

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mirant Americas Energy Marketing, L.P.,)	Docket No. EL01-93-012
Mirant New England, LLC, Mirant Kendall,)	
LLC and Mirant Canal, LLC)	
)	
v.)	
)	
ISO New England Inc.)	

**MOTION TO ADOPT PROTECTIVE ORDER
FOR SETTLEMENT PROCEDURES PHASE OF PROCEEDING**

**To: Honorable Curtis L. Wagner, Jr.
Presiding Judge**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New England Power Pool (“NEPOOL”) Participants Committee, on its own behalf and on behalf of parties who are participating in the Settlement Judge procedures (the “Settlement Procedures”) phase of this proceeding, respectfully requests that the Chief Administrative Law Judge adopt the Protective Order included as Attachment A hereto to govern disclosure and treatment of confidential and commercially-sensitive information during the course of the Settlement Procedures phase of this proceeding.²

¹ 18 C.F.R. §§ 385.212 (2007).

² The Commission in its September 21, 2007 order, 120 FERC ¶ 61,264 (2007), established hearing and settlement judge proceedings in Docket EL01-93, and in Docket ER03-631, *ISO New England Inc.* The two dockets were not consolidated, however. The Commission, in its Order on Rehearing, 121 FERC ¶ 61,197 (Nov. 21, 2007), terminated hearing and settlement judge proceedings with respect to Docket ER03-631. Accordingly, this motion and the attached protective order are captioned for filing in Docket EL01-93 only.

A version of the proposed Protective Order black lined against the Commission's Model Protective Order is included as Attachment B.³

The Protective Order was developed through collaborative processes in which all intervenors in the captioned proceeding had an opportunity to participate. Entities who have been participating in the Settlement Procedures phase of this proceeding by attending one or more of the scheduled settlement conferences before Judge Dring were given an opportunity to participate in the development of the proposed Protective Order. Those entities (the "parties") either support, do not oppose or have not expressed that they oppose entry of the proposed Protective Order for the Settlement Procedures phase of this proceeding. A copy of this motion and the attached Protective Order has been provided to Administrative Law Judge Dring, who has been appointed as Settlement Judge.

I. A PROTECTIVE ORDER IS APPROPRIATE TO FACILITATE SETTLEMENT

The Commission's policy of affording protection to proprietary or commercially sensitive materials is well established.⁴ Good cause exists for adoption of the Protective Order in the Settlement Procedures.

In the normal course of its activities, ISO New England Inc. (the "ISO") receives from NEPOOL Participants and itself generates Participant-specific information that is "confidential" within the meaning of the Commission-approved ISO New England Information Policy, which is Attachment D to ISO New England Inc.'s Transmission, Markets and Services Tariff (such

³ The Commission's Model Protective Order is available at <http://www.ferc.gov/legal/admin-lit/model-protective-order.pdf>.

⁴ See, e.g., *Puget Sound Energy, Inc.*, 101 FERC ¶ 61,304, at P 11 (2002) ("To prevent disclosure of confidential information, the presiding judge may adopt a protective order, as appropriate.").

information referred to herein as “Confidential Information”) Disclosure of Confidential Information regarding the bid mitigation agreements at issue in these proceedings, as well as information that the counterparties to the bid mitigation agreements consider to be commercially sensitive, will be required if Settlement Procedures are to be successful.

In the interest of facilitating Settlement Procedures and solely for purposes of the Settlement Procedures, the parties either agree that the Protective Order included as Attachment A hereto should be entered in the Settlement Procedures phase of this proceeding or do not oppose the granting of this motion.

The Chief Administrative Law Judge has previously seen fit to approve similar orders in other proceedings in which issues similar to those presented in these proceedings have been presented to the Commission for resolution.⁵

In addition, the parties represent further that: (1) This Protective Order is not intended to and does not establish any Participant’s obligation to produce, or any Participant’s right to the production of, any materials during the course of the Settlement Procedures phase of this proceeding. (2) Adoption of this Protective Order shall not modify or diminish the protection or privileged nature of such materials under applicable law and regulations, including Commission Rules of Practice and Procedure set forth in 18 C.F.R. Part 385, Subpart F. (3) Disclosure of material pursuant to this Protective Order shall not establish any Participant’s obligation to produce, or any Party’s right to the production of, the same materials in the event that this proceeding advances to the evidentiary hearing phase. (4) Adoption of this Protective Order for

⁵ See, e.g., Order of Chief Judge Adopting Protective Order, *Norwalk Power, LLC*, Docket Nos. ER07-799-000, *et al.* (Aug. 30, 2007) (granting motion to adopt protective order for settlement phase of a proceeding); Order Of Chief Judge Adopting Protective Order, *Xcel Energy Services Inc.*, Docket Nos. ER06-301-000, *et al.* (Mar. 6, 2007) (same).

the Settlement Procedures phase of this proceeding shall not be a bar to any Participant requesting that, in the event this proceeding advances to an evidentiary hearing phase, the Model Protective Order or any variations thereof be adopted. (5) The Protective Order attached hereto shall establish no precedent with respect to the Participants to this proceeding or with respect to any other proceeding.

II. PROPOSED MODIFICATIONS TO THE MODEL PROTECTIVE ORDER

The proposed Protective Order is a modified version of the Commission's Model Protective Order. The differences between the Model Protective Order and the proposed Protective Order are reflected in the comparison document in Attachment B hereto. Those changes are described below.

