



April 28, 2008

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

RE: Motion for Leave to Answer and Answer of ISO New England Inc. and the NEPOOL Participants Committee; Docket No. ER08-697-000

Dear Secretary Bose and Deputy Secretary Davis:

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.213 (2007), ISO New England Inc. ("ISO") and the New England Power Pool Participants Committee ("NEPOOL") (collectively, the "Filing Parties") hereby submit an Answer to the Motion to Intervene and Protest of NSTAR Electric Company and The United Illuminating Company, and the Motion to Intervene and Limited Comments of Northeast Utilities Service Company on Behalf of the NU Companies filed in the above-captioned proceeding.

Please do not hesitate to contact the undersigned should you have any questions.

Kind Regards,

/s/ Sherry A. Quirk
Sherry A. Quirk
(202) 778-6475

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

**ISO New England Inc. and
New England Power Pool**

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Docket No. ER08-697-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF ISO NEW ENGLAND INC. AND THE NEPOOL PARTICIPANTS
COMMITTEE**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213 (2007), ISO New England Inc. (“ISO”) and the New England Power Pool Participants Committee (“NEPOOL”) (collectively, the “Filing Parties”) hereby submit an Answer to: (1) the Motion to Intervene and Protest of NSTAR Electric Company and The United Illuminating Company (the “NSTAR and UI Motion”), and (2) the Motion to Intervene and Limited Comments of Northeast Utilities Service Company on Behalf of the NU Companies (the “NU Motion” and collectively with the NSTAR and UI Motion, the “Motions”) filed in the above-captioned proceeding. As more fully described below, the Filing Parties urge the Commission to deny the Motions to the extent they seek rejection of the revisions filed by the Filing Parties to Market Rule 1 and the ISO’s Open Access Transmission Tariff (“ISO OATT”) relating to the treatment of External Transactions in the New England capacity and energy markets.¹

¹ Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (“ISO Tariff”), the Second Restated New England Power Pool Agreement, and the Participants Agreement. Market Rule 1 is Section III of the ISO Tariff. The Open Access Transmission Tariff is Section II of the ISO Tariff.

I. INTRODUCTION

The Motions were filed in response to the joint filing by the Filing Parties on March 21, 2008 proposing revisions to Market Rule 1 and the ISO OATT to revise the treatment of External Transactions² in the New England capacity and energy markets (the “Joint Filing”). In the Joint Filing, among other proposed changes, the Filing Parties proposed providing Market Participants that submit Supply Offers for External Resources in the form of priced External Transactions and in support of a Capacity Obligation³ with greater flexibility in the timing for notifying the ISO of any required advance transmission reservations on non-Pool Transmission Facility (“non-PTF”) interconnections (the “Reservation Flexibility Changes”).⁴ The Filing Parties requested an effective date of July 1, 2009 for the Reservation Flexibility Changes.⁵

The movants request rejection of the Reservation Flexibility Changes. The movants present a rationale based primarily on purported reliability needs and disparities between the treatment of internal Resources and External Resources in the Capacity

² An “External Transaction” is “a purchase by a Market Participant of energy external to the New England Control Area or a sale by a Market Participant of energy external to the New England Control Area in the Day-Ahead Energy Market and/or Real-Time Energy Market or a through transaction scheduled by a Non-Market Participant in the Real-Time Energy Market.” Market Rule 1, Section III.1.3.2.

³ As used herein, the term “Capacity Obligation” refers to a capacity supply obligation in the ICAP Transition Period or a subsequent Capacity Commitment Period of the Forward Capacity Market.

⁴ “Priced” External Transactions are External Transactions of a specified amount of energy at a specified price, in contrast to “Self-Scheduled” External Transactions, which are External Transactions of a specified amount of energy at the market clearing price, rather than at a specified price. As explained in the Joint Filing at p. 7, the Reservation Flexibility Changes pertain only to transmission reservations for priced External Transactions that support Capacity Obligations, and leave in place for all other types of External Transactions the current ISO operating practice of requiring that the ISO be notified of a transmission reservation when the External Transaction is submitted to the Real-Time Energy Market.

⁵ The Reservation Flexibility Changes are described at pages 4-8 of the Joint Filing. The requested effective date for the Reservation Flexibility Changes is described on page 10 of the Joint Filing. The Filing Parties also proposed a number of other changes relating to the offer and scheduling of External Transactions, for which they have requested an effective date of June 3, 2008. The movants limit their comments and protests to the proposed Reservation Flexibility Changes. The Motions are not directed to the remaining changes requested by the Filing Parties.

