ATTACHMENT O

MARKET MONITORING PLAN

1. INTRODUCTION AND PURPOSE

1.1 Purposes and Objectives

This Market Monitoring Plan ("Plan") is intended to provide for the independent, impartial and effective monitoring of and reporting on: (1) the competitive structure, performance and economic efficiency of the New York Electric Markets; (2) the conduct of Market Parties, including but not limited to any exercise or attempt to exercise market power or restrain competition in any New York Electric Market by any Market Party or group of Market Parties; (3) the operation and use of the New York State Transmission System as such system affects or may affect competitive conditions in or the economic efficiency of any of the New York Electric Markets, including but not limited to the nature, extent and causes of any congestion on such system and the costs of or charges for such congestion; (4) the adequacy and effectiveness of any tariff or services agreement, or any rule, standard or procedure, or any market power mitigation or other remedial measures, implemented, administered or overseen by the New York Independent System Operator, Inc. ("ISO") and that affects or could affect the competitiveness or economic efficiency of any of the New York Electric Markets; and (5) any other condition, function or action affecting the foregoing.

2. DEFINITIONS

For purposes of this Plan, capitalized terms shall have the meanings specified below, or in the New York Independent System Operator Agreement or Market Administration and Control Area Services Tariff:

2.1 Affiliate

For purposes of the Plan, "Affiliate" includes both Affiliates, as defined in the ISO Services Tariff and, where appropriate, Affiliated Entities, as defined in the Market Mitigation Measures.

2.2 Board

"Board" shall mean the Board of Directors of the New York Independent System Operator, a not-for-profit New York corporation.

2.3 Core Market Monitoring Functions

"Core Market Monitoring Functions" or "Core Functions" shall mean the duties that the FERC determined the Market Monitoring Unit must be responsible for performing in Order 719. The Core Functions are set forth in Section 4.5 of this Plan.

2.4 Interested Government Agencies

"Interested Government Agencies" shall mean the FERC and the New York Public Service Commission.

2.5 ISO Market Power Mitigation Measures

"ISO Market Power Mitigation Measures" or "Market Mitigation Measures" shall mean Attachment H to the ISO's Market Administration and Control Area Services Tariff, or any successor provisions thereto.

2.6 Market Mitigation and Analysis Department

"Market Mitigation and Analysis Department" or "MMA" shall mean a department, internal to the ISO that is responsible for participating in the ISO's administration of its Tariffs. The MMA's duties are described in Section 3, below.

2.7 Market Monitoring Unit

"Market Monitoring Unit" shall mean the consulting or other professional services firm, or other similar entity, retained by the Board, as specified in Section 4.2 of this Plan, that is responsible for carrying out the Core Market Monitoring Functions and the other functions that are assigned to it in this Plan. The Market Monitoring Unit shall recommend Tariff and market rule changes, but shall not participate in the administration of the ISO's Tariffs, except as specifically authorized in this Plan.

2.8 Market Party

"Market Party" shall mean any person or entity that is a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule transactions with the ISO in or affecting, any of the New York Electric Markets, or any combination of the foregoing. Under this Plan and the ISO's Market Mitigation Measures, Market Parties may be held responsible for the actions of, or inaction by, their Affiliates.

2.9 Market Violation

"Market Violation" shall mean any of (i) a tariff violation, (ii) violation of a Commission-accepted or approved order, rule or regulation including, but not limited to, violations of FERC's Market Behavior Rules, 18 CFR Section 35.41, or any successor provisions thereto, (iii) market manipulation (*see* 18 CFR Section 1c.2, or any successor provision thereto), or (iv) inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.

2.10 New York Electric Markets

"New York Electric Markets" shall mean the LBMP Market, the Wholesale Market, any market for the purchase or sale of TCCs, and any other market administered, coordinated or facilitated by, or involving transmission or other services scheduled or otherwise provided by, the ISO.

2.11 Order 719

"Order 719" shall mean the Order issued by the FERC on October, 17, 2008 in Docket Nos. RM07-19-000 and AD07-7-000, including the regulations adopted by FERC in that Order, as amended by any subsequent orders issued by the FERC or by a Federal court of appeals.

2.12 Other State Commission

"Other State Commission" shall mean the State regulatory agencies other than the New York Public Service Commission that possess primary jurisdiction over (a) the construction and siting of electric transmission and generating facilities, and/or (b) the regulation of retail electric rates, within their respective State.