The proposed Protective Order includes modifications to the Model Protective Order to reflect that this Protective Order applies only to the Settlement Procedures phase of this proceeding.

The proposed Protective Order also contains additional modifications to the Model Protective Order to reflect compliance with the requirements of the ISO New England Information Policy. Those modifications are reflected in Paragraphs 2, 3 and 4(b) of the attached Protective Order. Paragraph 2 has also been modified to extend the Protective Order's coverage to Protected Materials Not Available to Competitive Duty Personnel. Presiding Judges have frequently adopted modifications to Protective Orders that grant special protection to particularly sensitive competitive duty information.⁶

⁶ See, e.g. Order Of Presiding Judge Granting Motion For Issuance of Protective Order, *Bridgeport Energy, LLC*, Docket No. ER05-611-006 (Nov. 21, 2006) (Silverstein, J.); Presiding Administrative Law Judge's Order Issuing Protective Order, *PSEG Power Connecticut, LLC*, Docket No. ER05-231-005 (June 7, 2005).

III. SERVICE OF THIS PLEADING

The undersigned has become aware in preparing this motion that the Service List on the Commission's website for Docket EL01-93 does not contain up-to-date information for a number of intervenors.⁷ Service of this pleading is also reflects the fact that the settlement procedures were initially noticed in both Docket EL01-93 and Docket ER03-631, which were not consolidated. The Commission in its November 21, 2007 order issued in Dockets EL01-93 and ER03-631 terminated further settlement and hearing proceedings with respect to Docket ER03-631. Parties to both of these Dockets have been participating in the settlement procedures. It is not clear whether all parties to Docket ER03-631 with an interest in Docket EL01-93 have also intervened in Docket EL01-93. In addition, the Service List information on the website for Docket ER03-631 contains some of the same inaccuracies as are present in the Service List for Docket EL03-91.

To effectuate effective service on all parties who have been involved in the settlement procedures to date or who may otherwise have an interest in Docket EL01-93 but now need to intervene in that Docket in light of the November 21, 2007 Order on Rehearing, NEPOOL Counsel has served this motion on all parties identified on the official Service List to both Docket EL01-93 and Docket ER03-631 as identified on the official Service List. Where NEPOOL Counsel was aware of an inaccuracy in the official Service List information and was able to obtain direction from that entity as to how service of this motion may be made on them,

⁷ In some cases an entity identified on the Service List has been acquired by another entity or otherwise no longer exists. In other cases, counsel and party representatives identified for service for an entity are no longer accurate due to the passage of time. By way of further example, the Service List identifies the law firm Stinson Morrison Hecker LLP as a party to Docket EL01-93. That law firm was, at the time, representing the Maine Public Utilities Commission ("MPUC"), which is not identified as a party to the proceeding but in fact is a party.

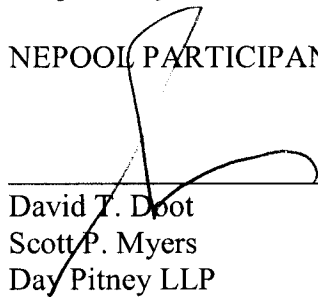
NEPOOL counsel has also sent the motion to that entity by e-mail and United States mail, all as indicated in the attached certificate of service.

V. CONCLUSION

Wherefore, for the foregoing reasons, NEPOOL on its own behalf and on behalf of the parties to this proceeding that have been participating in the Settlement Procedures phase of this proceeding, respectfully requests that the Presiding Judge adopt the proposed Protective Order to govern the disclosure and use of Protected Materials in the Settlement Procedures phase of this proceeding.

Respectfully submitted,

NEPOOL PARTICIPANTS COMMITTEE



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ATTACHMENT A

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mirant Americas Energy Marketing, L.P.,)
Mirant New England, LLC, Mirant Kendall,)
LLC and Mirant Canal, LLC)
v.)
ISO New England Inc.)

Docket No. EL01-93-012

**PROTECTIVE ORDER
(November ____, 2007)**

1. This Protective Order shall govern the use of all Protected Materials voluntarily produced by, or on behalf of, any Participant as part of the Settlement Judge procedures (the "Settlement Procedures") ordered by the Federal Energy Regulatory Commission ("Commission") in the above-captioned proceeding (the "Proceeding"), by order dated September 21, 2007. Notwithstanding any order terminating Settlement Procedures in the Proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Chief Administrative Law Judge or the Commission. This Protective Order does not establish any obligation to produce, or right to the production of, discovery materials, including Protected Materials, during the course of Settlement Procedures. Adoption of this Protective Order shall not modify or diminish the protection or privileged nature of such materials under applicable law and regulations, including Commission Rules of Practice and Procedure set forth in 18 C.F.R. Part 385, Subpart F. Disclosure of material pursuant to this Protective Order shall not establish any Participant's obligation to produce, or any Party's right to the production of, the same materials in the event that the Proceeding advances to an evidentiary hearing phase. This Protective Order shall not constitute precedent in any other phase of the Proceeding or in any other proceeding. Adoption of this Protective Order for the Settlement Procedures phase of this Proceeding shall not be a bar to any Participant requesting that, in the event this proceeding advances to an evidentiary hearing phase, the Model Protective Order or any variation thereupon be adopted.

