply reliability-related data including meter, voice and data communications; to receive and send (for Regulation purposes) telemetry to and from existing generators and transmission substations; provide for the receipt of such information from generators and substations, and provide metering data and/or telemetry to the ISO (including providing the infrastructure for Regulation and Frequency Response Service), as reasonably necessary for the ISO to perform its obligations under this Agreement and the ISO OATT; provided that NEITC shall have the unfettered right to use communications capacity on its telecommunication assets and equipment attached to or associated with Transmission Facilities for other business purposes to the extent such capacity is not being used by the ISO; and provided further that: (1) as required by the Schedule 22 Large Generator Interconnection Agreement and Schedule 23 Small Generator Interconnection Agreement in the ISO OATT, NEITC shall include provisions in its Interconnection Agreements with generators providing for the installation and maintenance of sufficient communications capability to allow the ISO to exercise

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its Operating Authority with respect to such generators, and (2) the ISO may include the installation of additional communications capacity as an identified need in the regional transmission expansion plan, in which case such installation may be included within the NEITC obligation to build set forth in, and subject to the terms and conditions in Schedule 3.09(a).

(vii) notify the ISO prior to making changes to the operational status of NEITC Category B Facilities and provide information on the operational status of NEITC Category B Facilities comparable to that provided by the PTOs for their Category B Facilities;

(viii) operate or cause to be operated its NEITC Local Area Facilities in a manner that does not result in the violation of reliability standards applicable to the New England Transmission System;

(ix) provide the ISO with revenue metering data or cause the ISO to be provided with such revenue metering data;

(x) cooperate with actions taken by PTOs' Local Control Centers with respect to the Transmission Facilities;

(xi) in all material respects, comply with all applicable laws, regulations, orders and license requirements, and with all applicable requirements, and with all applicable NERC/NPCC Requirements, other applicable reliability organizations' local reliability rules, and all applicable requirements of federal or state laws or regulatory authorities.

(b) Operation of Transmission Facilities During A System Failure. Existing Operating Procedures for use during a System Failure shall be utilized by the ISO, NEITC and the PTOs. Any modifications to the Existing Operating Procedures for use during a System Failure or new Operating Procedures for use during a System Failure shall be developed by the ISO in the manner specified in Section 3.02(d). The procedures for use during a System Failure shall provide that, in situations where immediate action is required, NEITC's Local Control Center(s), if any, shall have the authority to take the following reliability actions at a minimum, provided that NEITC shall coordinate with the ISO as soon as practicable upon taking such action:

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- (i) Undertake those operational functions with respect to Transmission Facilities undertaken by the ISO under non-System Failure conditions;
  - (ii) Re-energize transmission facilities following breaker trips;
  - (iii) Implement emergency Load Shedding and voltage reduction measures and subsequent restoration;
  - (iv) Implement Voltage/VAR control;
  - (v) Adjust PARS settings;
  - (vi) Dispatch generation as necessary to preserve system reliability; in accordance with applicable NERC/NPCC Requirements and ISO directives; and
  - (vii) Take such other measures necessary, consistent with Good Utility Practice, to respond to a System Failure.

Nothing in this Section 3.06(b) shall limit the right of NEITC pursuant to Section 3.07 to take any action(s) that it deems necessary to prevent loss of human life, injury to persons and/or damage to property.

### 3.07 **Reserved Rights of NEITC.**

(a) Notwithstanding any other provision of this Agreement to the contrary, NEITC shall retain all of the rights set forth in this Section 3.07; provided, however, that such rights shall be exercised in a manner consistent with applicable NERC/NPCC Requirements and applicable regulatory standards. This Section 3.07 is not intended to reduce or limit any other rights of NEITC as a signatory to this Agreement or under the ISO OATT.

- (i) Nothing in this Agreement shall restrict any rights: (A) of NEITC if it is a party to a merger, acquisition or other restructuring transaction to make filings under Section 205 of the Federal Power Act with respect to NEITC's reallocation or redistribution of revenues or the assignment of such NEITC's rights or obligations, to the extent the Federal Power Act requires such filings; or (B) of NEITC to terminate its participation in this Agreement pursuant to Article X of this Agreement.

(ii) Except as expressly provided in the grant of Operating Authority to the ISO, NEITC retains all rights that it otherwise has incident to its ownership of, and legal and equitable title to, its assets, including its Transmission Facilities and all land and land rights, including the right to build, acquire, sell, lease, merge, dispose of, retire, use as security, or otherwise transfer or convey all or any part of its assets, subject to NEITC's compliance with Section 2.06 of this Agreement. Subject to Article X, NEITC may, directly or indirectly, by merger, sale, conveyance, consolidation, recapitalization, operation of law, or otherwise, transfer all or any portion of the Transmission Facilities subject to this Agreement but only if such transferee or successors shall agree in writing to be bound by terms of this Agreement.

(iii) Any expansion or modification by NEITC of its Transmission Facilities, any facilities constructed by NEITC to connect the facilities of a current or proposed Transmission Customer to such Transmission Facilities, and/or any new transmission facilities constructed by NEITC pursuant to the ISO Planning Process shall be subject to NEITC's right to recover, pursuant to appropriate financial arrangements and tariffs or contracts, all costs prudently incurred or prudently committed to be incurred, plus a return on invested equity and other capital, associated with constructing and owning or financing such facilities, expansions or modifications to its Transmission Facilities, in accordance with Schedule 3.09(a) hereof.

(iv) The responsibilities granted to the ISO under this Agreement shall not affect the rights of NEITC to modify or expand its Transmission Facilities, nor confer upon the ISO any authority to direct NEITC to modify or expand its Transmission Facilities except as provided in Schedule 3.09(a), and NEITC shall retain all rights and responsibilities specifically assigned to NEITC pursuant to Schedule 3.09(a).

(v) NEITC shall have the right to adopt and implement, consistent with Good Utility Practice, procedures and to take such actions it deems necessary to protect its facilities from physical damage or to prevent injury or damage to persons or property.

(vi) NEITC retains the right to take whatever actions, consistent with Good Utility Practice, it deems necessary to fulfill its obligations under applicable Law.

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(vii) Nothing in this Agreement shall be construed as limiting in any way the rights of NEITC to make any filing with any applicable state or local regulatory authority.

(viii) NEITC may request that the ISO commit additional generators (including specific output levels), or NEITC may take other actions permitted under the ISO OATT and Market Rules (including self-scheduling), if NEITC determines that additional generation is needed to ensure local area reliability, provided that the ISO shall make the final determination whether to commit additional generation in accordance with applicable provisions of the ISO OATT and Market Rules.

(ix) Subject to Section 2.05, NEITC shall retain the right to enter into Interconnection Agreements with transmission owners, generators and other entities connecting with NEITC's transmission facilities (including Transmission Facilities) and to file such agreements for approval or acceptance by FERC.

(x) NEITC shall have the right to retain one or more subcontractors to perform any or all of its obligations under this Agreement. The retention of a subcontractor pursuant to the terms of this Section 3.07 shall not relieve NEITC of its primary liability for the performance of any of its obligations under this Agreement.

(b) Any and all other rights and responsibilities of NEITC related to the ownership or operation of its Transmission Facilities not expressly assigned to the ISO under this Agreement will remain with NEITC.

(c) Nothing in this Agreement shall be deemed to impair or infringe on any rights or obligations of NEITC under the Federal Power Act and FERC's rules and regulations thereunder, provided that any such rights are not inconsistent with the express terms of this Agreement. Nothing contained in this Agreement shall be construed to limit in any way the right of NEITC to take any position, including opposing positions, in any administrative or judicial proceeding or filing by NEITC or the ISO, notwithstanding that such proceeding or filing may be undertaken or made, explicitly or implicitly, pursuant to this Agreement.

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3.08 **Repair and Maintenance of Transmission Facilities.**

(a) **Planning, Scheduling, and Approval of Transmission Facility Outages.**

(i) NEITC shall submit to the ISO long-term plans for Transmission Facility outages, shall submit to the ISO schedules for Transmission Facility outages, and shall obtain ISO approval for Transmission Facility outages in accordance with, and to the extent required by, Market Rule 1.

(ii) Notwithstanding any of the foregoing, nothing in this Section 3.08 shall be construed to require NEITC to reschedule an outage of a Transmission Facility or to require NEITC to refrain from initiating switching and tagging procedures to take a Transmission Facility out of service or place it back into service to the extent NEITC determines that such outage or actions are necessary to prevent injury or damage to persons or property or to protect its facilities from physical damage, in accordance with Section 3.07(a)(v) of this Agreement.

(b) **Recovery of Transmission Outage Rescheduling Costs.** NEITC shall have the right to file a schedule to the ISO OATT that will provide for reimbursement to NEITC for any direct costs incurred by NEITC due to the ISO's rescheduling or revocation of a previously scheduled or approved Transmission Facility outage to the extent the ISO reschedules or revokes a previously scheduled or approved Transmission Facility outage in accordance with Market Rule 1.

(c) **Annual Assessment of Outage Coordination Efforts.** The ISO shall prepare and issue annual public reports on the scheduling and coordination of transmission outages. Each such annual report shall: (i) assess the accuracy of the ISO's estimation of congestion and RMR cost impacts and the accuracy of NEITC and other inputs used in such estimation; (ii) assess any long term impacts of the ISO's exercise of its authority to require the rescheduling of transmission maintenance outages and. (iii) include analyses and data which could allow NEITC to identify potential opportunities for incentives based on efficient coordination of outages and other operational measures that will reduce congestion costs or increase operational flexibility. The ISO shall provide a draft of each such annual report to NEITC and interested stakeholders prior to issuing a final report and shall consider the input of NEITC and interested stakeholders in preparing such reports, subject to any applicable restrictions set forth in the ISO Information Policy on file with FERC.

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(d) **Market Monitoring of Outage Scheduling.** The Market Monitoring Unit of the ISO shall monitor the outage scheduling activities of NEITC. The Market Monitoring Unit of the ISO shall have the right to request that NEITC provide information to the Market Monitoring Unit concerning NEITC's scheduling of Transmission Facility outages, including the rescheduling or cancellation of any Planned, Scheduled or Approved Outage, and NEITC shall provide such information to the Market Monitoring Unit in accordance with Section 11.07(c) of this Agreement.

(e) **Damage or Destruction of Transmission Facilities.**

(i) If, at any time during the Term, any of the Transmission Facilities are damaged or destroyed, then, NEITC shall determine, in its sole discretion, consistent with Good Utility Practice and applicable Law, whether or not (and if so, in what manner) to restore or cause the restoration of such damaged or destroyed Transmission Facilities to substantially the same condition, character or use as existed before the damage or destruction, if at all, provided that NEITC shall consult with the ISO prior to making such determination and shall comply with the requirements specified in Section 2.06.

(ii) Nothing in this Section 3.08(e) shall limit the authority of the ISO to direct NEITC to modify or expand its Transmission Facilities in accordance with the ISO Planning Process, subject to the terms and conditions of Schedule 3.09(a) hereof.

3.09 **Planning and Expansion.**

(a) NEITC shall perform all of its responsibilities, and exercise each of its rights, with respect to the planning and expansion of the New England Transmission System in accordance with the ISO OATT and Schedule 3.09(a) hereto. The ISO shall perform all of its responsibilities pursuant to the ISO Planning Process set forth in the ISO OATT. NEITC shall engage in planning for its Local Area Facilities in a manner that is consistent with applicable NERC/NPCC Requirements, Good Utility Practice and the ISO OATT. The ISO and NEITC shall perform all such responsibilities in accordance with applicable Laws and Good Utility Practice. Nothing in this Agreement shall be construed to impose on NEITC an obligation to build transmission facilities except as provided in Schedule 3.09(a) hereto.