2.13 Plan

"Plan" shall mean this ISO Market Monitoring Plan.

2.14 Protected Information

"Protected Information" shall mean: (a) information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, (b) information that is Confidential Information under Attachment F to the ISO OATT, (c) information that the Market Monitoring Unit or the ISO is obligated by tariff, regulation or law to protect, (d) information which, if revealed, would present opportunities for collusion or other anticompetitive conduct, or that could facilitate conduct that is inconsistent with economic efficiency, (e) information relating to ongoing investigations and monitoring activities (including the identity of the person or Market Party that requested or is the subject of an investigation, unless such party consents to disclosure), (f) information subject to the attorney-client privilege, the attorney work product doctrine, or concerning pending or threatened litigation, or (g) information that has been designated as such in writing by the party supplying the information to the ISO or to its Market Monitoring Unit, or by the ISO or its Market Monitoring Unit, provided that such designation is consistent with the ISO's tariffs and this Plan.

3. NYISO MARKET MITIGATION AND ANALYSIS DEPARTMENT

3.1 Establishment

The ISO shall establish, and provide appropriate staffing and resources for, its internal Market Mitigation and Analysis Department ("MMA").

3.2 Staffing

The MMA shall be comprised of full-time employees of the ISO having the experience and qualifications necessary to assist the ISO's efforts to implement its obligations under its Tariffs and under this Plan, including providing support to the ISO's external Market Monitoring Unit where and when needed. In carrying out its responsibilities, the MMA, may retain such consultants and other experts as the ISO deems appropriate to the effective implementation of this Plan, subject to the management oversight of the Chief Executive Officer. Such consultants or other experts shall comply with applicable ISO policies on conflicts of interest or other standards of conduct.

3.3 Duties of MMA

The MMA shall not be responsible for carrying out any of the Core Functions. Rather, the MMA is responsible for working collaboratively with the Market Monitoring Unit and other ISO departments to assist the ISO's efforts to carry out its Tariff responsibilities, including the ISO's obligation to provide adequate data and support to its Market Monitoring Unit. The MMA's duties shall include: (1) administering mitigation in accordance with the ISO's Tariffs, which will include performing daily monitoring of the ISO's markets to identify potential violations of the Market Mitigation Measures, (2) assisting the ISO's efforts to accurately and effectively implement the requirements of its Tariffs and its intended market design, (3) responding to information and data requests the ISO receives from the FERC's Office of Enforcement staff and from the staff of the New York Department of Public Service, consistent with the provisions of this Plan, the ISO's Code of Conduct, and any other provisions of the ISO's Tariffs that address the protection of Protected Information, (4) providing data and other assistance to support the Market Monitoring Unit, (5) working collaboratively with other ISO departments to analyze market outcomes, and (6) bringing to the Market Monitoring Unit's attention market-related concerns (including, but not limited to, possible Market Violations) it identifies while carrying out its responsibilities.

3.4 Accountability

The MMA shall act at the direction of the Chief Executive Officer, who shall be accountable for the ISO's implementation of this Plan.

The Chief Executive Officer shall ensure that the MMA has adequate employees, funding and other resources, access to required information, and the cooperation of the ISO staff, as necessary for it to perform its duties under this Plan and under the ISO's Market Mitigation Measures.

(11) The need for and the implementation and efficacy of appropriate sanctions or other remedial measures for violations of or other failures to comply with any tariff or services agreement, or any rule, standard or procedure, or any market power mitigation or other remedial measure, to the extent such violation or failure to comply impairs or threatens to impair the competitiveness or economic efficiency of any of the New York Electric Markets;

(12) To the extent practicable, conditions or events outside the New York Control Area affecting the supply and demand for, and the quantity and price of, products or services sold or to be sold in any of the New York Electric Markets; and

(13) Such other conditions, functions or actions as may be approved by the Chief Executive Officer or the Board (as appropriate).

5.3 Legal Advice

The Market Monitoring Unit and MMA may consult legal counsel for the ISO for advice on antitrust, regulatory or other legal issues pertinent to this Plan.

6. DATA COLLECTION AND DISCLOSURE

6.1 Access to ISO Data and Information

For purposes of carrying out their responsibilities under this Plan, the Market Monitoring

Unit and MMA shall have access to, and shall endeavor primarily to rely upon (but shall not be limited to), data or other information gathered or generated by the ISO in the course of its operations. This data and information shall include, but not be limited to, data or information gathered or generated by the ISO in connection with its scheduling, commitment and dispatch of generation, its determination of Locational Based Marginal Pricing, its operation or administration of the New York State Transmission System, and data or other information produced by, or required to be provided to the ISO under its Tariffs, the New York Independent System Operator Agreement, the New York State Reliability Council Agreement, or any other relevant tariffs or agreements.