2. This Protective Order applies to the following categories of Protected Materials, as follows. A Participant:

(A) may in its sole discretion designate as "Protected Materials" documents or materials containing information which customarily is treated by that Participant as sensitive or proprietary, which is not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and

(B) may in its sole discretion designate as "Protected Materials Not Available to Competitive Duty Personnel" those documents or materials containing highly sensitive information, the disclosure of which to current and potential customers and competitors would competitively harm the Participant; and

(C) shall designate as protected “Protected Materials - Critical Energy Infrastructure Information” those documents or materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113(c)(1); and

(D) shall designate as “Protected Materials-Confidential Information” documents or other materials that were provided to or generated by ISO New England Inc. (the “ISO”) and are confidential within the meaning of Sections 2 and 3 of the ISO New England Inc. Transmission, Markets and Services Tariff, Attachment D, Information Policy (the “Information Policy”) Documents or materials generated by the ISO for purposes of the Settlement Procedures phase of this Proceeding that contain separate or aggregated confidential information regarding a Participant and that will be presented in a manner for which consent to disclose under the Information Policy is not required, shall not be deemed Protected Materials –Confidential Information.

3. Definitions -- For purposes of this Order:

(a) The term “Participant” shall mean a Participant as defined in 18 C.F.R. § 385.102(b). The term “Producing Participant” as used herein refers to the Participant who is submitting the Protected Materials directly in the Settlement Procedures, and includes, in the case of Protected Materials-Confidential Information, the ISO who is submitting the Protected Materials by consent, in accordance with Paragraph 4b below.

(b) (1) The term “Protected Materials” means (A) materials identified in Paragraphs 2A-2D above provided by a Participant during the Settlement Procedure phase of the Proceeding and designated by such Participant as Protected Materials in accordance with Paragraphs 2A-2D above; (B) any information contained in or obtained from such Protected Materials; (C) any other materials which are made subject to this Protective Order by the Chief Administrative Law Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant providing Protected Materials, including Protected Materials that are Protected Materials-Confidential Information, for the Settlement Procedures shall physically mark Protected Materials on each page as “PROTECTED MATERIALS, Docket EL01-93” and include the calendar year in which the Protected Materials are produced in the Settlement Procedures. If the Protected Materials contain information not available to competitive duty personnel, the Producing Participant shall additionally mark on each page of such materials the words “PROTECTED MATERIALS NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL.” If the Protected Materials contain Critical Energy Infrastructure Information, the Producing Participant shall additionally mark on each page of the Protected Materials containing such information the words “CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE.”

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 5. Notes of Protected Materials are subject to the same

restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any document contained in the files of the Commission, or contained in the files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. ¶ 31,140. Protected Materials include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

(1) Commission Trial Staff designated as such in the Settlement Procedures phase of the Proceeding;

(2) an attorney who has made an appearance in this Proceeding for a Participant;

(3) an attorney, paralegal, and other employee associated for purposes of this case with an attorney described in Paragraph (2);

(4) an expert or an employee of an expert retained by a Participant for the purpose of advising the Participant during the Settlement Procedures phase of this Proceeding;

(5) any employee of ISO New England Inc. or the Maine Public Utilities Commission with responsibilities in the Settlement Procedures phase of this Proceeding;

(6) employees or other representatives of Participants participating in the Settlement Procedures phase of this Proceeding with significant responsibility for that phase of this Proceeding if designated and accepted by the Producing Party pursuant to Paragraph 8(b); or

(7) with respect to the New England Power Pool (“NEPOOL”), NEPOOL’s Independent Financial Advisor (Mr. Mackles) and designated officers of the Participants Committee with responsibilities of behalf of NEPOOL in this matter, to the extent required to support NEPOOL’s involvement in the Settlement Procedures phase of this Proceeding.

4. (a) Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

(b) Procedures regarding documents and materials that the ISO has determined are “Protected Materials-Confidential Information” - With respect to each document or material that the ISO has determined is “Protected Materials-Confidential Information,” the ISO shall attempt to obtain the consent required under the Information Policy in order for the ISO to disclose the Protected Materials-Confidential Information for purposes of the Settlement Procedures (the “Required Consent”). The ISO shall thereafter disclose in accordance with the terms of this Protective Order any Protected Materials-Confidential Information for which it has received the Required Consent. If the party providing the Required Consent advises the ISO that the documents and materials should also be designated in one of the other categories identified in Paragraphs 2A-2C, the ISO and the party providing the Required Consent shall agree among themselves as to who will be responsible for so labeling the documents and materials. In the event the ISO does not receive the Required Consent within a reasonable time of its request for such consent or cannot otherwise obtain a Required Consent, the ISO shall promptly notify the parties to the Settlement Procedures and the Settlement Judge.

5. Protected Materials shall remain available to Participants until the earlier of the date that an order terminating Settlement Procedures is issued or a request from the Participant submitting the Protected Materials, or from the party that has provided the Required Consent for materials that are Protected Materials-Confidential Information, for the return and/or destruction of the Protected Materials. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant or to the party that has provided the Required Consent, as applicable, or shall destroy the Protected Materials, except that Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the Participant or the party that has provided the Required Consent, as applicable, an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff (“Staff”), Staff shall follow the notification procedures of 18 C.F.R. § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the

Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this Proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of the Settlement Procedures phase of this Proceeding and who needs to know the information in order to carry out that person's responsibilities in the Settlement Procedures phase of this Proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if the Notes disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this Proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d)(1)-(5) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraph 3(d) above with respect to those materials. If no agreement is reached, that person shall not be provided access to the materials.

