



Raymond W. Hepper
Vice President & General Counsel

April 23, 2013

Ananda Radhakrishnan, Director
Division of Clearing and Risk
Commodity Futures Trading Commission
1151 21st St., N.W.
Washington, D.C. 20581

Re: Memorandum of John D. Sigel to ISO New England dated February 14, 2012

Dear Mr. Radhakrishnan:

ISO New England submitted to the Commodity Futures Trading Commission (“Commission”) a Memorandum by John D. Sigel of Wilmer, Cutler, Pickering, Hale and Dorr, LLP., dated February 14, 2012 (“Original Memorandum of Counsel”), assessing whether the designation of ISO New England Inc. (“ISO” or “ISO-NE”) as a central counterparty (“CCP”) for certain transactions in the ISO’s markets satisfies the mutuality condition necessary to assert setoff rights in the event of a bankruptcy of an ISO market participant. The analysis in the Original Memorandum of Counsel was based upon the premise that:

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.

Original Memorandum of Counsel at p.10. That premise was based upon information provided by ISO-NE at the time that the Original Memorandum of Counsel was written, that certain future changes would be made to the ISO-NE Tariff and that certain future arrangements undertaken. Specifically, the conclusion of the Original Memorandum of Counsel was based on counsel’s

understanding of changes that will be made to the Tariff to make the ISO the direct contracting party in certain transactions with Customers (defined as “a Market Participant, a Transmission Customer or another customer of the ISO”) constituting the purchase and sale of electricity in which the ISO takes title to all electricity that is purchased or sold (“Sale Transactions”). 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. In such capacity, the ISO will “act[] as the contracting party, in

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its name and own right and not as an agent, to an agreement or transaction with a Customer (including assignments involving Customers) involving sale to the ISO, and/or purchase from the ISO, of Regional Transmission Service and market and other products and services, and other transactions and assignments involving Customers, all as described in the Tariff.” 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.

Original Memorandum of Counsel at 7-8.

With this letter, I provide my Opinion of Counsel verifying that the following assumptions about the then future changes to the ISO-NE Tariff upon which the Original Memorandum of Counsel’s analysis was based have been put into place and are now operative.

- Section I.3 of the Tariff—“Obligations of Market Participants and Other Customers” has been amended to provide that “[t]he ISO acts as Counterparty for sales to its Customers of Regional Transmission Service, and for agreements and transactions with its Customers, including but not limited to assignments involving Customers, and agreements and transactions with Customers involving sale to the ISO and/or purchase from the ISO of energy, capacity, reserves, regulation, Ancillary Services, FTRs and involving other products, service and transactions, all as specified in Sections II and III of the Tariff (collectively, the ‘Products’).”
- Section I.2.2 of the Tariff - “Definitions” has been amended to provide that “Payment” is defined as “a sum of money due to a Covered Entity from the ISO.”
- ISO New England Financial Assurance Policy (Exhibit IA to Section I of the Tariff) - Attachment 2 “Sample Letter of Credit” has been amended to provide that Standby Letters of Credit issued in connection with the ISO’s Financial Assurance Policy must be executed in favor of the ISO, without reference to the ISO’s acting on behalf of any other party.
- ISO New England Financial Assurance Policy (Exhibit IA to Section I of the Tariff) - Attachment 1 “Sample Security Agreement” has been amended to provide that each time the ISO enters into a Security Agreement with a debtor in connection with the ISO’s Financial Assurance Policy, the ISO is signing without reference to acting as an agent for a Market Participant.
- As indicated in the Original Memorandum of Counsel (at 9), Section I.3.7 of the Tariff - “Payment of Invoices; Compliance with Policies” is unchanged and continues to provide that each Customer is “obligated to pay when due in accordance with th[e] Tariff, the ISO New England Financial Assurance Policy and the ISO New England Billing Policy all amounts invoiced to it pursuant to th[e] Tariff, and to comply with those terms, conditions and policies in all respects. If a Customer fails to meet the requirements specified in the ISO New England Financial Assurance Policy and the ISO New England Billing Policy, the ISO may take such actions as are specified in those policies.”
- ISO New England Billing Policy (Exhibit ID to Section I of the Tariff) - Section 1.1 “Scope” has been amended to provide that the ISO will no longer “act as agent for the other Covered Entities . . . , in administering, managing and enforcing the ISO New England Billing Policy.”