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(b) The ISO shall utilize the Planning Procedures relating to the planning and expansion of the New England Transmission System. The Planning Procedures shall initially consist of the Planning Procedures in existence on the Operations Date (hereinafter “Existing Planning Procedures”). Such Existing Planning Procedures shall consist of those Planning Procedures listed in Schedule 3.09(b). The ISO shall develop any modifications to Planning Procedures (including Existing Planning Procedures) and any new Planning Procedures that it may deem necessary or appropriate in coordination with NEITC, the PTOs and other stakeholders.

**3.10 Invoicing, Collection and Disbursement of Customer Payments.**

(a) Invoicing. Except as provided in Section 3.10(a)(ii), the ISO will administer its current net settlement system, including invoicing of charges to Transmission Customers for Transmission Services on the Transmission Facilities as follows:

(i) The charges invoiced by the ISO shall include the following (each, an “Invoiced Amount”):

(A) any and all revenue requirements, rates, charges, fees and/or penalties for Transmission Service under the ISO OATT and related service agreements which have been filed with FERC pursuant to Section 3.04(b) and which are integrated as described therein and have been accepted by FERC, other than amounts billed directly by NEITC pursuant to Section 3.10(a)(ii) below; and

(B) any and all rates, charges, fees and/or penalties under interconnection agreements which have been filed with and accepted by FERC, other than amounts billed directly by NEITC pursuant to Section 3.10(a)(ii) below.

(ii) Payments relating to all services provided by NEITC pursuant to its Local Service Schedule, interconnection agreements that provide for payment to NEITC, and any other payments shall be invoiced by NEITC and shall not be invoiced by the ISO; provided that, notwithstanding the foregoing, NEITC and the ISO may enter into separate agreements such that the ISO provides invoicing services for such payments.

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(iii) The ISO shall remit or credit to NEITC, consistent with the ISO Tariff and the net settlement system, any and all payments received or collected from Transmission Customers for Invoiced Amounts in accordance with this Agreement and directions provided to the ISO under the Disbursement Agreement. NEITC and the PTOs shall designate (and notify the ISO of the identity of) a single authorized individual to provide such directions to the ISO in accordance with the Disbursement Agreement. This individual shall also respond to any ISO questions or requests for clarification concerning such directions; provided that the ISO shall be able to rely upon the direction of the designated individual unless and until it receives notification from the affected PTO(s) and NEITC or from a Governmental Authority of reversal of such direction by any Governmental Authority with jurisdiction over this Agreement.

(b) The ISO's Collection Obligations and Application of Financial Assurances Policies.

(i) If a Transmission Customer defaults on any payment of any Invoiced Amount (the "Owed Amounts"), the ISO shall take all necessary actions to execute or call upon any Financial Assurances held by the ISO attributable to such Transmission Customer.

(ii) In connection with a default on payment of an Invoiced Amount by a Transmission Customer, the ISO shall, upon the request of the designated individual identified in subsection (a)(iii) above, take those actions necessary to suspend Transmission Services to such defaulting Transmission Customer, including making a filing under Section 205 of the Federal Power Act to seek consent to suspend such Transmission Services; provided that the ISO need not suspend Transmission Services until FERC approval is first obtained. This provision shall not preclude the ISO from suspending service or making a filing under Section 205 of the FPA to seek to suspend Transmission Services or other services under the Tariff in any other circumstances.

(c) No Pledge of Invoiced Amounts. The ISO shall not create, incur, assume or suffer to exist any lien, pledge, security interest or other change or encumbrance, or any other type of preferential arrangement (including a banker's right of set off) against any Invoiced Amounts, any accounts receivables representing Invoiced Amounts, the settlement account maintained by the ISO into which payments on Invoiced Amounts are made and from which remittances are made to NEITC or any Financial Assurances.

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3.11 **Subcontractors.** NEITC acknowledges and agrees that, subject to the terms set forth herein, the ISO has the right to retain one or more subcontractors to perform any or all of its obligations under this Agreement. The retention of a subcontractor pursuant to the terms of this Section 3.11 shall not relieve the ISO of its primary liability for the performance of any of its obligations under this Agreement.

3.12 **No Impairment of the ISO's Other Legal Rights and Obligations.**

Nothing in this Agreement shall be deemed to impair or infringe on any rights or obligations of the ISO under the Federal Power Act and FERC's rules and regulations thereunder, including the ISO's rights and obligations to submit filings to recover its administrative, capital, and other costs, provided that any such rights are not inconsistent with the express terms of this Agreement. During the Term of this Agreement, the ISO shall:

(a) have the rights and obligations to design, develop, operate, maintain and administer the New England Markets and congestion pricing mechanisms (including the exclusive right to make Section 205 filings relating to the Market Rules in accordance with Section 3.04),

(b) have the rights to undertake actions relating to congestion pricing and management in accordance with this Agreement, ISO Market Rules, and applicable FERC orders.

Nothing in this Agreement shall be deemed to impair or infringe on such rights and obligations.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

4.01 **Representations and Warranties of NEITC.** NEITC represents and warrants to the ISO as follows:

(a) **Organization.** It is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) **Authorization.** It has all requisite power and authority to execute, deliver and perform this Agreement; the execution, delivery and performance by NEITC of this Agreement have been duly authorized by all necessary and appropriate action on the part of NEITC; and this Agreement has been duly and validly executed and delivered by NEITC and constitutes the legal, valid and binding obligations of NEITC, enforceable against NEITC in accordance with its terms.

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(c) No Breach. The execution, delivery and performance by NEITC of this Agreement will not result in a breach of any terms, provisions or conditions of any agreement to which NEITC is a party which breach has a reasonable likelihood of materially and adversely affecting NEITC's performance under this Agreement.

(d) Transmission Facilities. NEITC has listed on Schedules 2.01(a) and (b) all of the transmission facilities with a voltage level of 69 kV or greater that it owns in the New England Control Area as of the Effective Date and all of the transmission facilities leased to it with a voltage level of 69 kV or greater in the New England Control Area as of the Effective Date.

(e) **NO WARRANTY REGARDING NEITC'S TRANSMISSION FACILITIES.** IN CONNECTION WITH NEITC'S GRANT OF OPERATING AUTHORITY TO THE ISO OVER NEITC'S TRANSMISSION FACILITIES PURSUANT TO THE TERMS OF THIS AGREEMENT, NEITC'S TRANSMISSION FACILITIES ARE BEING MADE AVAILABLE PURSUANT TO THIS AGREEMENT TO THE ISO "AS IS, WHERE IS," AND NEITC IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SUCH TRANSMISSION FACILITIES, INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. THE FOREGOING PROVISION IS NOT INTENDED TO LIMIT OR CONDITION ANY OBLIGATIONS OF NEITC EXPRESSLY PROVIDED FOR ELSEWHERE IN THIS AGREEMENT.

4.02 **Representations and Warranties of the ISO.** The ISO represents and warrants to NEITC as follows:

(a) Organization. It is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Authorization. It has all requisite power and authority to execute, deliver and perform this Agreement; the execution, delivery and performance by the ISO of this Agreement have been duly authorized by all necessary and appropriate action on the part of the ISO; and this Agreement has been duly and validly executed and delivered by the ISO and constitutes the legal, valid and binding obligation of the ISO, enforceable against the ISO in accordance with its terms.

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(c) **No Breach.** The execution, delivery and performance by the ISO of this Agreement will not result in a breach of any of the terms, provisions or conditions of any agreement to which the ISO is a party which breach has a reasonable likelihood of materially and adversely affecting the ISO's performance under this Agreement.

## ARTICLE V

### **COVENANTS OF NEITC**

5.01 **Covenants of NEITC.** NEITC covenants and agrees that during (i) the Term, or (ii) the period expressly specified herein, as applicable, NEITC shall comply with all covenants and provisions of this Article V, except to the extent the ISO waives such covenants or performance is excused pursuant to Section 11.11(b).

5.02 **Financial Statements and Filings.** If NEITC's financial statements, permit applications or any other filing with any Governmental Authority are publicly available, NEITC shall, upon request by the ISO, provide the ISO information sufficient to allow the ISO to locate such financial statements, permit applications or other filings, including the date and place of the filing of the relevant documents.

5.03 **Expenses.** Except to the extent specifically provided herein, all costs and expenses incurred by NEITC in connection with the negotiation of this Agreement shall be borne by NEITC; provided that nothing herein shall prevent NEITC from recovering such expenses in accordance with applicable law.

5.04 **Consents and Approvals.**

(a) NEITC shall exercise Commercially Reasonable Efforts to promptly prepare and file all necessary documentation to effect all necessary applications, notices, petitions, filings and other documents, and shall exercise Commercially Reasonable Efforts to obtain (and will cooperate with each other in obtaining) any consent, acquiescence, authorization, order or approval of, or any exemption or nonopposition by, any Governmental Authority required to be obtained or made by NEITC in connection with this Agreement or the taking of any action contemplated by this Agreement.

(b) NEITC shall exercise Commercially Reasonable Efforts to obtain consents of all other third parties necessary to the performance of this Agreement by NEITC. NEITC shall promptly notify the ISO of any failure to obtain any such consents and, if requested by the ISO, shall provide copies of all such consents obtained by NEITC.

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(c) Nothing in this Section 5.04 shall require NEITC to pay any sums to a third party, including any Governmental Authority, excluding filing fees paid to any Governmental Authority in connection with a filing necessary or appropriate to further action.

5.05 **Notice and Cure.** NEITC shall notify the ISO in writing of, and contemporaneously provide the ISO with true and complete copies of any and all information or documents relating to, any event, transaction or circumstance, as soon as practicable after it becomes Known to NEITC, that causes or shall cause any covenant or agreement of NEITC under this Agreement to be breached or that renders or shall render untrue any representation or warranty of NEITC contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. NEITC shall use all Commercially Reasonable Efforts to cure such event, transaction or circumstance as soon as practicable after it becomes Known to NEITC. No notice given pursuant to this Section 5.05 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or shall in any way limit the ISO's right to seek indemnity under Article IX.

## ARTICLE VI

### **COVENANTS OF THE ISO**

6.01 **Covenants of the ISO.** The ISO covenants and agrees that during (i) the Term, or (ii) the period expressly specified herein, as applicable, the ISO shall comply with all covenants and provisions of this Article VI, except to the extent the Parties consent in writing to a waiver of such covenants or performance is excused pursuant to Section 11.11(b).

6.02 **Financial Statements and Filings.**

(a) To the extent not provided to stakeholders generally or made publicly available by the ISO, the ISO shall make available to NEITC: (i) quarterly unaudited financial statements within sixty (60) days after each quarter end and (ii) annual audited financial statements within one hundred twenty (120) days after each fiscal year end. In each instance, the financial statements made available by the ISO pursuant to (i) and (ii) above shall be prepared in accordance with Generally Accepted Accounting Principles and shall be true and correct in all material respects.

(b) If financial statements, permit applications or any other filing with any Governmental Authority are publicly available, the ISO shall, upon request by NEITC, provide NEITC information sufficient to allow NEITC to locate such financial statements, permit applications or other filings including the date and place of the filing of the relevant documents.

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6.03 **Expenses.** Except to the extent specifically provided herein, all costs and expenses incurred by the ISO in connection with the negotiation of this Agreement shall be borne by the ISO; provided that nothing herein shall prevent the ISO from recovering such expenses in accordance with applicable law.