(c) When Protected Materials have been marked "Not Available to Competitive Duty Personnel," those materials and information derived therefrom may not be reviewed by, or disclosed to, a Reviewing Representative whose duties include (a) the marketing or sale of electric power at wholesale; (b) the purchase or resale of electric power at wholesale; (c) the direct supervision of any employee with duties specified in subparagraph (a) or (b) of this paragraph; or (d) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale. The duties specified in subparagraphs (a), (b), (c), and (d) of this paragraph are hereinafter collectively referred to as "Competitive Duties." If any person who has been a Reviewing Representative subsequently is assigned to perform any Competitive Duties, or if the designation of previously available Protected Materials is changed to "Not Available to Competitive Duty Personnel," that person shall thereafter have no access to materials marked "Not Available to Competitive Duty Personnel," shall dispose of such materials, and shall continue to comply with the requirements set forth in the Non-Disclosure Certificate executed by such person and this Protective Order with respect to any Protected Materials to which such person previously had access. Notwithstanding the foregoing, persons who otherwise would be disqualified as Competitive Duty Personnel may serve as Reviewing Representatives, subject to the following conditions: (i) the Participant who employs or has retained that person must certify in writing to each affected producing Participant that its ability effectively to participate in this proceeding would be substantially prejudiced if it were unable to rely upon the assistance of the particular Reviewing Representative; (ii) the party claiming such prejudice must identify by name and job title the particular Reviewing Representative required; and the party claiming such prejudice must acknowledge in writing to the affected producing

Participant that access to the Protected Materials that are designated “Not Available to Competitive Duty Personnel” shall be restricted only to the purpose of participation in this proceeding without the prior written consent of the producing Participant; (iii) the Participant who employs or has retained that person must acknowledge that any other use of the materials shall constitute a violation of a lawful order issued by the Commission; and the person designated as one of the Competitive Duty Personnel must provide a Non-Disclosure Certificate, in the form specified in the Attachment to this Protective Order, acknowledging his or her familiarity with the contents of this Order and the particular restrictions contained in this paragraph; and (iv) the producing Participant must agree in writing to the Reviewing Representative’s access to Protected Materials that are designated “Not Available to Competitive Duty Personnel.”

(d) If a Participant believes that Protected Materials previously distributed to Reviewing Representatives contain market sensitive information, public disclosure of which would competitively harm that Participant, and should be treated as if they had been labeled “Not Available to Competitive Duty personnel,” that Participant will be responsible for redistributing or re-labeling the materials.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney’s instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Producing Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in the Proceeding, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this Proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

12. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in an evidentiary hearing phase of this Proceeding or any other administrative or judicial proceeding documents or materials produced under this

Protective Order in the Settlement Procedures phase of this Proceeding. Non-objection to the entering of this Protective Order or to the imposition of any Paragraph 2 Protected Materials designation on any document or other material shall not be construed as a waiver by any Participant of the right to challenge that designation if imposed on the same document or other materials in an evidentiary phase of the Proceeding. In addition, this Protective Order shall not be construed to prevent any Participant during an evidentiary hearing phase of the Proceeding from seeking removal of any Paragraph 2 Protected Materials designation from the same document or other material produced in both the Settlement Procedures and evidentiary hearing phases of this Proceeding.

13. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials in violation of this Protective Order.

14. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with the Settlement Procedures in this proceeding. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of 18 C.F.R. 385.606(b) and an order of the Commission.

15. Nothing in this Protective Order shall be construed as precluding any Participant from contesting the scope and validity of this proceeding and each Participant fully reserves its rights to take any position in this and any subsequent proceeding consistent with its interests.

CURTIS L. WAGNER
Presiding Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mirant Americas Energy Marketing, L.P.,)
Mirant New England, LLC, Mirant Kendall,)
LLC and Mirant Canal, LLC)
)
)
v.)
)
ISO New England, Inc.)

Docket No. EL01-93-012

**PROTECTIVE ORDER
NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order entered on _____, 2007 in this Docket, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____
Title: _____
Representing: _____
Date: _____
Email: _____

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mirant Americas Energy Marketing, L.P.,)
Mirant New England, LLC, Mirant Kendall,)
LLC and Mirant Canal, LLC)
)
v.)
)
ISO New England, Inc.)

Docket No. EL01-93-012

**PROTECTIVE ORDER
NON-DISCLOSURE CERTIFICATE OF COMPETITIVE DUTY PERSONNEL**

I hereby certify my understanding that access to Protected Materials identified as “Not Available to Competitive Duty Personnel” is provided to me pursuant to the terms and restrictions of the Protective Order entered on _____, 2007 in this Docket, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of such Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses the contents of the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order. I further understand that access to Protected Materials designated as “Not Available to Competitive Duty Personnel” shall be restricted only to the prosecution of the Settlement Procedures phase of this Proceeding. I acknowledge that a violation of this certificate constitutes a violation of an Order of the Federal Energy Regulatory Commission.