Market,⁶ but also acknowledge that implementation of the Reservation Flexibility Changes would potentially result in the loss of firm transmission revenues for the movants.⁷

As the Filing Parties demonstrate herein and in the Joint Filing, the firm transmission revenues that movants seek to preserve are derived from a pre-existing operating practice that (i) is not reflected in filed market rules and, as applied to priced External Transactions in support of a Capacity Obligation, is inconsistent with the Forward Capacity Market settlement agreement (the “FCM Settlement Agreement”),⁸ (ii) if continued in conjunction with the market rules for the ICAP Transition Period and the Forward Capacity Market (the “Capacity Market Rules”), could inappropriately require Market Participants to purchase excess, unutilized transmission service, and (iii) has not been approved by the Commission in the context of the capacity or energy markets. Furthermore, the proposed Reservation Flexibility Changes do not seek to alter any transmission reservation requirements under the movants’ Schedule 20A tariffs. To the extent the movants believe they need to further preserve the current reservation practices, they are free to make their own filing to the Commission under Section 205 of the Federal Power Act (“Section 205”)⁹ to request modification of their tariffs to implement these practices. Therefore, the relief requested in the Motions should be denied.

⁶ As used herein, the term “Capacity Market” refers both to both the capacity construct applicable during the ICAP Transition Period, which is implemented in Section 8 of Market Rule 1, as well as the capacity construct of the Forward Capacity Market, which is implemented in Section 13 of Market Rule 1.

⁷ The reliability concerns are raised in the NSTAR and UI Motion at pp. 12-15. The disparities between the treatment of internal Resources and External Resources are raised in the NSTAR and UI Motion at pp. 9-12 and in the NU Motion at pp. 8-9. The concerns with loss of potential revenues are raised in the NSTAR and UI Motion at pp. 15-16 and in the NU Motion at p. 9.

⁸ *Devon Power LLC*, Order Accepting Proposed Settlement Agreement, 115 FERC ¶ 61,340, *order on reh’g*, 117 FERC ¶ 61,133 (2006).

⁹ 16 U.S.C. § 824d (2000).

II. MOTION FOR LEAVE TO ANSWER

The Filing Parties hereby move, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2007), for leave to file an answer to the NSTAR and UI Motion, which has been categorized as a protest. In addition, to the extent the NU Motion is considered a protest, the Filing Parties move for leave to answer that pleading as well. While the Commission's Rules of Practice and Procedure allow parties to respond to comments,¹⁰ as a general matter, the Commission's rules prohibit responses to protests.¹¹ However, the Commission has the authority to waive the prohibition against answers to protests for good cause.¹² The Commission has found good cause to permit replies where they are otherwise prohibited in various circumstances, including where the answer would assure a complete record in the proceeding,¹³ provide information helpful to the disposition of an issue,¹⁴ permit the issues to be narrowed or clarified,¹⁵ or aid the Commission in understanding and resolving issues.¹⁶

The Filing Parties believe the Motions provide an incomplete and incorrect picture of the impact of the Reservation Flexibility Changes and their relationship to the FCM Settlement Agreement. Therefore, the Filing Parties believe their answer will assure a more complete record in this proceeding, will assist in clarifying the issues in

¹⁰ See 18 C.F.R. § 385.213(a)(3) (2007).

¹¹ *Id.* at § 385.213(a)(2).

¹² *Id.*

¹³ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

¹⁴ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

¹⁵ See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 62,323 n.1 (1998).

¹⁶ See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

this proceeding, and otherwise will assist the Commission in understanding and resolving the issues presented. For these reasons, the Filing Parties respectfully request that the Commission grant their motion to provide the following Answer.

III. ANSWER

A. The Reservation Flexibility Changes are just and reasonable and should be accepted by the Commission as filed.

The proposed Reservation Flexibility Changes pertain to the time within which a Market Participant must notify the ISO of an advance transmission reservation that it has made on a non-PTF interconnection in conjunction with a priced energy offer for an External Resource in support of a Capacity Obligation in the New England Control Area.¹⁷ The proposed changes do not address the requirements for the transmission reservation itself, which are governed by the tariffs of transmission service providers that provide service on those ties. Rather, they address only when notice of any such advance reservation must be provided to the ISO for purposes of informing the ISO's dispatch decisions. Specifically, if a Market Participant with a Capacity Obligation for an External Resource submits a Supply Offer via a priced External Transaction, the Reservation Flexibility Changes would permit the Market Participant to wait until up to an hour before the delivery hour before notifying the ISO that it has made a transmission reservation on a non-PTF interconnection.