6.04 **Consents and Approvals.**

(a) The ISO shall exercise Commercially Reasonable Efforts to promptly prepare and file all necessary documentation to effect all necessary applications, notices, petitions, filings and other documents, and shall exercise Commercially Reasonable Efforts to obtain (and will cooperate with NEITC in obtaining) any consent, acquiescence, authorization, order or approval of, or any exemption or nonopposition by, any Governmental Authority required to be obtained or made by the ISO in connection with this Agreement or the taking of any action contemplated by this Agreement.

(b) The ISO shall exercise Commercially Reasonable Efforts to obtain consents of all other third parties necessary to performance of this Agreement by the ISO. The ISO shall promptly notify NEITC of any failure or anticipated failure to obtain any such consents and, if requested by NEITC, shall provide copies of all such consents obtained by the ISO.

(c) Nothing in this Section 6.04 shall require the ISO to pay any sums to a third party, including any Governmental Authority, excluding filing fees paid to any Governmental Authority in connection with a filing necessary or appropriate to discharge its obligations hereunder.

6.05 **Notice and Cure.** The ISO shall notify NEITC in writing of, and contemporaneously shall provide NEITC with true and complete copies of any and all information or documents relating to, any event, transaction or circumstance, as soon as practicable after it becomes Known to the ISO, that causes or shall cause any covenant or agreement of the ISO under this Agreement to be breached or that renders or shall render untrue any representation or warranty of the ISO contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. The ISO shall use all Commercially Reasonable Efforts to cure such event, transaction or circumstance as soon as practicable after it becomes Known to the ISO. No notice given pursuant to this Section 6.05 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or shall in any way limit any right of NEITC to seek indemnity under Article IX.

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## ARTICLE VII

### TAX MATTERS

7.01 **Responsibility for NEITC Taxes.** NEITC shall prepare and file all Tax Returns and other filings related to its Transmission Business and Transmission Facilities and pay any Tax liabilities related to its Transmission Business and Transmission Facilities. The ISO shall not be responsible for, or required to file, any Tax Returns or other reports for NEITC and shall have no liability for any Taxes related to NEITC's Transmission Business or Transmission Facilities. The ISO and NEITC hereby agree that, for tax purposes, the Transmission Facilities shall be deemed to be owned by NEITC.

7.02 **Responsibility for ISO Taxes.** The ISO shall prepare and file all Tax Returns and other filings related to its operations and pay any Tax liabilities related to its operations. NEITC shall not be responsible for, or required to, file any Tax Returns or other reports for the ISO and shall have no liability for any Taxes related to the ISO's operations.

## ARTICLE VIII

### RELIANCE; SURVIVAL OF AGREEMENTS

8.01 **Reliance; Survival of Agreements.** Notwithstanding any right of any Party (whether or not exercised) to investigate the accuracy of any of the matters subject to indemnification by any other Party contained in this Agreement, each of the Parties has the right to rely fully upon the representations, warranties, covenants and agreements of the other Party contained in this Agreement. The provisions of Sections 11.01, 11.07, 11.11 and 11.15 and Articles VII and IX shall survive the termination of this Agreement. With regard to Section 3.10 of this Agreement, the ISO will perform final billing consistent with Section 3.10 of this Agreement for all services provided until the Termination Date.

## ARTICLE IX

### INDEMNIFICATION; INSURANCE; LIMITATION OF LIABILITIES

9.01 **Indemnification.**

(a) Subject to Section 9.06(b) through 9.06(d), (i) NEITC shall release, indemnify, and hold harmless the ISO from and against any and all damages, losses, liabilities, obligations, claims, demands, suits, proceedings, recoveries, judgments, settlements, costs and expenses, court costs, attorney fees, and all other obligations (each, an "Indemnifiable Loss")

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asserted against the ISO by a Person that is not a Party to this Agreement (a “Third Party”) including but not limited to any action by a NEITC employee, to the extent alleged to result from, arise out of or be related to NEITC’s acts or omissions that give rise to such Indemnifiable Loss; and (ii) the ISO shall release, indemnify, and hold harmless NEITC from and against any Indemnifiable Loss asserted against NEITC by a Third Party, including but not limited to any action by an ISO employee, to the extent alleged to result from, arise out of or be related to the ISO’s acts or omissions that give rise to such Indemnifiable Loss, including an ISO directive and/or instructions to a Party.

(b) The indemnification by the ISO set forth in Section 9.01(a)(ii) above shall be limited to the extent that the liability of NEITC would be limited by any applicable Law and arises from a claim by (i) NEITC in its role as a Transmission Customer or (ii) a customer of NEITC.

(c) NEITC shall release, indemnify, and hold harmless the ISO from and against any Environmental Damages that the ISO becomes subject to as a result of its exercise of Operational Authority over the Transmission Facilities, to the extent such Environmental Damages arose prior to the Operations Date or did not result from the ISO’s acts or omissions.

(d) NEITC and/or the ISO each hereby (i) waives any defense or immunity it might otherwise have under applicable workers’ compensation laws or any other statute, or judicial decision, disallowing or limiting such indemnification and (ii) consents to a cause of action for indemnity and/or contribution in connection with such indemnification.

9.02 **Notice of Proceedings.** Each party entitled to receive indemnification under this Agreement (each, an “Indemnitee”) shall promptly notify the party who holds an indemnification obligation hereunder (in each case, the “Indemnifying Party”) of any Indemnifiable Loss in respect of which such Indemnitee is or may be entitled to indemnification pursuant to Section 9.01. Such notice shall be given as soon as reasonably practicable after the Indemnitee becomes aware of the Indemnifiable Loss and that any such claim or proceeding may give rise to an indemnification obligation hereunder. Such notice shall describe the nature of the loss or proceeding in reasonable detail and shall indicate, if practicable, the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The delay or failure of such Indemnitee to provide the notice required pursuant to this Section 9.02 shall not release the Indemnifying Party from any indemnification obligation which it may have to such Indemnitee except (a) to the extent that such failure or delay materially and adversely affects the Indemnifying Party’s ability to defend such action or increases the amount of the Indemnifiable Loss, and (b) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnitee in the defense of the claim, suit, action or proceeding during such period of failure or delay.

9.03 **Defense of Claims.**

(a) Unless and until the Indemnifying Party (i) acknowledges in writing its obligation within ten (10) calendar days of the Indemnitee's notice of a claim, suit, action or proceeding, and (ii) assumes control of the defense of such claim, suit, action or proceeding in accordance with Section 9.03(b), the Indemnitee shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Indemnitee in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

(b) Upon acknowledging in writing its obligation to indemnify an Indemnitee to the extent required pursuant to this Article IX and paying all reasonable costs incurred by such Indemnitee in its defense, including reasonable attorney's fees, the Indemnifying Party shall be entitled, at its option (subject to Section 9.03(d)), to assume and control the defense of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior reasonable approval of the Indemnitee.

(c) Neither the Indemnifying Party nor the Indemnitee shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other; provided, however, that such consent shall not be unreasonably withheld.

(d) Following the acknowledgment of the indemnification and the assumption of the defense by the Indemnifying Party pursuant to Section 9.03(b), the Indemnitee shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnitee, when and as incurred, unless: (i) the employment of counsel by such Indemnitee has been authorized in writing by the Indemnifying Party; (ii) the Indemnitee shall have reasonably concluded and specifically notified the Indemnifying Party that there may be a conflict of interest between the Indemnifying Party and the Indemnitee in the conduct of the defense of such action; (iii) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnitee to assume the defense of such action and shall have been so notified by the Indemnitee; (iv) the Indemnitee shall have reasonably concluded and specifically notified the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those

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available to the Indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon the Indemnitee beyond the scope of this Agreement; or (v) the Indemnifying Party shall not have taken reasonable steps necessary to defend diligently such action within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps. If clause (ii), (iii), (iv) or (v) of the preceding sentence shall be applicable, then counsel for the Indemnitee shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnitee and the reasonable fees and disbursements of such counsel shall constitute indemnifiable legal or other expenses hereunder.

(e) If the amount of any Indemnifiable Loss incurred by an Indemnitee, at any time subsequent to the making of an indemnity payment by an Indemnifying Party in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the Prime Rate) shall promptly be repaid by the Indemnitee to the Indemnifying Party. In the event that the claim, demand or suit giving rise to an Indemnifiable Loss is ultimately adjudicated, if a Final Order confirms that the Indemnitee was not entitled to indemnification hereunder, then the amount advanced by the Indemnifying Party in respect of such Indemnifiable Loss (together with interest thereon from the date of payment thereof at the Prime Rate) shall promptly be paid by the Indemnitee to the Indemnifying Party.

9.04 **Subrogation.** Upon payment of any indemnification by a party pursuant to this Article IX, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the Indemnitee may have relating thereto, and such Indemnitee shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

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9.05 **Insurance.**

(a) The ISO shall at all times, at its own cost and expense, carry and maintain or cause to be carried and maintained throughout the Term: (i) liability and errors and omissions insurance (including blanket coverage for contractual liability), insuring the ISO against liability for injury or death to persons, damage to property and environmental restoration, (ii) worker's compensation insurance, (iii) property insurance and (iv) directors' and officers' insurance. The amount of the insurance coverages and deductibles shall generally be comparable to other independent system operators or RTOs, taking into consideration the relative size of the ISO and its contractual and tariff liabilities as compared to the other system operators or RTOs administering similar market structures. In assessing the comparable coverages and deductibles, the ISO may rely on the advice of its insurance consultants.

(b) NEITC will maintain property insurance on its Transmission Facilities and liability insurance in accordance with good utility practice.

(c) All insurance required under this Section 9.05 by outside insurers shall be maintained with insurers qualified to insure the obligations or liabilities under this Agreement and having a Best's rating of at least B+ VIII (or an equivalent Best's rating from time to time of B+ VIII), or in the event that from time to time Best's ratings are no longer issued with respect to insurers, a comparable rating by a nationally recognized rating service or such other insurers as may be agreed upon by the Parties.

(d) NEITC shall be listed as an additional insured party on the liability and errors and omissions insurance required to be maintained by the ISO and the ISO shall be listed as an additional insured party on the liability insurance maintained by NEITC. Upon execution of this Agreement, and when requested thereafter, each Party shall furnish the other Party with certificates of all such insurance policies setting forth the amounts of coverage, policy numbers, and date of expiration for such insurance in conformity with the requirements of this Agreement.

(e) The insurance policies maintained by the ISO hereunder shall not be canceled, terminated or the terms thereof modified or amended without at least thirty (30) days' prior notice to NEITC.

(f) If any insurance policy required to be maintained by the ISO hereunder shall not be available to the ISO on a commercially reasonable basis (taking into account both terms and premiums), the ISO shall obtain a written report of an independent insurance advisor of recognized national standing, chosen by NEITC and reasonably acceptable to the ISO, confirming in reasonable detail that such insurance policy, in respect of amount or scope of coverage, is not available on a commercially reasonable basis from insurers of recognized standing. During any period with respect to which any insurance policy required by this

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Agreement is not commercially available, the ISO shall nevertheless maintain insurance that approximates such required insurance policy as closely as commercially practical, to the extent it is available on a commercially reasonable basis from insurers of recognized standing. If any insurance policy which was previously not held or discontinued because of its commercial unavailability later becomes available on a commercially reasonable basis, the ISO shall obtain or reinstate such insurance.