By: _____
Title: _____
Representing: _____
Date: _____
Email: _____

ATTACHMENT B

ATTACHMENT B
November 28, 2007 Motion to Adopt Protective Order
for Settlement Procedures Phase of Proceeding

~~MODEL PROTECTIVE ORDER~~ UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

<u>Name of Proceeding</u>	<u>Docket No.</u>
<u>Mirant Americas Energy Marketing, L.P.,</u>)	<u>Docket No. EL01-93-012</u>
<u>Mirant New England, LLC, Mirant Kendall,</u>)	
<u>LLC and Mirant Canal, LLC</u>)	
<u>v.</u>)	
<u>ISO New England Inc.</u>)	

PROTECTIVE ORDER
(Issued)
(November _____, 2007)

_____ 1. This Protective Order shall govern the use of all Protected Materials voluntarily produced by, or on behalf of, any Participant ~~as part of the Settlement Judge procedures (the "Settlement Procedures")~~ ordered by the Federal Energy Regulatory Commission ("Commission") in the above-captioned proceeding (the "Proceeding"), by order dated September 21, 2007. Notwithstanding any order terminating this proceeding Settlement Procedures in the Proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Chief Administrative Law Judge ("Presiding Judge") or the Federal Energy Regulatory Commission ("Commission"). This Protective Order does not establish any obligation to produce, or right to the production of, discovery materials, including Protected Materials, during the course of Settlement Procedures. Adoption of this Protective Order shall not modify or diminish the protection or privileged nature of such materials under applicable law and regulations, including Commission Rules of Practice and Procedure set forth in 18 C.F.R. Part 385, Subpart F. Disclosure of material pursuant to this Protective Order shall not establish any Participant's obligation to produce, or any Party's right to the production of, the same materials in the event that the Proceeding advances to an evidentiary hearing phase. This Protective Order shall not constitute precedent in any other phase of the Proceeding or in any other proceeding. Adoption of this Protective Order for the Settlement Procedures phase of this Proceeding shall not be a bar to any Participant requesting that, in the event this proceeding advances to an evidentiary hearing phase, the Model Protective Order or any variation thereupon be adopted.

_____ 2. This Protective Order applies to the following ~~two~~ categories of materials: ~~(A)~~ Protected Materials, as follows. A Participant:

(A) _____ may in its sole discretion designate as protected those "Protected Materials" documents or materials containing information which customarily are/is treated by that Participant as sensitive or proprietary, which are/is not available to the public, and which, if

disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) ~~A Participant shall designate~~

(B) may in its sole discretion designate as "Protected Materials Not Available to Competitive Duty Personnel" those documents or materials containing highly sensitive information, the disclosure of which to current and potential customers and competitors would competitively harm the Participant; and

(C) shall designate as protected those "Protected Materials - ("Critical Energy Infrastructure Information")" those documents or materials which contain critical energy infrastructure information, as defined in 18 CFR C.F.R. § 388.113(c)(1) ("Critical Energy Infrastructure Information"); and

(D) shall designate as "Protected Materials-Confidential Information" documents or other materials that were provided to or generated by ISO New England Inc. (the "ISO") and are confidential within the meaning of Sections 2 and 3 of the ISO New England Inc. Transmission, Markets and Services Tariff, Attachment D, Information Policy (the "Information Policy") Documents or materials generated by the ISO for purposes of the Settlement Procedures phase of this Proceeding that contain separate or aggregated confidential information regarding a Participant and that will be presented in a manner for which consent to disclose under the Information Policy is not required, shall not be deemed Protected Materials –Confidential Information.

3.- Definitions -- For purposes of this Order:

(a) The term "'Participant'" shall mean a Participant as defined in 18 CFR C.F.R. § 385.102(b). The term "Producing Participant" as used herein refers to the Participant who is submitting the Protected Materials directly in the Settlement Procedures, and includes, in the case of Protected Materials-Confidential Information, the ISO who is submitting the Protected Materials by consent, in accordance with Paragraph 4b below.
§ 385.102(b).

(b)-(1)- The term "'Protected Materials'" means (A) materials (including depositions) identified in Paragraphs 2A-2D above provided by a Participant in response to discovery requests during the Settlement Procedure phase of the Proceeding and designated by such Participant as ~~protected~~ Protected Materials in accordance with Paragraphs 2A-2D above; (B) any information contained in or obtained from such designated ~~Protected m~~ Materials; (C) any other materials which are made subject to this Protective Order by the ~~Presiding~~ Chief Administrative Law Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant ~~producing the Protected Materials~~ providing Protected Materials, including Protected Materials that are Protected Materials-Confidential Information, for the Settlement Procedures shall physically mark them ~~Protected Materials~~ on each page as "'PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the MATERIALS,

Docket EL01-93” and include the calendar year in which the Protected Materials are produced in the Settlement Procedures. If the Protected Materials contain information not available to competitive duty personnel, the Producing Participant shall additionally mark on each page of such materials the words “PROTECTED MATERIALS NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL.” If the Protected Materials contain Critical Energy Infrastructure Information, the Producing Participant producing such information shall additionally mark on each page of the Protected Materials containing such information the words “Contains Critical Energy Infrastructure Information - Do Not Release”“CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE.” Release”.