6.2 Data from Market Parties

6.2.1 Data Requests

If the Market Monitoring Unit or MMA, determines that additional data or other information is required to accomplish the objectives of the Plan or of the Market Mitigation Measures, the ISO may request the persons or entities possessing, having access to, or having the ability to generate or produce such data or other information to furnish it to the ISO or to its Market Monitoring Unit. Any such request shall be accompanied by an explanation of the need for such data or other information, a specification of the form or format in which the data is to be produced, and an acknowledgment of the obligation of the ISO and its Market Monitoring Unit to maintain the confidentiality of data or information appropriately designated as Protected Information by the party producing it.

A party receiving an information request from the ISO shall furnish all information, in the requested form or format, that is: (i) included on the below list of categories of data or information that it may routinely request from a Market Party; or (ii) reasonably necessary to achieve the purposes or objectives of this Plan, not readily available from some other source that is more convenient, less burdensome and less expensive, and not subject to an attorney-client or other generally recognized evidentiary doctrine of confidentiality or privilege.

The categories data or information that may be routinely requested shall be limited to data or information the routine provision of which would not be unduly burdensome or expensive, and which has been reasonably determined by the ISO, in consultation with its Market Monitoring Unit, to be likely to be relevant to the purposes and objectives of this Plan or the Market Mitigation Measures. .

6.2.2 Categories of Data the ISO May Request from Market Parties

The following categories of data or information may be obtained by the ISO from Market Parties in accordance with this Plan. Market Parties shall retain the following categories of data or information for the period specified in Section 6.3 of this Plan.

(1) Production costs – Data or information relating to the costs or operating a specified Electric Facility (for generating units such data or information shall include, but not be limited to, heat rates, start-up fuel requirements, fuel purchase costs, and operating and maintenance expenses) or data or information relating to the costs of providing load reductions from a specified facility participating as a Demand Side Resource in the ISO Operating Reserves or Regulation Service markets.

(2) Opportunity costs – Data or information relating to a claim of opportunity costs, including, but not limited to, contracts or price quotes.

(3) Logs – Data or information relating to the operating status of an Electric Facility, including, for generating units, generator logs showing the generating status of a specified unit or data or information relating to the operating status of a specified facility participating as a Demand Side Resource in the ISO Operating Reserves or Regulation Service markets. Such data or information shall include, but not be

limited to, any information relating to the validity of a claimed forced outage or derating of a generating unit or other Electric Facility or a facility participating as a Demand Side Resource in the ISO Operating Reserves or Regulation Service markets.

(4) Bidding or Capacity Agreements – Documents, data, or information relating to a Market Party or its Affiliate conveying to or receiving from another entity the ability: (i) to determine the bid/offer of (in any of the markets administered by the ISO); (ii) to determine the output level of; or (iii) to withhold; generation that is owned by another entity. At the request of the producing entity, the ISO may (but is not required to) permit the documents, data or information produced in response to the foregoing specification to be partially redacted, or the ISO may agree to other measures for the protection of confidential or commercially sensitive information, provided that the ISO receives the complete text of all provisions relating to the subjects specified in this Section 6.2.2(4).

(5) Other Cost and Risk Data Supporting Reference Levels or Going-Forward Costs – All data or information not specifically identified above that supports or relates to

a Market Party's claimed, requested, or approved reference levels or Going-Forward Costs (as that term is defined in the Market Mitigation Measures) for a particular resource.

(6) Ownership and Control – Data or information identifying a Market Party's Affiliates.

6.2.3 Enforcement of Data Requests

(a) A party receiving a request for data or information specified in Section 6.2.2 of this Plan shall promptly provide it to the ISO, and may not contest the right of the ISO to obtain such data or information except to the extent that the party has a good faith basis to assert that the data or information is not included in any of the categories on the list.

(b) If a party receiving a request for data or information not specified in Section 6.2.2 of this Plan believes that production of the requested data or information would impose a substantial burden or expense, or would require the party to produce information that is not relevant to achieving the purposes or objectives of this Plan, or would require the production of data or information of extraordinary commercial sensitivity, the party receiving the request shall promptly so notify the ISO, and the ISO shall review the request with the receiving party with a view toward determining whether, without unduly compromising the objectives of this Plan, the request can be narrowed or otherwise modified to reduce the burden or expense of compliance, or special confidentiality protections are warranted, and if so shall so modify the request or the procedures for handling data or information produced in response to the request.