9.06 **Assumption of Liability.**

(a) (i) NEITC shall be liable to the ISO, and the ISO shall be liable to NEITC, for losses, liabilities, damages, diminution in value, obligations, claims, proceedings, fines, deficiencies and expenses (collectively, "Losses") caused by such Party's grossly negligent acts or omissions or willful misconduct (including the grossly negligent acts or omissions or willful misconduct of such Party's directors, Affiliates, members, officers, employees, agents, and contractors) in connection with the performance of such Party of its obligations under this Agreement; and (ii) neither Party shall be liable to the other Party for any incidental, indirect, special, exemplary, punitive or consequential damages, including lost revenues or profits, even if such damages are foreseeable or the damaged Party has advised such Party of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy. The foregoing limitations shall not apply to the right of the Parties to seek indemnification under this Agreement in accordance with Section 9.01.

(b) Nothing in this Agreement shall be deemed to affect the right of the ISO to recover its costs due to liability under this Article IX through the ISO Participants Agreement or the ISO Administrative Tariff.

(c) The ISO shall not be liable to NEITC with respect to any damages incurred by it that are directly attributable to the ISO's reliance on facility ratings established by NEITC.

(d) NEITC shall not be liable to the ISO by reason of this Agreement (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) for: any acts or omissions taken or done in compliance with, or good faith attempts to comply with, the directives and/or instructions of the ISO, except in cases of the gross negligence or willful misconduct of NEITC.

(e) Notwithstanding any of the foregoing, the ISO shall be liable in actual damages for failure to make payments or transfer sums under Section 3.10 of this Agreement if the ISO fails to discharge its obligation to prepare and send bills or to perform its obligations pursuant to Section 3.10 of this Agreement.

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## ARTICLE X

### **TERM; DEFAULT AND TERMINATION**

#### 10.01 **Term; Termination Date.**

(a) **Term.** Subject to the terms set forth in this Section 10.01, the initial term of this Agreement (the "**Initial Term**") shall commence on the Effective Date and shall continue for a period of five years from the Operations Date. Subject to the terms set forth in this Section 10.01, the Initial Term shall be extended automatically for additional two-year periods (each, an "**Additional Term**"). NEITC may withdraw from this Agreement effective at the end of the Initial Term or the end of any Additional Term by providing no less than 180 days' prior notice of such withdrawal to the ISO. Together, the Initial Term and the Additional Term(s), if any, shall constitute the term (the "**Term**") of this Agreement. This Agreement shall terminate automatically on February 1, 2013 if by that date: (i) no New Transmission Facility or Transmission Upgrade that the ISO has indicated that NEITC is to commence planning, designing or constructing is included as "Proposed" or "Planned" in the RSP Project List that is current as of February 1, 2013, and (ii) NEITC has not acquired an Acquired Transmission Facility; provided, however, that this Agreement shall terminate automatically, if not terminated automatically pursuant to the clauses (i) and (ii) above, on February 1, 2018 if a New Transmission Facility or Transmission Upgrade has not gone into service by that date.

(b) **NEITC Withdrawal During The Term.** Subject to Section 10.01(d), NEITC may withdraw from this Agreement at any time during the Term if any of the following shall have occurred:

(i) upon an ISO event of default in accordance with Section 10.03(a), provided that NEITC shall exercise this right in accordance with Section 10.03(b)(i).

(ii) one or more PTOs has given notice of withdrawal from the TOA pursuant to Sections 10.01(b)(ii) or (iii) thereof;

(iv) NEITC has obtained authorization from the FERC to join another RTO or other similar organization (such as an Independent System Operator) in connection with a merger with or acquisition by another entity other than a PTO.

(c) **Termination By the ISO.** The ISO may terminate its obligations under this Agreement and surrender its Operating Authority over the Transmission Facilities if any of the following shall have occurred:

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(i) the withdrawal of one or more PTOs from the Transmission Operating Agreement and the ISO has given notice to the PTOs that it is terminating the Transmission Operating Agreement pursuant to Section 10.01(c)(i) thereof.

(ii) FERC issues an order putting into effect material changes in the liability and indemnification protections afforded to the ISO under this Agreement or the ISO OATT, provided that: (A) withdrawal pursuant to this provision shall require notice to NEITC not less than 180 days prior to the Termination Date established pursuant to Section 10.01(d); and (B) the ISO shall be required to rescind such notice if FERC issues a subsequent order prior to the Termination Date so as to eliminate the material changes to such liability and indemnification protections.

(iii) FERC issues an order putting into effect an amendment or modification of this Agreement that materially adversely affects the ISO's ability to carry out its responsibilities under this Agreement, unless the ISO has agreed to such changes in accordance with Section 11.04, provided that: (A) withdrawal pursuant to this provision shall require notice to NEITC not less than 180 days prior to the Termination Date established pursuant to Section 10.01(d); and (B) the ISO shall be required to rescind such notice if FERC issues a subsequent order prior to the Termination Date so as to eliminate the material adverse effect to the ISO's ability to carry out its responsibilities under this Agreement.

(iv) upon a NEITC event of default in accordance with Section 10.04(a), provided that the ISO shall exercise this right in accordance with Section 10.04(b)(i).

(d) Actions Prior To Withdrawal or Termination. Upon submission of a written notice of termination or withdrawal by a Party, if NEITC has Transmission Facilities, the Party submitting such notice shall commence the development of a plan under which Operating Authority shall be transferred from the ISO to another entity. The Termination Date with respect to NEITC or the ISO shall not occur until both: (a) the ISO and NEITC and all affected PTOs have agreed upon a plan addressing the technical, operational and market issues associated with the transfer of Operating Authority in connection with such termination or withdrawal and such plan has been implemented, provided that: (i) if the Parties are unable to reach agreement on such plan any affected Party shall have the right to submit the matter to FERC for resolution without additional negotiation under Section 11.12; (ii) with respect to a withdrawal pursuant to Section 10.01(a), NEITC shall not be required to remain a Party to this Agreement for longer than one year after providing notice of withdrawal; and (iii) in the event of a default by the ISO,

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NEITC may require that the ISO immediately make arrangements for the orderly transfer of the ISO's invoicing and collection functions with respect to NEITC prior to the Termination Date in accordance with Section 10.03(b); and (b) all required regulatory approvals, if any, have been obtained for such withdrawal or termination, including any approvals required pursuant to Section 10.01(e).

(e) Approvals. Notwithstanding any other provision contained herein or in any other document to the contrary, any termination or withdrawal requested under this Section 10.01 shall be effective: (i) unless a party to this Agreement seeking to challenge the request demonstrates that the requested termination or withdrawal is contrary to the public interest under the Mobile-Sierra Doctrine and (ii) subject to the FERC's determination under Section 205 of the Federal Power Act that the termination or withdrawal is just, reasonable and not unduly discriminatory or preferential. If NEITC has Transmission Facilities at the time of termination or withdrawal, NEITC, on exercising its right to withdraw or terminate in accordance with this Section 10.01, shall file with the FERC, pursuant to Section 205 of the FPA, the tariffs and rate schedules applicable to transmission service over the Transmission Facilities to become effective upon such termination or withdrawal.

(f) Continuing Obligations. The withdrawing or terminating Party shall have the following continuing obligations following withdrawal from this Agreement:

(i) All financial obligations incurred and payments applicable to the time period prior to the Termination Date shall be honored by the terminating or withdrawing Party and the other Party in accordance with the terms of this Agreement, and each Party shall remain liable for all obligations arising hereunder prior to the Termination Date.

(ii) NEITC shall file a replacement transmission tariff to replace its rate schedule under the ISO OATT, unless FERC rules no longer require the filing of such a tariff.

#### 10.02 Release of Operating Authority.

(a) Upon the Termination Date, the ISO's right and obligation to exercise Operating Authority over the Transmission Facilities of NEITC shall promptly cease, and, in accordance with Section 10.01, the ISO shall be deemed to have released and returned, and NEITC (or its designee) shall have assumed, Operating Authority over such Transmission Facilities on the Termination Date.

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(b) After the Termination Date, the ISO shall take Commercially Reasonable Efforts to assist NEITC or its designee in resuming performance of the functions comprising Operating Authority.

### 10.03 Events of Default of the ISO.

(a) Events of Default of the ISO. Subject to the terms and conditions of this Section 10.03, the occurrence of any of the following events shall constitute an event of default of the ISO under this Agreement:

(i) Failure by the ISO to perform any material obligation set forth in this Agreement and continuation of such failure for longer than thirty (30) days after the receipt by the ISO of written notice of such failure from NEITC; provided, however, that if the ISO is diligently pursuing a remedy during such thirty (30) day period, said cure period shall be extended for an additional thirty (30) days or as otherwise agreed by NEITC;

(ii) If there is a dispute between the ISO and NEITC as to whether the ISO has failed to perform a material obligation, the cure period(s) provided in Section 10.03(a)(i) above shall run from the point at which a finding of failure to perform has been made by a Governmental Authority;

(iii) Any attempt (not including consideration of strategic options or entering into exploratory discussions) by the ISO to transfer an interest in, or assign its obligations under, this Agreement, except as otherwise permitted hereunder;

(iv) Failure of the ISO (if it has received the necessary corresponding funds from ISO customers) to pay when due any and all amounts payable to NEITC by the ISO as part of the settlement process pursuant to Section 3.10 within three (3) Business Days;

(v) Failure of the ISO to pay when due any other amounts payable to NEITC by the ISO pursuant to this Agreement within thirty (30) days of the due date;

(vi) The exercise of Operating Authority or other responsibilities under this Agreement in a manner that results in a material amount of damage to or the destruction of the Transmission Facilities due to the willful misconduct or gross negligence of the ISO or the repeated and persistent exercise by the ISO of its Operating Authority in a manner that subjects Transmission Facilities to the significant risk of a material amount of damage, provided that exercise by the ISO of its Operating Authority over any Transmission Facility both in accordance with the Operating Procedures and within the ratings established by NEITC for such Transmission Facility shall not be considered to subject such Transmission Facility to risk of damage and further provided that nothing in this Section 10.03(a)(vi) shall be deemed to excuse the ISO from complying with its obligations under this Agreement or to limit the other events of default specified in this Section 10.03(a).

(vii) With respect to the ISO, (A) the filing of any petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws, (B) assignment by the ISO for the benefit of creditors; or (C) allowance by the ISO of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within thirty (30) days after such appointment.

(b) Remedies for Default. If an event of default by the ISO occurs, NEITC shall have the right to avail itself of any or all of the following remedies, all of which shall be cumulative and not exclusive:

(i) To terminate its participation in this Agreement in accordance with Section 10.01(b); provided that if the ISO contests such allegation of an ISO event of default, this Agreement shall remain in effect pending resolution of the dispute, but any applicable notice period shall run during the pendency of the dispute;

(ii) To demand that the ISO shall immediately make arrangements for the orderly transfer of Operating Authority over the Transmission Facilities and assist NEITC or NEITC's designee in resuming performance of the functions comprising Operating Authority, provided that: (A) NEITC shall not be liable for the reimbursement of the ISO for any costs and expenses incurred by the ISO in

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connection therewith; (B) the ISO and NEITC shall agree upon a plan addressing the technical and operational issues associated with such transfer of Operating Authority, and such plan has been implemented; and (C) if the Parties are unable to reach agreement on such plan, either Party shall have the right to submit the matter to FERC for resolution without additional negotiation under Section 11.12;

(iii) To demand that the ISO shall terminate any right of the ISO, immediately make arrangements for the orderly transfer of the ISO's invoicing and collection functions with respect to NEITC and assist NEITC or NEITC's designee in resuming performance of the functions the later of 20 days from the date of making such demand or the start of the next billing cycle.