_____ (2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1)-5. Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

_____ (3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or contained in the files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. ¶ 31,140. Protected Materials ~~do~~ include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

_____ (c) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

_____ (d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

_____ (1) Commission Trial Staff designated as such in ~~this proceeding;~~ the Settlement Procedures phase of the Proceeding;

_____ (2) an attorney who has made an appearance in this ~~p~~Proceeding for a Participant;

_____ (3) ~~attorneys, paralegals~~ an attorney, paralegal, and other employees associated for purposes of this case with an attorney described in ~~Subparagraph~~ Paragraph (2);

_____ (4) ~~an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding~~ advising the Participant during the Settlement Procedures phase of this Proceeding;

_____ (5) ~~a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or~~

(5) any employee of ISO New England Inc. or the Maine Public Utilities Commission with responsibilities in the Settlement Procedures phase of this Proceeding;

_____ (6) ~~employees or other representatives of Participants appearing in this proceeding participating in the Settlement Procedures phase of this Proceeding with significant responsibility for this docket.~~ that phase of this Proceeding if designated and accepted by the Producing Party pursuant to Paragraph 8(b); or

(7) with respect to the New England Power Pool (“NEPOOL”), NEPOOL’s Independent Financial Advisor (Mr. Mackles) and designated officers of the Participants Committee with responsibilities of behalf of NEPOOL in this matter, to the extent required to support NEPOOL’s involvement in the Settlement Procedures phase of this Proceeding.

_____ 4. (a) Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

(b) Procedures regarding documents and materials that the ISO has determined are “Protected Materials-Confidential Information” - With respect to each document or material that the ISO has determined is “Protected Materials-Confidential Information,” the ISO shall attempt to obtain the consent required under the Information Policy in order for the ISO to disclose the Protected Materials-Confidential Information for purposes of the Settlement Procedures (the “Required Consent”). The ISO shall thereafter disclose in accordance with the terms of this Protective Order any Protected Materials-Confidential Information for which it has received the Required Consent. If the party providing the Required Consent advises the ISO that the documents and materials should also be designated in one of the other categories identified in Paragraphs 2A-2C, the ISO and the party providing the Required Consent shall agree among themselves as to who will be responsible for so labeling the documents and materials. In the event the ISO does not receive the Required Consent within a reasonable time of its request for such consent or cannot otherwise obtain a Required Consent, the ISO shall promptly notify the parties to the Settlement Procedures and the Settlement Judge.

_____ 5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review Settlement Procedures is issued or a request from the Participant submitting the Protected Materials, or from the party that has provided the Required Consent for materials that are Protected Materials-Confidential Information, for the return and/or destruction of the Protected Materials. If requested to do so in writing after that date, the

Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them or to the party that has provided the Required Consent, as applicable, or shall destroy the materials Protected Materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant or the party that has provided the Required Consent, as applicable, an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a nonpublic non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR C.F.R. § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding the Settlement Procedures phase of this Proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding the Settlement Procedures phase of this Proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they the Notes disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3-(d)(1)-(5) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be

a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, ~~the Participant shall~~that person shall not be provided access to the materials.
~~submit the disputed designation to the Presiding Judge for resolution.~~

(c) When Protected Materials have been marked "Not Available to Competitive Duty Personnel," those materials and information derived therefrom may not be reviewed by, or disclosed to, a Reviewing Representative whose duties include (a) the marketing or sale of electric power at wholesale; (b) the purchase or resale of electric power at wholesale; (c) the direct supervision of any employee with duties specified in subparagraph (a) or (b) of this paragraph; or (d) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale. The duties specified in subparagraphs (a), (b), (c), and (d) of this paragraph are hereinafter collectively referred to as "Competitive Duties." If any person who has been a Reviewing Representative subsequently is assigned to perform any Competitive Duties, or if the designation of previously available Protected Materials is changed to "Not Available to Competitive Duty Personnel," that person shall thereafter have no access to materials marked "Not Available to Competitive Duty Personnel," shall dispose of such materials, and shall continue to comply with the requirements set forth in the Non-Disclosure Certificate executed by such person and this Protective Order with respect to any Protected Materials to which such person previously had access. Notwithstanding the foregoing, persons who otherwise would be disqualified as Competitive Duty Personnel may serve as Reviewing Representatives, subject to the following conditions: (i) the Participant who employs or has retained that person must certify in writing to each affected producing Participant that its ability effectively to participate in this proceeding would be substantially prejudiced if it were unable to rely upon the assistance of the particular Reviewing Representative; (ii) the party claiming such prejudice must identify by name and job title the particular Reviewing Representative required; and the party claiming such prejudice must acknowledge in writing to the affected producing Participant that access to the Protected Materials that are designated "Not Available to Competitive Duty Personnel" shall be restricted only to the purpose of participation in this proceeding without the prior written consent of the producing Participant; (iii) the Participant who employs or has retained that person must acknowledge that any other use of the materials shall constitute a violation of a lawful order issued by the Commission; and the person designated as one of the Competitive Duty Personnel must provide a Non-Disclosure Certificate, in the form specified in the Attachment to this Protective Order, acknowledging his or her familiarity with the contents of this Order and the particular restrictions contained in this paragraph; and (iv) the producing Participant must agree in writing to the Reviewing Representative's access to Protected Materials that are designated "Not Available to Competitive Duty Personnel."