By implementing these changes, the ISO will cease its practice of requiring a Market Participant that imports energy via a priced External Transaction in support of a Capacity Obligation to provide notice of any advance transmission reservation at the

¹⁷ The non-PTF interconnections with neighboring control areas include the 330 MW Cross Sound Cable High Voltage, Direct Current interconnection with New York (also known as a "Merchant Transmission Facility" or "MTF"), the 2000 MW Phase I/II High Voltage, Direct Current interconnection with Quebec, and the Maine Electric Power Company ("MEPCO") transmission facility.

same time the energy offer is submitted to the ISO (the “ISO Operating Practice”). Under the Capacity Market Rules, Market Participants with Capacity Obligations for External Resources must submit Supply Offers in both the Real-Time Energy Market and the Day-Ahead Energy Market by noon of the day prior to the Operating Day. When this obligation is combined with the current ISO Operating Practice, the result is, for all practical purposes, a requirement that a Market Participant submitting a priced External Transaction in support of a Capacity Obligation purchase transmission service twelve hours in advance of the Operating Day for all hours of the Operating Day.

Neither the FCM Settlement Agreement nor the Capacity Market Rules mandate, or otherwise require the codification of, the ISO Operating Practice for priced External Transactions in support of a Capacity Obligation. The elimination of the ISO Operating Practice will result in Capacity Market Rules that treat External Resources more comparably with internal Resources, which treatment is mandated in the FCM Settlement Agreement,¹⁸ and may decrease the purchase by Market Participants of excess, unutilized transmission service. More specifically, the Reservation Flexibility Changes are just and reasonable for the following reasons:

1. Continuing the ISO Operating Practice is not consistent with the FCM Settlement Agreement.

Under the FCM Settlement Agreement and the Capacity Market Rules, capacity payments are dependent on Market Participants with Capacity Obligations meeting energy scheduling and delivery requirements that are unrelated to the type or duration of

¹⁸ See Section 11.VI of the FCM Settlement Agreement, which is discussed in more detail in Sections III.A.1 and III.B.6 of this Answer.

any transmission service purchased.¹⁹ Neither the FCM Settlement Agreement nor the Capacity Market Rules addresses whether energy delivery is supported by PTF or non-PTF infrastructure, or what type of transmission service is required for either internal or External Resources utilizing non-PTF lines. Whether a Market Participant secures firm or non-firm transmission service, whether that service is purchased for two or ten hours, and whether that service is purchased one or twelve hours in advance of the Operating Hour to support its priced energy offers, are all irrelevant to whether the Market Participant has a right to a capacity payment under the Capacity Market Rules. Thus, despite the movants' suggestions to the contrary,²⁰ there is not any market requirement or operating practice requiring *firm* transmission service (or any other type of transmission service) for any capacity Resource located within the New England Control Area, and the Capacity Market Rules do not address specific transmission reservation requirements.²¹

The ISO requires *notification* of an advance transmission reservation solely for the purpose of utilizing this information when making Real-Time Energy Market

¹⁹ The market rules for the ICAP Transition Period are contained in Section 8 of Market Rule 1, and the Market Rules for the Forward Capacity Market are contained in Section 13 of Market Rule 1. Section 8.3 of Market Rule 1 defines the obligation of Market Participants with capacity Resources in the ICAP Transition Period to offer those resources into the Day-Ahead Energy Market on a daily basis in order to qualify for an ICAP Payment. Section 8.3.7.2.1 addresses this obligation for External Resources. Section 8.1 of Market Rule 1 describes the right of a Market Participant with a capacity Resource to receive an ICAP Payment during the ICAP Transition Period as being a function of the Resource's UCAP Rating. Under Section 8.8 of Market Rule 1, UCAP Ratings are calculated based on the Resource's performance when called to deliver energy. In addition, Section 8.3.7.3 of Market Rule 1 describes the penalties to which Market Participants with External Resources are subject in the event of a failure to schedule or deliver. Section 13.6 defines the obligation of Market Participants with capacity Resources in the Forward Capacity Market to offer those resources into the Day-Ahead Energy Market on a daily basis in order to qualify for a capacity payment. Section 13.6.1.2.1 addresses this obligation for External Resources. Section 13.7.2.7.1.2 of Market Rule 1 explains the adjustments and penalties that will apply in the event a capacity Resource fails to meet availability requirements.

²⁰ See NSTAR and UI Motion at pp. 12-13.

²¹ The rules for the ICAP Transmission Period simply state that a Market Participant with an ICAP Obligation "is responsible for making any and all transmission arrangements needed for the transactions." Market Rule 1, Section 8.3.7.2.2(e).

scheduling decisions for External Resources. Because real-time scheduling decisions for External Resources are made by the ISO's Market Operations group an hour in advance of the Operating Hour in which the energy is to flow, the ISO need only be notified of a transmission reservation for priced External Transactions supporting a Capacity Obligation up to an hour before the Operating Hour.²² The transmission notification serves no purpose under the Capacity Market Rules in qualifying a resource for capacity, forecasting availability, or in making capacity payment-related determinations.²³ Under these circumstances, it is entirely reasonable not to require Market Participants to purchase firm transmission service for all hours of the Operating Day in order to participate in the Capacity Market.