(iv) To make any payment or perform or comply with any agreement that the ISO shall be obligated to pay, perform or comply with under this Agreement and the amount of reasonable expenses (including attorneys' fees and any other reasonable professionals' fees and expenses) of NEITC incurred in connection with such payment or the performance of or compliance with any such agreement shall be payable by the ISO upon demand;

(v) To obtain such specific performance and/or an injunction to prevent breaches of this Agreement and to enforce specifically the terms and conditions hereof; and/or

(vi) To obtain damages pursuant to the indemnity provisions of Sections 9.01 and 9.06 and for non-performance of invoicing/payment obligations under Section 3.10 of this Agreement.

#### 10.04 **Events of Default of NEITC.**

(a) Events of Default of NEITC. Subject to the terms and conditions of this Section 10.04, the occurrence of any of the events listed below shall constitute an event of default of NEITC under this Agreement (in each instance, a "NEITC Default"):

(i) Failure by NEITC to perform any material obligation set forth in this Agreement and continuation of such failure for longer than thirty (30) days after the receipt by NEITC of written notice of such failure from the ISO, provided, however, that if NEITC is diligently pursuing a remedy during such thirty (30) day period, said cure period shall be extended for an additional thirty (30) days or as otherwise agreed by the ISO and NEITC;

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(ii) If there is a dispute between NEITC and the ISO as to whether NEITC has failed to perform a material obligation, the cure period(s) provided in Section 10.04(a)(i) above shall run from the point at which a finding of failure to perform has been made by a Governmental Authority;

(iii) With respect to NEITC, (A) the filing of any petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws, (B) assignment by NEITC for the benefit of creditors; or (C) allowance by NEITC of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within thirty (30) days after such appointment; or

(iv) Failure of NEITC to pay when due any amounts payable to the ISO by NEITC pursuant to this Agreement within thirty (30) days of the due date.

(b) Remedies for Default. If an event of default by NEITC occurs, the ISO shall have the following remedies, all of which shall be cumulative and not exclusive:

(i) terminate this Agreement with respect to NEITC in accordance with Section 10.01(c); provided that if NEITC contests such allegation of an NEITC event of default, this Agreement shall remain in effect pending resolution of the dispute, but any applicable notice period shall run during the pendency of the dispute;

(ii) such specific performance and/or an injunction to prevent breaches of this Agreement and to enforce specifically the terms and conditions hereof; or

(iii) obtain damages pursuant to the indemnity provisions of Sections 9.01 and 9.06.

(c) Notwithstanding anything to the contrary herein, nothing in this Section 10.04 shall be deemed to give the ISO or any ISO agent or designee the right to exercise any functions other than those enumerated as Operating Authority in Section 3.02 or the right to take physical control of any NEITC facilities.

#### 10.05 Transitions.

(a) Disbursement Agreement. Because NEITC has been determined by the Federal Energy Regulatory Commission in Docket No, EL07-21-000 to meet the independence

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and capability requirements for an ITC set forth in Attachment M to the ISO OATT, upon issuance of a final order from the FERC accepting this Agreement for filing under Section 205 of the Federal Power Act, NEITC shall promptly execute a signature page for the Disbursement Agreement and deliver it to the parties thereto and shall become a party to the Disbursement Agreement.

(b) Transmission Operating Agreement. On the date on which (1) a New Transmission Facility is placed into service or (2) NEITC's acquisition of Acquired Transmission Facilities is consummated, whichever occurs earlier, NEITC shall execute and deliver to the ISO a counterpart of the Transmission Operating Agreement as an Additional PTO (as defined therein), and if the Transmission Operating Agreement at that time prohibits an Independent Transmission Company from becoming a party to the Transmission Operating Agreement then NEITC will relinquish its status as an Independent Transmission Company under, and as defined in, the Transmission Operating Agreement. Upon such execution and delivery, this Agreement shall terminate automatically, and the Parties will have no obligations under Section 10.01(d) in connection with that transition.

## ARTICLE XI

### MISCELLANEOUS

11.01 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing and any such communication or notice shall become effective (a) upon personal delivery thereof, including by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by facsimile, upon receipt thereof; provided that such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to the relevant party and copy party hereto at its address set forth in Schedule 11.01 or at such other address as such party or copy party may from time to time designate by written notice to the other party hereto; further provided that a notice given in connection with this Section 11.01 but received on a day other than a Business Day, or after business hours in the situs of receipt, will be deemed to be received on the next Business Day.

11.02 Supersession of Prior Agreements. With respect to the subject matter hereof, this Agreement (together with all schedules and exhibits attached hereto) constitutes the entire agreement and understanding among the Parties with respect to all subjects covered by this Agreement and supersedes all prior discussions, agreements and understandings among the Parties with respect to such matters.

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11.03 **Waiver.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by a Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, shall be cumulative and not alternative.

11.04 **Amendment; Limitations on Modifications of Agreement.**

(a) This Agreement shall only be subject to modification or amendment by agreement of the Parties and the acceptance of any such amendment by FERC.

(b) In light of the foregoing, the Parties agree that they shall not rely to their detriment on any purported amendment, waiver or other modification of any rights under this Agreement unless the requirements of this Section 11.04 are satisfied and further agree not to assert equitable estoppel or any other equitable theory to prevent enforcement of this provision in any court of law or equity, arbitration or other proceeding.

(c) Absent the agreement of the Parties to any proposed change hereof or an amendment hereof pursuant to Section 11.04(a), the standard of review for changes to the following sections of this Agreement (or changes to any schedules associated with such sections) proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review under the Mobile-Sierra Doctrine: 2.01, 2.04, 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, 3.07, 3.09, 3.10, 3.12, 4.01(e), 9.01, 9.06, 10.02, 10.03, 10.04, 11.04(a) - (d), 11.06, 11.15, and Article I, as it applies to the foregoing sections. Absent the agreement of the Parties to any proposed change hereof or an amendment hereof pursuant to Section 11.04(a), with respect to changes to the remaining provisions of this Agreement proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting sua sponte, the standard of review shall be that provided under Section 206 of the Federal Power Act.

(d) Notwithstanding the Parties' rights under Section 3.04 hereof, neither the ISO nor NEITC shall propose to modify or amend the ISO OATT nor any other tariff, rate schedule, procedure, protocol, or agreement applicable to the ISO or NEITC in any manner that would limit, alter, or adversely affect the rights and responsibilities of the other Party under this Agreement or that would otherwise be inconsistent with the provisions of this Agreement unless: (i) NEITC and the ISO have entered into a prior written agreement to make corresponding modifications to this Agreement in accordance with this Section 11.04, or (ii) if corresponding modifications to the provisions of this Agreement enumerated in Section 11.04(c) above are required, the proposing Party also requests FERC to find (or FERC has already so found) that the corresponding modifications are required under the "public interest" standard of review under the

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Mobile-Sierra Doctrine or (iii) if corresponding modifications to the provisions of this Agreement are required, the proposing Party also requests FERC to find (or FERC has already so found) that the corresponding modifications are required under the standard of review under Section 206 of the Federal Power Act.

(e) The Parties shall notify stakeholders of proposed amendments to this Agreement by posting such amendments on the ISO website prior to the filing of such amendments with FERC and shall consider stakeholder input concerning such proposed amendments.

**11.05 No Third Party Beneficiaries.** Except as provided in Article IX, it is not the intention of this Agreement or of the Parties to confer a third party beneficiary status or rights of action upon any Person or entity whatsoever other than the Parties and nothing contained herein, either express or implied, shall be construed to confer upon any Person or entity other than the Parties any rights of action or remedies either under this Agreement or in any manner whatsoever.

**11.06 No Assignment; Binding Effect.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned by a Party-, (including by operation of law) law (an "Assignment")-, without the prior written consent of the other Party in its sole discretion and any attempt at Assignment in contravention of this Section 11.06 shall be void, provided, however, that NEITC may assign its rights and interests hereunder as security in connection with any financing for the construction or operation of NEITC's Transmission Facilities (a "Collateral Assignment") without prior written consents or approvals. NEITC may assign or transfer any or all of its rights, interests and obligations hereunder upon the transfer of its assets through sale, reorganization, or other transfer, provided that:

(a) NEITC's successors and assigns shall agree to be bound by the terms of this Agreement except that NEITC's successors and assigns shall not be required to be bound by any obligations hereunder to the extent that NEITC has agreed to retain such obligations; and

(b) notwithstanding (a), NEITC shall assign or transfer to any new owner of Transmission Facilities subject to this Agreement all of the rights, responsibilities and obligations associated with the physical operation of such Transmission Facilities as well as all of the rights, responsibilities and obligations associated with the ISO's Operating Authority with respect to such Transmission Facilities, further provided that the new owner shall have the right to retain one or more subcontractors to perform any or all of its responsibilities or obligations under this Agreement.

Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective permitted successors and assigns. No Assignment shall be effective until NEITC receives all required regulatory approvals for such Assignment.

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11.07 **Further Assurances; Information Policy; Access to Records.**

(a) Each Party agrees, upon the other Party's request, to make Commercially Reasonable Efforts to execute and deliver such additional documents and instruments, provide information, and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and of the transactions contemplated hereby.

(b) The ISO shall, upon NEITC's request, make available to NEITC any and all information within the ISO's custody or control that is necessary for NEITC to perform its responsibilities and obligations or enforce its rights under this Agreement, provided that such information shall be made available to NEITC only to the extent permitted under the ISO Information Policy and subject to any applicable restrictions in the ISO Information Policy, including provisions of the ISO Information Policy governing the confidential treatment of non-public information, and provided further that any NEITC employee or employee of NEITC's Local Control Center shall comply with such ISO Information Policy and any applicable standards of conduct to prevent the disclosure of such information to any unauthorized Person. Any dispute concerning what information is necessary for NEITC to perform its responsibilities and obligations or enforce its right under this Agreement shall be subject to dispute resolution under Section 11.12 of this Agreement.

(c) NEITC shall, upon the ISO's request, make available to the ISO any and all information within NEITC's custody or control that is necessary for the ISO to perform its responsibilities and obligations or enforce its rights under this Agreement, provided that such information shall be made available to the ISO only to the extent permitted under the ISO Information Policy and subject to any applicable restrictions in the ISO Information Policy, including provisions of the ISO Information Policy governing the confidential treatment of non-public information, and provided further that any ISO employee shall comply with such ISO Information Policy and any applicable standards of conduct to prevent the disclosure of such information to any unauthorized Person. Any dispute concerning what information is necessary for the ISO to perform its responsibilities and obligations or enforce its right under this Agreement shall be subject to dispute resolution under Section 11.12 of this Agreement.

(d) If, in order to properly prepare its Tax Returns, other documents or reports required to be filed with Governmental Authorities or its financial statements or to fulfill its obligations hereunder, it is necessary that the ISO or NEITC be furnished with additional information, documents or records not referred to specifically in this Agreement, and such information, documents or records are in the possession or control of the other Party, the other Party shall use its best efforts to furnish or make available such information, documents or records (or copies thereof) at the ISO's or NEITC's request, cost and expense. Any information obtained by the ISO or NEITC in accordance with this paragraph shall be subject to any applicable provisions of the ISO Information Policy.