(d) If a Participant believes that Protected Materials previously distributed to Reviewing Representatives contain market sensitive information, public disclosure of which would competitively harm that Participant, and should be treated as if they had been labeled "Not Available to Competitive Duty personnel," that Participant will be responsible for redistributing or re-labeling the materials.

9.- (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Producing Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings the Proceeding, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this pProceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

~~11. Subject to Paragraph 17, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.~~

~~12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents~~

~~which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information - Do Not Release". For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.~~

~~13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.~~ 14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

~~15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.~~

~~16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.~~

~~17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information - Do Not Release."~~

~~18. If the Presiding Judge finds at any time in the course of this proceeding that~~

~~all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected Materials in the files of the Commission.~~

~~19. 12. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this~~
independently seeking through discovery in an evidentiary hearing phase of this Proceeding or any other administrative or judicial proceeding documents or materials produced
under this Protective Order in the Settlement Procedures phase of this Proceeding. Non-objection to the entering of this Protective Order or to the imposition of any Paragraph 2 Protected Materials designation on any document or other material shall not be construed as a waiver by any Participant of the right to challenge that designation if imposed on the same document or other materials in an evidentiary phase of the Proceeding. In addition, this Protective Order shall not be construed to prevent any Participant during an evidentiary hearing phase of the Proceeding from seeking removal of any Paragraph 2 Protected Materials designation from the same document or other material produced in both the Settlement Procedures and evidentiary hearing phases of this Proceeding.
~~proceeding under this Protective Order.~~

~~20. 13. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.~~ in violation of this Protective Order.

~~21. 14. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with~~ the Settlement Procedures in this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of 18 C.F.R. 385.606(b) and an order of the Commission.

~~15. Nothing in this Protective Order shall preclude any Participant from~~ be construed as precluding any Participant from contesting the scope and validity of this proceeding and each Participant fully reserves its rights to take any position in this and any subsequent proceeding consistent with its interests.

CURTIS L. WAGNER
Presiding Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Name of Proceeding		Docket No.
<u>Mirant Americas Energy Marketing, L.P.,</u>)	<u>Docket No. EL01-93-012</u>
<u>Mirant New England, LLC, Mirant Kendall,</u>)	
<u>LLC and Mirant Canal, LLC</u>)	
)	
<u>v.</u>)	
)	
<u>ISO New England, Inc.</u>)	

**PROTECTIVE ORDER
NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order entered on _____, 2007 in this proceeding Docket, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____
Title: _____
Representing: _____
Date: _____
Email: _____

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Mirant Americas Energy Marketing, L.P.,)
Mirant New England, LLC, Mirant Kendall,)
LLC and Mirant Canal, LLC)
)
v.)
)
ISO New England, Inc.)

Docket No. EL01-93-012

PROTECTIVE ORDER
NON-DISCLOSURE CERTIFICATE OF COMPETITIVE DUTY PERSONNEL

I hereby certify my understanding that access to Protected Materials identified as “Not Available to Competitive Duty Personnel” is provided to me pursuant to the terms and restrictions of the Protective Order entered on _____, 2007 in this Docket, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of such Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses the contents of the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order. I further understand that access to Protected Materials designated as “Not Available to Competitive Duty Personnel” shall be restricted only to the prosecution of the Settlement Procedures phase of this Proceeding. I acknowledge that a violation of this certificate constitutes a violation of an Order of the Federal Energy Regulatory Commission.

By: _____
Title: _____
Representing: _____
Date: _____
Email: _____

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2007, I caused a copy of the foregoing document and its attachments to be served either electronically or by US mail, first class postage prepaid, as applicable in accordance with the Commission’s Rules, upon each entity identified in the official Service List maintained by the Secretary for Docket EL01-93 and for Docket ER03-631, as identified on that Service List. I further certify that on November 28, 2007, I caused a copy of the foregoing document and its attachments to be served by e-mail and US mail, first class postage prepaid, upon the Honorable John P. Dring (Settlement Judge) and to Marc Gary Denkinger (Commission Trial Staff).

I further certify that on November 28, 2007, I also sent a copy of the foregoing document and its attachments by e-mail and US mail, first class postage prepaid, to the following intervenors to Docket EL01-93 and Docket ER03-631, as indicated below.

DOCKET EL01-93

Braintree Electric Light Department, Reading Municipal Light Department, Taunton Municipal Lighting Plant	
John P. Coyle Duncan & Allen 1575 Eye Street, N.W., Suite 300 Washington, DC 20005-1175 jpc@duncanallen.com	
Calpine Eastern Corporation	
Sarah G. Novosel Senior Vice President, Government Affairs and Managing Counsel Calpine Corporation 1401 H Street, NW Washington, DC 20005 sarah.novosel@calpine.com	
Connecticut Jet Power LLC; Devon Power LLC; Middletown Power LLC; Montville Power	

