

TO: MEMBERS AND ALTERNATES OF THE NEPOOL PARTICIPANTS COMMITTEE
COUNSEL FOR PARTICIPANTS IN FERC DOCKET NOS. EL09-47 AND EL09-48

DT: October 20, 2009

RE: Fifth Legal Notice of Data Requests in FERC Hearing Investigating Capacity Importers

ISO New England Inc. (the "ISO") is providing notice, pursuant to Section 2.2 of the ISO New England Information Policy (the "Information Policy"), that it may be required to disclose certain information that is Confidential Information of Furnishing Governance Participants under the Information Policy. Specifically, the Connecticut Department of Public Utility Control, the Connecticut Office of Consumer Counsel, and Richard Blumenthal, Attorney General for the State of Connecticut, (the "Requesting Entities") issued on October 16, 2009 their fourth set of data requests to the ISO in the FERC hearings in Docket Nos. EL09-47-000 and EL09-48-000 that request information that might constitute Confidential Information.

The October 16 data requests seek, among other things, detailed information regarding the following:

- information regarding requests for energy from the ISO to Brookfield Energy Marketing Inc. and Constellation Energy Commodities Group, Inc.; and
- detailed information about and documents related to payments of Net Commitment Period Compensation and/or "uplift" made to capacity importers when the day-ahead energy market has cleared dispatchable transactions from New York under certain conditions.

The full data requests are posted on the ISO website at <http://www.iso-ne.com/regulatory/lglnotice/index.html>.

The ISO also is providing notice that the Requesting Entities served a subpoena on the Independent Market Monitoring Unit on September 15, 2009 that may require the disclosure of Confidential Information including, but not limited to, information related to the day-ahead and real-time energy bid data of capacity importers for both the New England and New York wholesale electricity markets, as well as any communications between capacity importers and the IMMU. A copy of the subpoena to the IMMU is posted on the ISO website at <http://www.iso-ne.com/regulatory/lglnotice/index.html>.

The Presiding Administrative Law Judge in the capacity imports proceeding has issued an order adopting a Protective Order governing how Confidential Information will be treated in the proceeding. The ISO will follow the procedures included in the Protective Order before releasing any Confidential Information to the Requesting Entity. As specified in the Protective Order, the ISO hereby objects (as permitted by Rule 410 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.410 (2009)) to the release of Confidential Information in

response to these data requests. Several of the key procedures included in the Protective Order are described below.

Per the Protective Order, if your data is being sought, as the Furnishing Governance Participant you have five business days from the date of this notice to resolve with the Requesting Entity any issues you might have with respect to release of your Confidential Information, and to provide the ISO a written declaration in response to this notice that the requested information: (1) may be released; (2) may be released pursuant to the Protective Order (as, for instance, “Protected Material” and “Not Available to Competitive Duty Personnel”); or (3) should not be released, in which case the Requesting Entity shall be free to file a motion to compel. If you declare that your Confidential Information should not be released, you (and not the ISO) will be directly responsible for conducting further interactions with the Requesting Entity, including responding to any motion to compel. The Protective Order provides that, unless the ISO receives notice to the contrary, you will be deemed to have consented to the ISO’s release of the information as “Protected Material” and “Not Available to Competitive Duty Personnel” pursuant to the Protective Order. You will have the opportunity to intervene in the consolidated proceeding and either to object formally to the release of Confidential Information and/or to seek a separate protective order or other measures to prevent public disclosure of Confidential Information.

Furnishing Governance Participants may wish to contact their FERC counsel in deciding appropriate action to take in response to this notice.

If you have any questions about this matter, please contact James Douglass, Senior Regulatory Counsel for the ISO, at (413) 540-4559 or Dave Doot, NEPOOL Counsel, at (860) 275-0102.