

MEMORANDUM

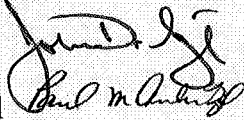
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Date April 23, 2013

To ISO New England

From John D. Sigel

Paul M. Architzel



Re **Setoffs of ISO New England in Market Participant Bankruptcies**

In a memo dated February 14, 2012 (the "Original Memo"), we addressed whether the designation of ISO New England as a central counterparty ("CCP") for certain transactions in ISO New England's markets would satisfy the mutuality condition necessary to assert setoff rights in the event of a bankruptcy of an ISO New England market participant. Capitalized terms used herein and not otherwise defined are used as defined in the Original Memo.

Our analysis was based in part on proposed amendments to ISO New England's Transmission, Markets and Services Tariff (the "Tariff") that would make ISO New England the direct contracting party in certain transactions with customers in the purchase and sale of electricity in which ISO New England would take title to all electricity that is purchased or sold.

Our conclusion was based upon the premise that under the Tariff, as amended:

As a counterparty to each Sale Transaction in which the ISO takes title, each Market Participant in the ISO will have a credit relationship only with the ISO, rather than with every other Market Participant in the ISO. With this counterparty structure in place, the seller and buyer will be known in each transaction, and the ISO will always be the other counterparty to each obligation.

We further understood that:

The ISO intends to amend its Tariff (the "Amended Tariff") to make clear that it will be a CCP to certain electricity transactions with its Customers in which the ISO will take title to all electricity that is purchased and sold, and will become a buyer to each market seller and a seller to each market buyer. ... The purpose of this planned revision is to make clear that there is a single, specific counterparty to the ISO's Customers with respect to the foregoing electricity transactions, including Sale Transactions.

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We have reviewed the letter of Raymond W. Hepper, General Counsel of ISO New England to Ananda Radhakrishnan, Director, Division of Clearing and Risk, Commodity Futures Trading Commission (the "CFTC"), dated April 23, 2013 (the "Hepper Letter"). In the Hepper Letter, Mr. Hepper confirms to the CFTC that the proposed amendments to the Tariff upon which the conclusions in the Original Memo were premised have been put in place and are now operative.

Based upon and in reliance on the facts stated in the Hepper Letter, and upon our ongoing review of the applicable law, and subject to limitations described in the Original Memo, we are of the view that by amending the Tariff to become a CCP and by taking title to and purchasing and selling electricity in its own name and for its own account, steps taken by ISO New England to satisfy the obligations of FERC regulation 35.47(d), ISO New England should be able to satisfy the conditions for setoff under title 11 of the United States Code in the event of the bankruptcy of a market participant as described in the Original Memo.

This Memorandum was written for ISO New England in connection with its submission to the Commodity Futures Trading Commission of an Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act. A copy of this Memorandum and our Memorandum dated February 14, 2012, may be provided to the Commodity Futures Trading Commission and be made publicly available, by it for information purposes. No person or entity may rely on this Memorandum without the prior written consent of Wilmer Cutler Pickering Hale and Dorr LLP.