<p>LLC; Norwalk Power LLC; NRG Power Marketing, Inc.; Somerset Power LLC</p>	
<p>Christopher C. O'Hara Assistant General Counsel – Regulatory NRG Energy, Inc. 211 Carnegie Center Princeton, NJ 08540-6213 chris.ohara@nrgenergy.com</p>	<p>Brian M. Meloy Leonard Street and Deinard, PA 1627 Eye Street, N.W., Suite 610 Washington, DC 20006 brian.meloy@leonard.com</p>
<p>Mirant Americas Energy Marketing LP</p>	
<p>Debra Raggio Bolton VP & Assistant General Counsel Mirant Corporation 601 13th Street, N.W., Suite 850 N Washington, DC 20005 debra.bolton@mirant.com</p>	<p>David Reich Mirant Corporation 601 13th Street, N.W., Suite 850 N Washington, DC 20005 david.reich@mirant.com</p>
<p>Northeast Utilities Service Company; Select Energy, Inc.</p>	
<p>Andrew Katz Senior Counsel Northeast Utilities Service Company 601 Pennsylvania Avenue Suite 620 South Building Washington, DC 20004 katzas@nu.com</p>	<p>James R. Shuckerow, Jr. Northeast Utilities Service Company 107 Selden Street Berlin, CT 06037 schuckjr@nu.com</p>
<p>Fitchburg Gas & Electric Light Company; Unitil Power Corporation</p>	
<p>David K. Foote Vice President Unitil Service Corp. 6 Liberty Lane West Hampton, NH 03842-1720 foote@unitil.com</p>	<p>Sonia Mendonca Dewey & LeBoeuf LLP 1101 New York Avenue, NW Suite 1100 Washington, DC 20005 sonia.mendonca@dl.com</p>
<p>National Grid USA</p>	
<p>Terry Schwennesen Assistant General Counsel National Grid USA 25 Research Drive Westborough, MA 01582 terry.schwennesen@us.ngrid.com</p>	<p>Timothy Brennan National Grid USA 25 Research Drive Westborough, MA 01582 timothy.brennan2@us.ngrid.com</p>

New England Conference of Public Utilities Commissioners	
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ISO New England Inc.	
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PSEG Companies; PSEG Energy Resources & Trade LLC; PSEG Power Connecticut LLC	
Kenneth R. Carretta General Regulatory Counsel – Markets PSEG Services Corporation 80 Park Plaza, T5G Newark, NJ 07102 Kenneth.Carretta@pseg.com	Thomas P. Thackston Assistant General Regulatory Counsel PSEG Services Corporation 80 Park Plaza, T5G Newark, NJ 07102 Thomas.Thackston@pseg.com
Marji Philips Managing Director – Market Development PSEG Energy Resources & Trade LLC 80 Park Plaza, T19 Newark, NJ 07102 Marji.Philips@pseg.com	James Wrynn Paralegal PSEG Service Corporation 80 Park Plaza, T5G Newark, NJ 07102 james.wrynn@pseg.com
Sithe New England Holdings, LLC care of Exelon New England Holdings	
Paul Wight Skadden, Arps, Slate, Meagher & Flom LLP 1440 New York Avenue, NW Washington, DC 20005-2111 pwight@skadden.com	Noel Trask Exelon Generating Company, LLC 300 Exelon Way Kennett Square, PA 19438-2473 (Requested service by US mail only)
Wisvest Corporation; Wisconsin Energy Corporation; Wisconsin Electric Power Company	

<p>Bill Beres Chief Financial Officer Wisvest Corporation 231 W. Michigan Street, P388 Milwaukee, WI 53203 bill.feres@we-energies.com</p>	<p>Mary E. Bengel Counsel Wisconsin Electric Power Company 231 W. Michigan Street, A292 L Milwaukee, WI 53203 mary.bengel@we-energies.com</p>
<p>James R. Keller Director, Federal Regulatory and Policy Wisconsin Electric Power Company 231 W. Michigan Street, A214 Milwaukee, WI 53203 ferc@we-energies.com</p>	<p>Roger Smith Troutman Sanders LLP 401 9th Street NW # 1000 Washington, DC 20004 roger.smith@troutmansanders.com</p>
<p>USGen New England, Inc.</p>	
<p>Raymond Wuslich Margaret Claybour Winston & Strawn LLP 1700 K Street, NW Washington, DC 20006 rwuslich@winston.com mclaybour@winston.com</p>	
<p>Maine Public Utilities Commission</p>	
<p>Lisa S. Gast Duncan, Weinberg, Genzer & Pembroke, P.C. 1615 M Street, NW – Suite 800 Washington, DC 20036 LSG@dwgp.com</p>	<p>Lisa C. Fink Senior Staff Attorney Maine Public Utilities Commission 242 State Street 18 State House Station Augusta, ME 04333 lisa.fink@maine.gov</p>

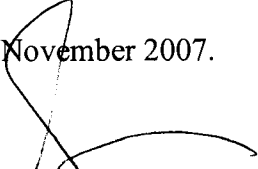
DOCKET ER03-631

<p>NRG Companies</p>	
<p>Christopher C. O'Hara Assistant General Counsel – Regulatory NRG Energy, Inc. 211 Carnegie Center Princeton, NJ 08540-6213 chris.ohara@nrgenergy.com</p>	<p>Brian M. Meloy Leonard Street and Deinard, PA 1627 Eye Street, N.W., Suite 610 Washington, DC 20006 brian.meloy@leonard.com</p>

Mirant Corporation	
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Northeast Utilities Service Company; Select Energy, Inc.	
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Green Mountain Power Corporation	
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ISO New England Inc.	
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