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(e) Notwithstanding anything to the contrary contained in this Section 11.07:

(i) no Party shall be obligated by this Section 11.07 to undertake studies or analyses that such Party would not otherwise be required to undertake or to incur costs outside the normal course of business to obtain information that is not in such Party's custody or control at the time a request for information is made pursuant to this Section 11.07;

(ii) if NEITC and the ISO are in an adversarial relationship in litigation or arbitration (other than with respect to litigation or arbitration to enforce this Section 11.07), the furnishing of information, documents or records by the ISO or NEITC in accordance with this Section 11.07 shall be subject to applicable rules relating to discovery;

(iii) no Party shall be compelled to provide any privileged and/or confidential documents or information that are attorney work product or subject to the attorney/client privilege; and

(iv) no Party shall be required to take any action that impairs or diminishes its rights under this Agreement or otherwise lessens the value of this Agreement to such Party.

11.08 **Business Day.** Notwithstanding anything herein to the contrary, if the date on which any payment is to be made pursuant to this Agreement is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such scheduled date and, provided such payment is made on such succeeding Business Day, no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

11.09 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware including all matters of construction, validity and performance without regard to the conflicts-of-laws provisions thereof.

11.10 **Consent to Service of Process.** Each of the Parties hereby consents to service of process by registered mail, Federal Express or similar courier at the address to which notices to it are to be given, it being agreed that service in such manner shall constitute valid service upon such Party or its successors or assigns in connection with any such action or proceeding; provided, however, that nothing in this Section 11.10 shall affect the right of any Party or its successors and permitted assigns to serve legal process in any other manner permitted by applicable Law or affect the right of any such Party or its successors and assigns to bring any action or proceeding against the other Party or its property in the courts of other jurisdictions.

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11.11 **Specific Performance; Force Majeure.**(a) **Specific Performance.** The Parties specifically acknowledge that a breach of this Agreement, whether or not an Event of Default, and notwithstanding any cure period in Section 10.03(a) or 10.04(a), would cause the non-breaching Party to suffer immediate and irreparable harm due to the unique relationship of the Parties. The Parties hereto shall be entitled to seek specific performance and/or an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and conditions hereof in any court of competent jurisdiction, such remedy being in addition to any other remedy to which a Party may be entitled at law or in equity.

(b) **Force Majeure.** A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials (not including as a result of non-payment), act of the public enemy or terrorists, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes (not including a lack of funds or other financial causes) beyond such Party's reasonable control, including any order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities. A Party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except that the settlement of any labor disturbance shall be in the sole judgement of the affected Party.

11.12 **Dispute Resolution.** The Parties agree that any dispute arising under this Agreement shall be the subject of good-faith negotiations among the Parties and affected market participants, if any. Each Party and each affected market participant shall designate one or more representatives with the authority to negotiate the matter in dispute to participate in such negotiations. The Parties and affected market participants shall engage in such good-faith negotiations for a period of not less than 60 calendar days, unless: (a) a Party or market participant identifies exigent circumstances reasonably requiring expedited resolution of the dispute by FERC or a court or agency with jurisdiction over the dispute; or (b) the provisions of this Agreement otherwise provide a Party the right to submit a dispute directly to FERC for resolution. Any other dispute that is not resolved through good-faith negotiations may, by a Party or any market participant, be submitted for resolution by FERC or a court or agency with jurisdiction over the dispute upon the conclusion of such negotiations. A Party or market participant may request that any dispute submitted to FERC for resolution be subject to FERC settlement procedures. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to arbitration or any other form of alternative dispute resolution upon the agreement of the Parties and all affected market participants to participate in such an alternative dispute resolution process.

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11.13 **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (d) the court holding such provision to be illegal, invalid or unenforceable may in lieu of such provision add as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as it deems appropriate.

11.14 **Headings and Table of Contents.** The headings of the sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

11.15 **Liabilities; No Joint Venture.**

(a) The obligations and liabilities of the ISO and NEITC arising out of or in connection with this Agreement shall be several, and not joint, and each Party shall be responsible for its own debts, including Taxes. No Party shall have the right or power to bind any other Party to any agreement without the prior written consent of such other Party. The Parties do not intend by this Agreement to create nor does this Agreement constitute a joint venture, association, partnership, corporation or an entity taxable as a corporation or otherwise. No express or implied term, provision or condition of this Agreement shall be deemed to constitute the parties as partners or joint venturers.

(b) To the extent any Party has claims against the other Party, such Party may only look to the assets of the other Party for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees, affiliates, or agents of such other Party who, each Party acknowledges and agrees, have no liability, personal or otherwise, by reason of their status as directors, members, officers, employees, affiliates, or agents of that Party, with the exception of fraud or willful misconduct.

11.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. The parties hereto agree that any document or signature delivered by facsimile transmission shall be deemed an original executed document for all purposes hereof.

11.17 **Conditions Precedent.** Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be effective as set forth in Section 11.18 with respect to any Party unless all of the conditions precedent set forth in this Section 11.17 shall have been satisfied or waived.

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(a) **Required Regulatory Approvals.** All final required regulatory approvals shall have been obtained and be in full force and effect and shall not be subject to the satisfaction of any condition or conditions that, if accepted, would: (i) in the case of NEITC, in the reasonable judgment of NEITC, in the aggregate have a material adverse effect on the value of its Transmission Facilities, its expected level of transmission revenues, or its electric utility business, revenues, or financial condition, unless NEITC waives said condition, provided however, that with respect to any required regulatory approval obtained from a Governmental Authority of a State, the condition set forth in this clause shall apply only if NEITC operates its Transmission Business within such State; and (ii) in the case of the ISO, in its reasonable judgment, have a material adverse effect on the ISO's ability to perform its obligations under this or any other agreement to which it is subject, unless the ISO waives such condition.

(b) **Board Consent.** The board of directors of each Party, in its sole discretion, shall have authorized and approved such Party's executing, delivering and performing this Agreement.

(c) **Additional Conditions Precedent.** Additional conditions precedent are listed on Schedule 11.17(c).

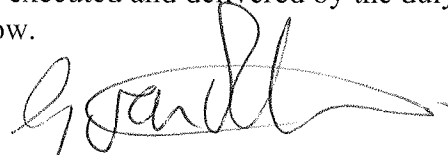
#### 11.18 **Effective Dates**

(a) Except for Sections 2.01-2.05, 2.07, 3.01-3.06, 3.08, 3.10, 4.01(e), Articles V, VI and IX, this Agreement shall be effective upon the date last signed below (the "Effective Date").

(b) The Sections and Articles excepted in subsection (a), above, shall become effective upon the earlier of the date on which the ISO lists an NEITC regulated transmission project as "Proposed" on an RSP Project List or the date on which NEITC acquires Acquired Transmission Facilities.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date written below.



**For ISO New England Inc.**


Name: G van Wehe

Title: President + CEO

Date: 3/23/2010

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**For New England Independent Transmission  
Company, L.L.C.**

Name: 

Title: Chairman

Date: March 23, 2010

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Issued by: Raymond W. Hepper, ISO-NE Issuing Officer  
Stephen A. Conant, NEITC Issuing Officer  
Issued on: March 26, 2010

Effective: March 23, 2010

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## **Schedule 1.01**

### **Schedule of Definitions**

**Acquired Transmission Facilities.** Any transmission facility acquired within the New England Control Area by NEITC after the Operations Date that meets the classification standards set forth in Section 2.02(a).

**Additional Term.** “Additional Term” shall have the meaning ascribed thereto in Section 10.01(a) of this Agreement.

**Affiliate.** Any person or entity which controls, is controlled by, or is under common control by another person or entity. For purposes of this definition, "control" shall mean the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

**Agreement.** This Operating Agreement between the ISO and New England Independent Transmission Company, LLC, as it may be amended from time to time.

**Ancillary Service.** Those services that are necessary to support the transmission of electric capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with Good Utility Practice.

**Approved Outages.** “Approved Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

**ATC.** Available Transfer Capability.

**Best's.** The A.M. Best Company.

**Business Day.** Any day other than a Saturday or Sunday or an ISO holiday, as posted by the ISO on its website.

**Commercially Reasonable Efforts.** A level of effort which, in the exercise of prudent judgment in the light of facts or circumstances known or which should reasonably be known at the time a decision is made, can be expected by a reasonable person to accomplish the desired result in a manner consistent with Good Utility Practice and which takes the performing party's interests into consideration. "Commercially Reasonable Efforts" will not be deemed to require a Person to undertake unreasonable measures or measures that have a significant adverse economic affect on such Person, including the payment of sums in excess of amounts that would be expended in the ordinary course of business for the accomplishment of the stated purpose.

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Commission. The Federal Energy Regulatory Commission.

Control Area. An electric power system or combination of electric power systems, bounded by metering, to which a common automatic generation control scheme is applied in order to:

(a) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(b) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

(c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice and applicable NERC/NPCC Requirements; and

(d) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

Coordination Agreement. An agreement between the ISO and the operator(s) of one or more neighboring Control Areas addressing issues including interchange scheduling, operational arrangements, emergency procedures, energy for emergency and reliability needs, the exchange of information among Control Areas, and other aspects of the coordinated operation of the Control Areas.

Disbursement Agreement. The Rate Design and Funds Disbursement Agreement among NEITC and the PTOs, as amended and restated from time to time.

Effective Date. “Effective Date” shall have the meaning ascribed thereto in Section 11.18(a) of this Agreement.

Elective Transmission Upgrade. A Transmission Upgrade constructed by any Person which is not required to be constructed pursuant to any applicable requirement of this Agreement, but which may be subject to applicable requirements set forth in the ISO OATT and this Agreement.

Elective Transmission Upgrade Applicant. “Elective Transmission Upgrade Applicant” shall have the meaning ascribed thereto in Section 2.05 of this Agreement.

Environment. Soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

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Environmental Damages. “Environmental Damages” shall mean any cost, damages, expense, liability, obligation or other responsibility arising from or under Environmental Law consisting of or relating to:

(a) any environmental matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products);

(b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial or inspection costs and expenses arising under Environmental Law;

(c) financial responsibility under Environmental Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment or other remediation or response actions (“Cleanup”) required by applicable Environmental Law (whether or not such Cleanup has been required or requested by any Governmental Authority or any other Person) and for any natural resource damages; or

(d) any other compliance, corrective, investigative, or remedial measures required under Environmental Law.

Environmental Laws. Any Law now or hereafter in effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the Environment, health or safety or to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

Excluded Assets. “Excluded Assets” shall have the meaning ascribed thereto in Section 2.04 of this Agreement.

Exigent Circumstances. “Exigent Circumstances” shall mean circumstances such that the ISO determines in good faith that (i) failure to immediately implement a proposed Tariff filing authorized under Sections 3.04(c) and 3.04(e) of this Agreement would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures set forth in Sections 3.04(c) and 3.04(e) of this Agreement would not allow for timely redress of the ISO’s concerns.

Existing Operating Procedures. “Existing Operating Procedures” shall have the meaning ascribed thereto in Section 3.02(d) of this Agreement.

External Transactions. Interchange transactions between the New England Transmission System and neighboring Control Areas.

FACTS. Flexible AC Transmission Systems.

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FERC. The Federal Energy Regulatory Commission.

Final Order. An order issued by a Governmental Authority in a proceeding after all opportunities for rehearing are exhausted (whether or not any appeal thereof is pending) that has not been revised, stayed, enjoined, set aside, annulled or suspended, with respect to which any required waiting period has expired, and as to which all conditions to effectiveness prescribed therein or otherwise by law, regulation or order have been satisfied.

Financial Assurances. “Financial Assurances” shall have the meaning ascribed thereto in Section 3.10(b) of this Agreement.

FPA. The Federal Power Act.

FTR. A Financial Transmission Right, as defined in the ISO OATT.