(c) If the ISO determines that the requested information has not or will not be provided within a reasonable time, the ISO may invoke the dispute resolution provisions of the New York Independent System Operator Agreement, or if the foregoing is not applicable to the party from which the information has been requested the dispute resolution provisions of the New York ISO Tariff, if applicable, to determine the ISO's right to obtain the requested information. The parties shall submit any such determination to binding arbitration, or other form of binding resolution, and shall seek expedited resolution, in accordance with the applicable dispute resolution procedures. If the entity from which the data or other information has been requested is not subject to either of the foregoing dispute resolution procedures and does not voluntarily agree to the use of either or a comparable dispute resolution procedure, the ISO may initiate such judicial or regulatory proceedings to compel the production of the requested information as may be available and deemed appropriate.

6.3 Data Retention

6.3.1 Section 6.3 of the Plan sets forth requirements for the retention of market information by the ISO, by the Market Monitoring Unit and by Market Parties. The provisions of this data retention policy are binding on the ISO, on the Market Monitoring Unit and on Market Parties.

6.3.2 Except as specified herein, a Market Party shall retain the data and information specified in Section 6.2.2 of this Plan for a period of six years from the date to which the data relates.

6.3.3 The ISO or its Market Monitoring Unit (as appropriate) shall retain for a period of six years from the date to which the data or information relates:

(1) data or information required to be submitted to, or otherwise used by, the ISO in connection with the bidding, scheduling and dispatch of resources or loads in the New York energy, ancillary services, TCC or Installed Capacity (ICAP) markets;

(2) data or information used or monitored by the ISO on system conditions in the New York Control Area, including but not limited to transmission constraints or planned or forced facility outages, that materially affect transmission congestion costs or market conditions in the New York energy, ancillary services or ICAP markets;

(3) data or information collected by the ISO or by the Market Monitoring Unit (as appropriate) in the course of their implementation of the Plan or the Market Mitigation Measures, on conditions in markets external to New York, or on fuel prices or other economic conditions that materially affect market conditions in the New York energy, ancillary services, TCC or ICAP markets;

(4) data or information relating to the imposition of, or a decision not to impose, mitigation measures; and

(5) such other data or information as the MMA or Market Monitoring Unit deem it necessary to collect in order to implement the Plan or the Market Mitigation Measures.

6.3.4 The foregoing obligations to retain data or information shall not alter any data retention requirements that may otherwise be applicable to the ISO, to the Market Monitoring Unit, or to a Market Party; nor shall any such other data retention requirement alter the requirements specified above.

6.3.5 The ISO, Market Monitoring Unit or a Market Party may, at its option, purge or otherwise destroy any data or information that has been retained for the longest applicable period specified above, provided the retention of such data or information is not mandated by the FERC, the New York Public Service Commission, or other applicable requirement or obligation.

6.3.6 Compliance with the requirements specified herein for the retention of data or information shall not suspend or waive any statute of limitations or doctrine of laches, estoppel or waiver that may be applicable to any claim asserted against the ISO, the Market Monitoring Unit, or a Market Party.

6.4 Confidentiality

The Market Monitoring Unit and the ISO shall use all reasonable procedures necessary to protect and preserve the confidentiality of Protected Information, provided that such information is not available from public sources, is not otherwise subject to disclosure under any tariff or agreement administered by the ISO, and is properly designated as Protected Information. The ISO and the Market Monitoring Unit's obligation to protect and preserve the confidentiality of Protected Information shall be of a continuing nature, and shall survive the rescission, termination or expiration of this Plan.

Except as may be required by subpoena or other compulsory process, or as authorized in the ISO's Tariffs and governing documents (including this Plan), the Market Monitoring Unit and the ISO shall not disclose Protected Information to any person or entity without the prior written consent of the party that the Protected Information pertains to. Upon receipt of a subpoena or other compulsory process for the disclosure of Protected Information, the ISO and/or the Market Monitoring Unit shall promptly notify the party that the Protected Information pertains to, and shall provide all reasonable assistance requested by the party to prevent or limit disclosure. Upon receipt of a subpoena or other compulsory process for the disclosure of Protected Information that was provided to the ISO or the Market Monitoring Unit pursuant to section 6.6 below, the ISO or the Market Monitoring Unit, as appropriate, shall promptly notify the entity that provided the Protected Information and shall provide all reasonable assistance requested by that party to prevent or limit disclosure.