- ISO New England Billing Policy (Exhibit ID to Section I of the Tariff) - Section 1.2 “Financial Transaction Conventions” has been amended to define “Payment” as “a sum of money due to a Covered Entity from the ISO . . . ”
- ISO New England Billing Policy (Exhibit ID to Section I of the Tariff) – The procedures through which the ISO will attempt to recover from defaulting Covered Entities with respect to ISO Charges (Section 3.3) and Transmission Charges (Section 3.4) were not changed in the Tariff, except to state explicitly that such charges will be paid “to the ISO.” Payment defaults will continue to be mutualized by the pool of participants in the ISO, and the Tariff (at Section 3.5) now states that “Each Covered Entity consents to other Covered Entities’ having [the] independent right” to “seek and obtain payment and recovery of the amount of its share of” a shortfall in payments.
- ISO New England Open Access Transmission Tariff (Section II of the Tariff) – Section II.2 “Purpose of this OATT” has been amended to include the following language “[t]he ISO acts as Counterparty for sales to its Customers of Regional Transmission Service and Ancillary Services, and as Counterparty with suppliers of Ancillary Services. The ISO offers Regional Transmission Service, as made available to the ISO under the terms of the TOA for provision to its Customers, at the rates established by the PTOs. Where Ancillary Services are initially supplied to the ISO by Market Participants for provision to the ISO’s Customers, the ISO pays to or charges its Market Participants or Customers (as applicable) the amounts produced by the pertinent market clearing process or through the other pricing mechanisms described in the Tariff.”
- ISO New England Open Access Transmission Tariff (Section II of the Tariff) has been amended to make clear that Customers will be purchasing Ancillary Services *from* the ISO and not *through* the ISO and that Through or Out Service, discounts will be made by the PTOs “through the ISO.”

In addition, I verify that:

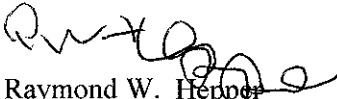
- The ISO-NE Tariff as amended has received all necessary governmental approvals, including that of Federal Energy Regulatory Commission (“FERC”) and that the ISO-NE Tariff as amended remains in full force and effect;
- ISO-NE as a public utility is subject to the jurisdiction of FERC with respect to its rates, terms and conditions of service which are set forth in its Tariff. The ISO-NE Tariff is required to be filed with, and approved by, FERC. ISO-NE may not deviate from those rates, terms and conditions of service as approved by FERC without FERC’s prior approval.
- To the best of my knowledge and belief, ISO-NE is operating in accordance with all those provisions stated in the ISO-NE Tariff that are material to the assumptions underlying the Memorandum Of Counsel and relied upon therein.
- No other operative provisions of any agreement or tariff among, between, or binding on ISO-NE or its participants have been approved by FERC and therefore no other agreement or provision conflicts with such Tariff provisions relating to ISO-NE’s ability to exercise set off rights in the event of a bankruptcy of an ISO-NE participant.

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This Opinion is limited to the matters expressly stated herein. With this Opinion I do not undertake to advise you or anyone else of any changes in the opinion expressed herein resulting from changes in law, changes in facts or circumstances or any other matters that hereafter may occur or be brought to my attention. This Opinion was written in connection with the submission to the Commodity Futures Trading Commission of an Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO-NE and be made publicly available by it for information purposes. No other person or entity may rely on this Opinion without the prior written consent of the signatory.

If you should have any questions, please do not hesitate to contact me.

Respectfully submitted,


Raymond W. Hepper