Generally Accepted Accounting Principles. The widely accepted set of rules, conventions, standards, and procedures for reporting financial information, as established by the Financial Accounting Standards Board.

Generating Unit. A device for the production of electricity.

Good Utility Practice. Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority. The government of any nation, state or other political subdivision thereof, including any entity exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government, not including NEITC or the ISO.

Hazardous Materials. Any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

Indemnifiable Loss. “Indemnifiable Loss” shall have the meaning ascribed thereto in Section 9.01(a)(i) of this Agreement.

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Indemnifying Party. “Indemnifying Party” shall have the meaning ascribed thereto in Section 9.02 of this Agreement.

Indemnitee. “Indemnitee” shall have the meaning ascribed thereto in Section 9.02 of this Agreement.

Initial Term. “Initial Term” shall have the meaning ascribed thereto in Section 10.01(a) of this Agreement.

Interconnection Agreement. An agreement or agreements for the interconnection of any entity to the Transmission Facilities of NEITC.

Interconnection Standard. The applicable interconnection standards set forth in the ISO OATT.

Invoiced Amount. “Invoiced Amount” shall have the meaning ascribed thereto in Section 3.10(a)(i) of the Agreement.

ISO. ISO New England Inc., the RTO for New England authorized by the Federal Energy Regulatory Commission to exercise the functions required pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations.

ISO Administrative Charge. “ISO Administrative Charge” shall have the meaning ascribed thereto in Section 3.04(h) of this Agreement.

ISO Control Center. The primary control center established by the ISO for the exercise of its Operating Authority and the performance of functions as an RTO.

ISO Information Policy. The information policy set forth in the ISO OATT.

ISO-NE. ISO New England Inc.

ISO OATT. The ISO Open Access Transmission Tariff, as in effect from time to time.

ISO Participants Agreement. The agreement among the ISO and stakeholder participants addressing, *inter alia*, the stakeholder process for the ISO.

ISO Planning Process. The process set forth in the ISO OATT, for the coordinated planning and expansion of the New England Transmission System with provision for the participation of all state regulatory authorities with jurisdiction over retail rates in the ISO region acceptable to those authorities, which process shall be subject to certain terms and conditions set forth in Schedule 3.09(a).

ISO System Plan. The “Regional System Plan” as defined in the ISO OATT.

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ISO Tariff. The ISO Transmission, Markets and Services Tariff, as amended from time to time, on file with FERC.

Large Generating Facility. “Large Generating Facility” shall have the meaning ascribed thereto in the ISO OATT.

Law. Any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

Load Shedding. The systematic reduction of system demand by temporarily decreasing load.

Local Control Center. The control center(s) established by NEITC in accordance with Section 3.06(a) of this Agreement that are separate from the ISO Control Center and perform certain functions in accordance with this Agreement.

Local Networks. “Local Networks” shall have the meaning ascribed thereto in Section 3.03(e) of this Agreement.

Local Network Service. Network Transmission Service solely over the facilities of NEITC (including facilities leased to NEITC or to which NEITC has contractual entitlements) provided under a FERC-accepted or -approved Local Service Schedule.

Local Point-to-Point Transmission Service. Point-to-point Transmission Service solely over the facilities of NEITC (including facilities leased to NEITC or to which NEITC has contractual entitlements) provided under a FERC-accepted or -approved Local Service Schedule.

Local Service. Transmission Service solely over the facilities of NEITC (including facilities leased to NEITC or to which NEITC has contractual entitlements) provided under a FERC-accepted or -approved Local Service Schedule.

Local Service Schedule. An NEITC-specific rate schedule to the ISO OATT setting forth rates, charges, terms and conditions applicable only to service provided over the Transmission Facilities of NEITC.

Market Monitoring Unit. Any market monitoring unit established by the ISO, including any internal market monitoring unit of the ISO and any independent market monitoring unit of the ISO.

Market Participant Service Agreement. The agreement among the ISO and market participants addressing, *inter alia*, the requirements for participating in the New England Markets.

Market Rules. The rules describing how the New England Markets are administered.

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Merchant Facility. A transmission facility constructed by an entity that assumes all market risks associated with the recovery of costs for the facility and whose costs are not recovered through traditional cost-of-service based rates, but instead are recovered either through negotiated agreements with customers or through market revenues.

Mobile-Sierra Doctrine. The “Mobile-Sierra Doctrine” shall mean the public interest standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

Moratorium Period. “Moratorium Period” shall have the meaning ascribed thereto in Section 3.04(h)(i) of this Agreement.

NEITC Category A Facilities. Those transmission facilities listed in Schedule 2.01(a) of the Agreement, as that list may be modified from time to time in accordance with the terms of this Agreement.

NEITC Category B Facilities. Those transmission facilities listed in Schedule 2.01(b) of the Agreement, as that list may be modified from time to time in accordance with the terms of this Agreement.

NEITC Local Area Facilities. “Local Area Facilities” shall have the meaning ascribed thereto in Section 2.01 of this Agreement.

NEITC Local Restoration Plan. The restoration plan developed by NEITC with respect to the Transmission Facilities.

NERC. The North American Electric Reliability Corporation.

NERC/NPCC Requirements. NPCC criteria, guides, and procedures, NERC reliability standards, and NERC operating policies and planning standards (until such time as they are replaced by NERC reliability standards) and any successor documents.

New England Control Area. The Control Area consisting of the interconnected electric power system or combination of electric power systems in the geographic region consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut and Rhode Island.

New England Markets. Markets or programs (including congestion pricing and design and implementation of FTRs) for the purchase of energy, capacity, ancillary services, demand response services or other related products or services that are offered in the New England Control Area and that are administered by the ISO pursuant to rules, rates, or agreements on file from time to time with the Commission.

New England Transmission System. The system comprised of the transmission facilities over which the ISO has operational jurisdiction, including the Transmission Facilities of NEITC and

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the PTOs and the transmission system of any ITC formed pursuant to Attachment M to the ISO OATT.

New Transmission Facility. Any new transmission facility constructed within the New England Transmission System that is owned by NEITC and that goes into commercial operation after the Effective Date. For the avoidance of doubt, in the case of a high-voltage, direct-current system, a New Transmission Facility shall include the transmission cable and the AC/DC converter stations as a single project.

Non-PTF. “Non-PTF” shall have the meaning ascribed thereto in the ISO OATT.

NPCC. The Northeast Power Coordinating Council.

OASIS. The Open Access Same-Time Information System of the ISO.

Operating Authority. “Operating Authority” shall have the meaning ascribed thereto in Section 3.02 of this Agreement and shall include the responsibilities set forth in Section 3.05.

Operating Limits. The transfer limits for a transmission interface or generation facility.

Operating Procedures. The operating manuals, procedures, and protocols relating to the exercise of Operating Authority over the Transmission Facilities, as such manuals, procedures, and protocols may be modified from time to time in accordance with this Agreement.

Operations Date. February 1, 2005.

Order 2000. FERC’s Order No. 2000, *i.e.*, *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *petitions for review dismissed sub nom.*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 . (D.C. Cir. 2001).

Owed Amounts. “Owed Amounts” shall have the meaning ascribed thereto in Section 3.10(c) of this Agreement.

PARS. Phase angle regulators.

Participant. A participant in the New England Markets, Transmission Customer, or other entity that has entered into the ISO Participants Agreement.

Participants Committee. “Participants Committee” shall mean the stakeholder participants committee established pursuant to the ISO Participants Agreement.

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Party or Parties. A “Party” shall mean the ISO or NEITC, as the context requires. “Parties” shall mean NEITC and the ISO.

Person. An individual, partnership, joint venture, corporation, business trust, limited liability company, trust, unincorporated organization, government or any department or agency thereof, or any other entity.

Planned Outages. “Planned Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

Planning Procedures. The manuals, procedures and protocols for planning and expansion of the New England Transmission System, as such manuals, procedures, and protocols may be modified from time to time in accordance with this Agreement.

Prime Rate. The interest rate that commercial banks charge their most creditworthy borrowers, as published in the most recent Wall Street Journal in its “Monday Rates” column.

PTF. “PTF” shall have the meaning ascribed thereto in the ISO OATT.

PTO or Participating Transmission Owner. “PTO” shall have the meaning ascribed thereto in the opening paragraph of the TOA. “Participating Transmission Owner” shall have the same meaning as “PTO.”

PTO Administrative Committee or PTO AC. “PTO Administrative Committee” or “PTO AC” shall have the meaning ascribed thereto in Section 11.04 of the TOA.

PTO Local Restoration Plan. The restoration plan developed by each PTO with respect to such PTO’s Transmission Facilities.

PTO New Transmission Facilities. “PTO New Transmission Facilities” shall have the meaning ascribed to “Transmission Facilities” in the TOA.

PTO Transmission Upgrades. “PTO Transmission Upgrades” shall have the meaning ascribed to “Transmission Upgrades” in the TOA.

Rating Procedures. “Rating Procedures” shall have the meaning ascribed thereto in Section 3.02(d) of this Agreement.

Regulation and Frequency Response Service. An Ancillary Service as defined in the ISO OATT.

Reliability Authority. “Reliability Authority” shall have the meaning established by NERC, as such definition may change from time to time, provided such definition of Reliability Authority shall not be inconsistent with the specific rights and responsibilities of the ISO and the PTOs under this Agreement.

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Restoration Plans. The System Restoration Plan, all PTO Local Restoration Plans and the NEITC Local Restoration Plan.

RMR. Reliability must run resources.

RSP Project List. “RSP Project List” shall have the meaning ascribed thereto in the ISO OATT.

RTO. An independent entity that complies with Order No. 2000 and FERC’s corresponding regulations (or an entity that complies with all such requirements except for the scope and regional configuration requirements), as determined by the FERC.

Schedule 22 Large Generator Interconnection Agreement. The interconnection agreement included in Schedule 22 of the ISO OATT.

Schedule 23 Small Generator Interconnection Agreement. The interconnection agreement included in Schedule 23 of the ISO OATT.

Scheduled Outages. “Scheduled Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

Small Generating Facility. “Small Generating Facility” shall have the meaning ascribed thereto in the ISO OATT.

System Failure. Widespread telecommunication, hardware or software failure or systemic the ISO hardware or software failures that makes it impossible to receive or process bid information, dispatch resources, or exercise Operating Authority over the Transmission Facilities.

Tax or Taxes. All taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state or local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

Tax Return. Any return, report, information return, or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes.

Technical Committees. “Technical Committee” shall mean the stakeholder technical committees established pursuant to the ISO Participants Agreement.

Term. “Term” shall have the meaning ascribed thereto in Section 10.01(a)(i) of this Agreement.

Third Party. “Third Party” shall have the meaning ascribed thereto in Section 9.01(a) of this Agreement.

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Termination Date. “Termination Date” shall have the meaning ascribed thereto in Section 10.01(c) of this Agreement.

TOA. The Transmission Operating Agreement entered into by the ISO and the PTOs, effective February 1, 2005, as it may be amended from time to time.

Transmission Business. The business activities of each PTO related to the ownership, operation and maintenance of its Transmission Facilities.

Transmission Customer. Any entity taking Transmission Service under the ISO OATT.

Transmission Facilities. “Transmission Facilities” shall have the meaning ascribed thereto in Section 2.01 of this Agreement.

Transmission Owner. “Transmission Owner” shall have the meaning ascribed thereto in the ISO OATT.

Transmission Provider. The ISO, in its capacity as the provider of transmission services over the Transmission Facilities of the PTOs in accordance with FERC’s Order No. 2000 and FERC’s RTO regulations.