The ISO may, in consultation with the Market Monitoring Unit, adopt further or different procedures for the designation of information as Protected Information, or for the reasonable protection of Protected Information, after providing an opportunity for interested parties to review and comment on such procedures; provided, however, that such further or different procedures shall not permit the ISO or Market Monitoring Unit to disclose data or information that would be protected from disclosure under the procedures in place at the time the data or information was provided to the ISO or to the Market Monitoring Unit.

6.5 Collection and Availability of Information

6.5.1 The ISO and the Market Monitoring Unit shall regularly collect and maintain the information necessary for implementing this Plan.

The ISO and the Market Monitoring Unit may provide Protected Information to each other as they determine necessary to carry out the purposes of this Plan.

6.5.2 The ISO, in consultation with the Market Monitoring Unit, shall make publicly available: (i) a description of the categories of data and information collected and maintained by the MMA and Market Monitoring Unit; (ii) such data or information as may be useful for the competitive or efficient functioning of any of the New York Electric Markets that can be made publicly available consistent with the confidentiality of Protected Information; and (iii) if and to the extent consistent with confidentiality requirements, such summaries, redactions, abstractions or other non-confidential compilations, versions or reports of Protected Information as may be useful for the competitive or efficient functioning of any of the New York Electric Markets. Any such proposed methods for creating non-confidential reports of such information shall only be adopted after provision of a reasonable opportunity for, and consideration of, the comments of Market Parties and other interested parties. All such proposed or adopted methods shall be set forth in the ISO Procedures, shall be made available through the ISO web site or comparable means, and shall be subject to review and approval by the Board.

6.5.3 Consistent with the foregoing requirements, the ISO and its Market Monitoring Unit shall make available, through the ISO web site or comparable means, such reports on the New York Electric Markets as they determine will, at reasonable cost, facilitate competition in those markets.

6.5.4 Any data or other information collected by the ISO relating to any of the New York Electric Markets shall be provided upon request, and without undue discrimination between requests, to a Market Party, other interested party, or an Interested Government Agency, provided: (i) such data or information is not Protected Information, or the party designating it as Protected Information has consented in writing to its disclosure; (ii) such information can be provided without undue burden or disruption to, or interference with the other duties and responsibilities of the

ISO; and (iii) the requesting party, if other than an Interested Government Agency, provides appropriate guarantees of reimbursement of the costs to the ISO of compiling and disclosing the data or information. If the ISO determines that doing so would not be unduly burdensome or expensive, or inconsistent with maintaining the competitiveness or economic efficiency of any market, the ISO shall make data or information provided in accordance with this paragraph available to interested parties through the ISO web site or other appropriate means.

6.5.5 The New York Public Service Commission and any Other State Commission may make tailored requests to the Market Monitoring Unit for information related to general market trends and the performance of the New York Electric Markets. If the Market Monitoring Unit determines that such a request is not unduly burdensome, it shall provide the information sought, subject to the restrictions and limitations established in Sections 6.5.5.1, 6.5.5.2 and 6.5.5.4, below.

6.5.5.1 Except as provided in this ~~paragraph~~Section 6.5.5.1, ~~Until such time as the ISO is able to develop with its stakeholders and FERC accepts appropriate confidentiality protections (*See* Order 719 at PP. 448, 459),~~ the Market Monitoring Unit shall not provide Protected Information to the New York Public Service Commission or to an Other State Commission in response to a request under ~~this~~ Section 6.5.5, above. ~~of the Plan, except~~ The Market Monitoring Unit may, but is not required to, provide Protected Information to the New York Public Service Commission or an Other State Commission when~~re~~ the party ~~designating~~ to which the requested ~~information as~~ Protected Information pertains has consented in writing to its disclosure. The Market Monitoring Unit may, but is not required to, provide Protected Information to the New York Public Service Commission or an Other State Commission if the general counsel/chief legal officer of the requesting state commission certifies, in writing, that: (i) the requested Protected Information will be protected from disclosure by law (and provides copies of the relevant laws, rules or regulations under which the requested Protected Information is protected from public disclosure); (ii) the requested Protected Information will be treated as confidential to the fullest extent of the laws of its state; (iii) the state commission will promptly notify the Market Monitoring Unit if it receives a request for disclosure of all or part of the Protected Information; ~~and~~ (iv) the state commission agrees to provides all reasonable and permissible assistance to prevent further disclosure of Protected Information provided by the Market Monitoring Unit to the state commission in response to a request governed by Section 6.5.5 of this Plan; and (v) the Protected Information will not be used for a state enforcement action.

The Market Monitoring Unit shall not provide Protected Information it received from another ISO or RTO, or from a market monitoring unit for another ISO or RTO, pursuant to the authority to share information granted by Section 6.6 of this Plan, in response to a request under Section 6.5.5 of this Plan. Instead, the Market Monitoring Unit shall identify to the requesting state commission the ISO, RTO or market monitoring unit that provided the information to the Market Monitoring Unit, so that the New York Public Service Commission or Other State Commission may request the Protected Information directly from its source.

6.5.5.2 Prior to disclosing Protected Information pertaining to a particular Market Party in response to a tailored request made under Section 6.5.5, the Market Monitoring Unit shall (1) notify the Market Party or Parties to which the Protected Information pertains of the request and describe the information that the Market Monitoring Unit proposes to disclose, and (2) allow the Market Party or Parties a reasonable time to object to the disclosure and to provide context to the Protected Information related to it. Providing the opportunity for Market Parties to object to disclosure, or to provide context to the information being produced shall not be permitted to unduly delay its release.

6.5.5.3 Section 6.5.5 of the Plan pertains to requests by the New York Public Service Commission and Other State Commissions to the Market Monitoring Unit to provide information. Section 6.4 of the Plan addresses how the Market Monitoring Unit responds to compulsory processes, such as subpoenas and court orders.

6.5.5.4 In responding to a request under Section 6.5.5 of the Plan, the Market Monitoring Unit shall not knowingly provide information to the New York Public Service Commission, or to an Other State Commission, that is designed to aid a state enforcement action.

6.5.5.5 The New York Public Service Commission or any Other State Commission may petition FERC to require the ISO to release information that the Market Monitoring Unit is not required to release, or that the Market Monitoring Unit is proscribed from releasing, under this Section 6.5.5 of the Plan.

6.5.6 The Market Monitoring Unit shall respond to information and data requests issued to it by the Commission or its staff. If the Commission or its staff, during the course of an investigation or otherwise, requests Protected Information from the Market Monitoring Unit that is otherwise required to be maintained in confidence, the Market Monitoring Unit shall provide the requested information to the Commission or its staff within the time provided for in the request for information. In providing the information to the FERC or its staff, the Market Monitoring Unit shall, consistent with any FERC rules or regulations that may provide for privileged treatment of that information, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Market Monitoring Unit shall not be held liable for any losses, consequential or otherwise, resulting from the Market Monitoring Unit divulging such Protected Information pursuant to a request under this Section 6.5.6. After the Protected Information has been provided to the Commission or its staff, the Market Monitoring Unit shall immediately notify any affected Market Participant(s) when it becomes aware that a request for disclosure of such Protected Information has been received by the Commission or its staff, or a decision to disclose such Protected Information has been made by the Commission, at which time the Market Monitoring Unit and the affected Market Participant(s) may respond before such information would be made public, pursuant to the Commission's rules and regulations that may provide for privileged treatment of information provided to the Commission or its staff.

6.6 Sharing Information With ~~PJM Interconnection LLC to Comply with FERC Opinion No. 476~~Other ISOs/RTOs and Market Monitoring Units

6.6.1 The Market Monitoring Unit or the ISO may disclose Protected Information to another ISO or RTO or to another ISO or RTO's market monitoring unit if the requesting entity submits a written request stating that the requested Protected Information is necessary to an investigation or evaluation that the ISO/RTO or market monitor is undertaking to determine ~~pursuant to to it its electric system or market functions~~(a) if market power is being, or has been, exercised, (b) if market manipulation is occurring or has occurred, or (c) if a market design flaw exists in or between interconnected markets, and either (i) demonstrates (by providing copies of the relevant documents, provisions, statutes, rules, orders, etc.) that its tariff or other governing document limits further disclosure of the Protected Information in a manner that satisfies all of the requirements set forth in Section 6.6.1.1, below, or (ii) executes a non-disclosure agreement with the ISO and/or the Market Monitoring Unit that incorporates all of the requirements set forth in Section 6.6.1.1 below, and provides a written certification that the requesting ISO, RTO or market monitoring unit possesses legal authority to enter into the required non-disclosure agreement and to be bound by its terms.