Transmission Service. The non-discriminatory, open access, wholesale transmission services provided to customers by the ISO in accordance with the ISO OATT.

Transmission Upgrade. Any upgrade to an existing Transmission Facility owned by NEITC that goes into commercial operation after the Effective Date.

TTC. Total Transfer Capability.

VAR. Volt-Amps Reactive.

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**Schedule 3.02(d)**

**LIST OF EXISTING OPERATING PROCEDURES**

- 1. ISO New England Manual No. 6 -- Financial Transmission Rights**
- 2. ISO New England Manual 11 – Market Operations**
- 3. ISO New England Manual 20 – Installed Capacity**
- 4. ISO New England Manual 27 – Tariff Accounting**
- 5. ISO New England Manual 28 – Market Rule 1 Accounting**
- 6. ISO New England Manual 29 – Billing**
- 7. ISO New England Manual 35 – Definitions and Abbreviations**
- 8. ISO New England Manual 37- Forward Reserve**
- 9. ISO New England Manual – ISO-NE Load Response Program**
- 10. ISO New England Operating Procedure No. 1 “Central Dispatch Operating Responsibility and Authority of ISO New England, the Local Control Centers and Market Participants”**
- 11. ISO New England Operating Procedure No. 2 “Maintenance Of Communications, Computers, Metering, and Computer Support Equipment”**
- 12. ISO New England Operating Procedure No. 3 “Transmission Outage Scheduling”**
- 13. ISO New England Operating Procedure No. 4 “Action During a Capacity Deficiency”**
- 14. ISO New England Operating Procedure No. 5 “Generation Maintenance and Outage Scheduling”**
- 15. ISO New England Operating Procedure No. 6 “System Restoration”**
- 16. ISO New England Operating Procedure No. 7 “Action In An Emergency”**
- 17. ISO New England Operating Procedure No. 8 “Operating Reserve and Regulation”**
- 18. ISO New England Operating Procedure No. 9 “Scheduling and Dispatch of External Transactions”**

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19. **ISO New England Operating Procedure No. 10 “Analysis and Reporting of Power System Emergencies”**
  20. **ISO New England Operating Procedure No. 11 “Black Start Capability Testing Requirements”**
  21. **ISO New England Operating Procedure No. 12 “Voltage and Reactive Control”**
  22. **ISO New England Operating Procedure No. 13 “Standards For Voltage Reduction and Load Shedding Capability”**
  23. **ISO-NE Operating Procedure No. 14 “Technical Requirements for Generation, Dispatchable and Interruptible Loads”**
  24. **ISO New England Operating Procedure No. 16 “Transmission System Data”**
  25. **ISO New England Operating Procedure No. 17 “Load Power Factor Correction”**
  26. **ISO New England Operating Procedure No. 18 “Metering and Telemetry Criteria”**
  27. **ISO New England Operating Procedure No. 19 “Transmission Operations”**
  28. **ISO New England Operating Procedure No. 20 “Cold Weather Event Operations”**
  29. **ISO New England Compliance Procedure**
  30. **ISO New England Compliance and Enforcement Process For Enhanced NPCC Reliability and NERC Standards**
  31. **Master/Local Control Center Procedure #1 “Nuclear Plant Transmission Operations”**
  32. **Master/Local Control Center Procedure #2 “Abnormal Conditions Alert”**
  33. **Master/Local Control Center Procedure No. 3 “Test Procedure For Local Control Center Satellite Phone Communications”**
  34. **Master/Local Control Center Procedure #4 “Rules for Generator Unit Control Modes, Limits and Dispatch Terminology”**
  35. **Master/Local Control Center Procedure #5 “Procedure for Millstone Point Station Generation Reduction”**

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- 36. Master/Local Control Center Procedure #6 “Procedure for Evacuation of ISO New England Control Room”**
  - 37. Master/Local Control Center Procedure #7 “Processing Transmission Outage Applications”**
  - 38. Master/Local Control Center Procedure #8 “Coordination of Generation Voltage Regulator Outages”**
  - 39. Master/Local Control Center Procedure #9 “Operation of the Chester Static VAR Compensator (SVC)”**
  - 40. Master/Local Control Center Procedure #10 “Generator Governor Control and Operation”**
  - 41. Common Operating Instructions for Hydro-Québec TransÉnergie and the New England Asset Owners for the ± 450Kv DC Lines Radisson - Nicolet – Sandy Pond (Phase II) and ± 450Kv DC Lines Des Cantons - Monroe (Phase I)**
  - 42. Common System Dispatch Instructions for Hydro-Québec TransÉnergie and ISO New England Inc. for the ± 450Kv DC Lines Radisson - Nicolet – Sandy Pond (Phase II) and ± 450 kV DC Lines Des Cantons - Monroe (Phase I)**

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### **Schedule 3.09(a)**

#### **Planning and Expansion – NEITC Rights and Obligations**

##### **1. NEITC’s Rights and Obligations to Build and Associated Conditions Including Cost Recovery:**

1.1 The following provisions shall apply to any New Transmission Facility or Transmission Upgrade designated in the ISO System Plan other than a Merchant Transmission Facility except as provided in Section 1.3 of this Schedule:

(a) Subject to the requirements of applicable law, government regulations and approvals, including requirements to obtain any necessary federal, state or local siting, construction and operating permits; the availability of required financing; the ability to acquire necessary rights-of-way; and satisfaction of the other conditions set forth in this Section 1.1, NEITC shall have the obligation to own and construct (or cause to be constructed) any New Transmission Facility or Transmission Upgrade that has been categorized as “Planned” in the RSP Project List and that has been designated in that list by the ISO, to the extent consistent with the ISO’s obligations to the PTOs under the TOA, for construction and operation by NEITC and as necessary and appropriate for system reliability or economic efficiency. NEITC may enter into appropriate contracts to fulfill any obligations associated with the ownership and construction of such New Transmission Facilities or Transmission Upgrades.

(b) (i) NEITC’s assumption of an obligation to build New Transmission Facilities and Transmission Upgrades under Section 1.1(a) shall be subject to the right of NEITC to recover, pursuant to appropriate financial arrangements and tariffs or contracts, all prudently incurred costs associated with a New Transmission Facility or Transmission Upgrade that has been included in the ISO System Plan, plus a return on invested equity and other capital as determined by the Commission.

(ii) If NEITC incurs costs associated with a New Transmission Facility or Transmission Upgrade that NEITC is obligated to construct pursuant to Section 1.1(a) above and that has been categorized as “In Service” on an RSP Project List, NEITC shall have the right, by filing in accordance with Section 3.04 of this Agreement, to recover all of its costs associated with such New Transmission Facility or Transmission Upgrade that are prudently incurred or prudently committed to be incurred, including costs prudently incurred or prudently committed to be incurred by NEITC in connection with the planning, design, engineering, permitting, procuring and other preparation for construction, and/or construction of the New Transmission Facility or Transmission Upgrade, plus a return on invested equity and other capital as determined by the Commission, provided that this Section 1.1(b)(ii) is not intended to limit NEITC from filing with FERC to seek recovery of costs associated with construction work in progress

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in connection with a New Transmission Facility or Transmission Upgrade that has been categorized as “Planned” on an RSP Project List.

(c) If a New Transmission Facility or Transmission Upgrade is included in an RSP Project List as “Proposed” and the ISO has indicated that NEITC is to commence planning, designing or constructing such New Transmission Facility or Transmission Upgrade, then NEITC, once it incurs costs in order to implement the ISO System Plan (and satisfy its obligation to build hereunder) by commencing to plan, design or construct such New Transmission Facility or Transmission Upgrade, shall be permitted to recover all of its prudently incurred costs as set forth in Section 1.1(b) even if the ISO subsequently determines that the New Transmission Facility or Transmission Upgrade is no longer required and removes it from the RSP Project List, notwithstanding any contrary FERC policy or rule relating generally to the recovery of the costs of abandoned plant.

(d) If a New Transmission Facility or Transmission Upgrade categorized in an RSP Project List as “Planned” is not constructed because any of the conditions set forth in this Section 1.1 have not been satisfied or for any other reason, the ISO shall submit a report to the FERC addressing such non-construction, which report shall include a report from NEITC when it is responsible for the planning, design or construction of such New Transmission Facility or Transmission Upgrade.

1.2 NEITC shall promptly seek siting and any other required regulatory approvals for projects for which NEITC is designated as the appropriate entity to construct and own or finance facilities included in the ISO System Plan. If requested by NEITC, the ISO shall undertake reasonable efforts (consistent with its technical judgment) to assist NEITC in obtaining required regulatory approvals for New Transmission Facilities or Transmission Upgrades categorized in the RSP Project List as “Planned.” The assistance may include the provision of testimony, witnesses, and similar assistance. The ISO shall not, in any manner, be precluded from similarly assisting, at its discretion, other projects that address a need identified by the ISO in the ISO System Plan.

1.3 The ISO shall ensure that the ISO Planning Process includes opportunities for state regulatory authorities to provide their views to the ISO with respect to need for the New Transmission Facility or Transmission Upgrade.

## **2. NEITC Obligations:**

2.1 NEITC shall support the planning process as described in the ISO OATT and any interregional planning coordination. As requested by the ISO, such support may include conducting any necessary studies, including system impact studies and facilities studies for NEITC’s Transmission Facilities, assisting in the performance of such studies or any additional

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studies, and supplying any information and data reasonably required to prepare a ISO System Plan or to perform transmission enhancement and expansion studies.

2.2 NEITC shall make reasonable efforts to provide information and support in response to the ISO's requests within the ISO's requested time frames and shall comply with all deadlines set forth in the ISO Planning Process, as specified in the ISO OATT.

2.3 NEITC shall comply with the ISO's Planning Procedures (which are supplemental to the ISO Planning Process, as specified in the ISO OATT), provided that any modifications to existing Planning Procedures and any new Planning Procedures shall be developed in accordance with the process set forth for the development of new or modified Planning Procedures in Section 3.09(b) to the TOA.

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**Schedule 3.09(b)**

**LIST OF EXISTING PLANNING PROCEDURES**

**ISO New England Planning Procedure No. 3**

Reliability Standards for the New England Area Bulk Power Supply System

**ISO New England Planning Procedure No. 4**

Procedure for Pool-Supported PTF Cost Review

**ISO New England Planning Procedure No. 4-1**

Cost Responsibility For Transmission Upgrades With Multiple Needs

**ISO New England Planning Procedure No. 5**

Procedure for Reporting Notice of Intent to Construct, Retire or Change Facilities in Accordance with Section I.3.9 of the ISO New England Tariff (Proposed Plan Application Procedure)

**ISO New England Planning Procedure No. 5-1**

Procedure For Review Of Governance Participant's Proposed Plans (Section I.3.9 Applications: Requirements, Procedures And Forms)

**ISO New England Planning Procedure No. 5-3**

Guidelines for Conducting and Evaluating Proposed Plan Application Analyses

**ISO New England Planning Procedure No. 5-4**

Subordinate Proposed Plan Application Policy

**ISO New England Planning Procedure No. 5-5**

Special Protection Systems Application Guidelines

**ISO New England Planning Procedure No. 5-6**

Scope Of Study For System Impact Studies Under The Minimum Interconnection Standard

**ISO New England Planning Procedure No. 6**

Procedures for the Establishment and Study of New England Interconnection

**ISO New England Planning Procedure No. 8**

Construction Sequencing

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**Schedule 11.01**

**NOTICES**

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**Schedule 11.17(c)**

**Additional Conditions Precedent**