6.6.1.1 The requesting entity's governing documents or non-disclosure agreement must:

(1) protect Protected Information that the ISO or the Market Monitoring Unit provides from disclosure, except where disclosure may be required by the FERC or by subpoena or other compulsory process;

(2) establish a legally enforceable obligation to treat Protected Information provided by the ISO or its Market Monitoring Unit as confidential. Such obligation must be of a continuing nature, and must survive the rescission, termination or expiration of the applicable tariff(s), other governing document(s) or non-disclosure agreement;

(3) require state commissions to request Protected Information provided by the ISO or its Market Monitoring Unit directly from the ISO or its Market Monitoring Unit, in a manner consistent with Section 6.5.5.1 of this Plan, and promptly inform the ISO or its Market Monitoring Unit of any requests received from a state commission for Protected Information provided by the ISO or its Market Monitoring Unit;

(4) require the requesting entity to promptly notify the ISO or its Market Monitoring Unit and seek appropriate relief to prevent or,

if it is not possible to prevent, to limit disclosure in the event that a subpoena or other compulsory process seeks to require disclosure of Protected Information provided by the ISO or its Market Monitoring Unit;

(5) require the requesting entity to promptly notify the ISO or its Market Monitoring Unit of any third party requests for additional disclosure of the Protected Information where Protected Information provided by the ISO or its Market Monitoring Unit has been disclosed to a court or regulatory body in response to a subpoena or other compulsory process, and to seek appropriate relief to prevent or limit further disclosure; and

(6) require the destruction of the Protected Information at the earlier of (i) five business days after a request from the ISO or its Market Monitoring Unit for the return of the Protected Information is received, or (ii) the conclusion or resolution of the investigation or evaluation.

The ISO or the Market Monitoring Unit may undertake a joint investigation ~~of matters governed by this Plan~~ with another ISO/RTO or with another ISO or RTO's market monitoring unit to determine (a) if market power is being, or has been, exercised, (b) if market manipulation is occurring or has occurred, or (c) if a market design flaw exists in or between interconnected markets. In such a case, the ISO and the Market Monitoring Unit may disclose Protected Information to the other ISO/RTO or market monitoring unit as necessary to achieve the objectives of the investigation; provided that the ISO or Market Monitoring Unit first receives a written certification from the other ISO/RTO or market monitoring unit that its tariffs or other governing documents meet the standards set forth in this Section 6.6 or executes a non-disclosure agreement.

Protected Information provided by another ISO/RTO or market monitoring unit to the ISO or to the Market Monitoring Unit pursuant to the provisions of this Plan shall either be destroyed or returned to the entity that provided the Protected Information at the earlier of (i) five business days after receipt of a request from that entity for the return of the Protected Information ~~is received~~, or (ii) the conclusion or resolution of the matter being investigated.

~~Subject to the requirements of Section 6.6.2, the ISO and the Market Monitoring Unit may release Protected Information of Public Service Electric & Gas Company ("PSE&G"), Consolidated Edison Company of New York ("ConEd"), and their affiliates, and the Protected Information of any Market Participant regarding generation and/or transmission facilities located within the ConEd Transmission District (*see* Section 2.184 of the ISO's Open Access Transmission Tariff) to PJM Interconnection LLC ("PJM") and the PJM Market Monitoring Unit ("PJM Market Monitor") to the limited extent that the ISO or the ISO's Market Monitoring~~

~~Unit determines necessary to carry out the responsibilities of the Market Monitoring Units of PJM Interconnection LLC ("PJM") and the ISO under FERC Opinion No. 476 (*see Consolidated Edison Company v. Public Service Electric and Gas Company, et al*., 108 FERC ¶ 61,120 at P 215 (2004)) to conduct joint investigations to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the contracts that are the subject of FERC Opinion No. 476.~~

~~6.6.2 The ISO and the Market Monitoring Unit may release a Market Participant's Protected Information pursuant to Section 6.6.1 to PJM and/or the PJM Market Monitor only if the entity receiving the Protected Information is subject to obligations limiting the disclosure of such Protected Information that are equivalent to or greater than the limitations on disclosure specified in Section 6.4 of this Plan. Information received from PJM or the PJM Market Monitor under Section 6.6.1 that is designated as Protected Information shall be protected from disclosure in accordance with Section 6.4 of this Plan by the ISO and by its Market Monitoring Unit.~~

~~6.7 Sharing Confidential, Transmission System and Protected Information with ISO New England Inc. and PJM~~

~~6.7.1 Subject to the terms, requirements and conditions set forth below, the ISO is authorized to exchange Protected Information (including, but not limited to, information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the ISO or by the ISO) that is related to External Transactions at the Proxy Generator Buses representing the electrical interfaces between the NYCA and New England, with ISO New England Inc. ("ISO-NE") for the specific and limited purposes of: (i) identifying and preventing the actual or intended gaming of the market rules set forth in the New York and/or New England (NEPOOL and ISO-NE) tariffs, procedures and technical documents, and/or (ii) identifying and preventing the actual or intended exercise of market power in New York or in New England; and~~

~~6.7.2 to exchange Protected Information (including, but not limited to, information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the ISO or by the ISO) that is related to External Transactions at the Proxy Generator Buses representing the electrical interfaces between the NYCA and the PJM Control Area, with PJM for the specific~~

~~and limited purposes of: (i) identifying and preventing the actual or intended gaming of the market rules set forth in the New York and/or PJM tariffs, procedures and technical documents, and/or (ii) identifying and preventing the actual or intended exercise of market power in New York or in PJM.~~

~~6.7.3 Prior to disclosing any Protected Information, the ISO shall ensure that ISO-NE or PJM (as appropriate) will provide protections for Protected Information that are the substantial equivalent of those required by this Plan, and that are the substantial equivalent of the protections that are required by Section 4 of the ISO's Code of Conduct for Confidential Information. In particular, ISO-NE and PJM shall be required to provide the following protections, and the ISO and its Market Monitoring Unit are authorized to provide reciprocal protections for Protected Information that is provided by ISO-NE or PJM:~~

~~(1) ISO-NE or PJM (as appropriate) shall be subject to a legally enforceable obligation to treat as confidential, in accordance with all applicable tariffs and rules (including, but not limited to, their FERC Code of Conduct and the FERC Standards of Conduct), all information that is designated in writing by the ISO as being Protected Information, except where such information would not be subject to protection under the ISO's Code of Conduct or this Plan. ISO-NE's or PJM's~~

~~legally enforceable obligation to treat Protected Information provided by the ISO as confidential shall be of a continuing nature, and shall survive the rescission, termination or expiration of any applicable tariffs, rules, Code of Conduct and/or Standards of Conduct;~~

~~(2) ISO-NE or PJM (as appropriate) shall possess reciprocal legal authority to provide Protected Information to the ISO;~~

~~(3) ISO-NE or PJM (as appropriate) shall notice the ISO of all requests from courts or regulatory entities for access to Protected Information provided by the ISO and shall provide all reasonable assistance requested by the ISO to prevent disclosure of such information. Upon receipt of notice from ISO-NE or PJM, the ISO shall inform the party or parties that are the source or subject of the Protected Information and, in conjunction with ISO-NE or PJM, shall undertake reasonable efforts to ensure that the source(s) or subject(s) of the information are provided an opportunity to participate in defending the information from disclosure;~~

~~(4) if required to release Protected Information to a court or regulatory body, ISO-NE or PJM (as appropriate) shall take measures to ensure that it receives notice of any requests from third parties for access to such data and shall notice the ISO of any such requests. Upon receipt of notice from ISO-NE or PJM, the ISO shall inform~~

~~the party or parties that are the source or subject of the Protected Information and, in conjunction with ISO-NE or PJM, shall undertake reasonable efforts to ensure that the source(s) or subject(s) of the information are provided an opportunity to participate in defending the information from disclosure;~~

~~(5) if required to release Protected Information to a court or regulatory body, ISO-NE or PJM (as appropriate) shall seek appropriate protective relief to limit the disclosure to the greatest extent possible; and~~

~~(6) ISO-NE or PJM shall return or destroy Protected Information received from the ISO when the issue underlying ISO-NE's or PJM's inquiry has been resolved.~~

7. PERFORMANCE INDICES AND SCREENS

7.1 Development of Indices and Screens

The MMA or the Market Monitoring Unit, with due consideration of the proposals and comments of Market Parties and other interested parties submitted as specified below, with the approval of the Chief Executive Officer and the Market Monitoring Unit (for indices and screens developed by the MMA), or subject to review and comment by the ISO and review and approval by the Board (for indices and screens developed by the Market Monitoring Unit), shall develop, adopt and refine on the basis of experience with their application, such indices or other screens