2. It is not reasonable for the Forward Capacity Market to include practices that may unnecessarily increase energy prices from External Resources.

The Reservation Flexibility Changes eliminate a requirement that, when applied to priced External Transactions in support of a Capacity Obligation, results in an obligation to purchase transmission service well before it can be determined whether the energy offered into the market will likely be scheduled to flow in Real-Time. As a result of the ISO Operating Practice, Market Participants may be required to purchase transmission service that will not be utilized if the External Resource is ultimately not dispatched when the ISO makes its scheduling decisions one hour prior to the delivery

²² See generally ISO New England Manual for Market Operations, Manual M-11, § 2.5.9.2 for references to the ISO's dispatch procedures in the context of Real-Time Energy Market price determinations. In particular, § 2.5.9.2(1) notes in relevant part that "[t]he ISO forecasts Dispatch Rates on an hour-ahead basis for use by the ISO in the dispatching of External Transactions." See also ISO New England Operating Procedure No. 9, *Scheduling and Dispatch of External Transactions*.

²³ While it is true under the proposal that a Market Participant that fails to obtain a necessary transmission reservation for an hour during which its External Resource is scheduled to operate stands to be penalized, the failure to obtain the reservation in itself is not what causes the penalty, but rather the failure to *deliver* the energy in real-time.

hour (which is at least twelve hours and up to thirty-six hours *after* the Market Participant with the External Resource has submitted notice of the transmission reservation under the ISO Operating Practice). To recover these costs, Market Participants could increase their Supply Offers in the energy markets. If the Resource is scheduled in Real-Time as the marginal unit, then the costs of excess transmission service costs incorporated in Supply Offers will be reflected in higher energy prices. The Reservation Flexibility Changes eliminate the ISO Operating Practice and all unintended consequences of requiring Market Participants with External Resources to purchase excess, unutilized transmission service for the Capacity Market.

3. The proposed changes comply with the terms of the FCM Settlement Agreement.

In recognition of the role that External Resources play in meeting the capacity needs of the New England region, the FCM Settlement Agreement mandates that rules be developed to provide more equal treatment between internal Resources and External Resources during the ICAP Transition Period and in the Forward Capacity Market.²⁴ The proposed Reservation Flexibility Changes meet this objective, providing greater parity for External Resources that are connected over interfaces that require advance transmission reservations by better aligning the timing for submitting transmission-related data with the time for Resource dispatch determinations. This comparability is demonstrated by contrasting the ISO Operating Practice for non-PTF interconnections that require advance transmission reservations for External Resources with other

²⁴ Section 11.VI of the FCM Settlement Agreement states in pertinent part, “Market Rules, operating procedures and manuals shall be changed to allow External Resources to participate in the Forward Capacity Market and Transition Period on a basis comparable to internal generation Resources.”

transmission reservation and notice requirements for internal Resources and External Resources on PTF and non-PTF lines:

- *Internal and External Resources using PTF lines.* For both internal Resources and External Resources, transmission scheduling decisions for the PTF lines are made by the ISO's security constrained economic dispatch determinations.²⁵ No reservation is required for use of a PTF line by either internal Resources or External Resources, and therefore no notification is provided to the ISO (which is responsible for scheduling determinations on those lines for *both* internal Resources *and* External Resources). Additionally, certain External Resources connect to the New England Control Area directly via PTF interconnections.²⁶ For example, for External Resources that transmit energy to the New England Control Area across the New York PTF interface, the scheduling decisions for the External Resource's energy offer is made based on economic evaluation of the energy offer and the available transfer capability of the interface, and the ISO then enters the associated transmission reservation on OASIS *after* the scheduling determination is made in order to show utilization of the interface.
- *Internal Resources using "Local" non-PTF lines.* Many Market Participants with internal Resources that participate in the Capacity Market are also required, pursuant to the tariffs of transmission service providers, to reserve advance transmission service over "local" non-PTF lines that allow those Resources to connect from their

²⁵ See ISO New England Manual for Market Operations, Manual M-11, § 2.5.9.2, for references to the ISO's dispatch procedures in the context of Real-Time Energy Market price determinations.

²⁶ The PTF interconnections with neighboring control areas include A/C ties to NY at the Roseton Node, A/C ties to Quebec over the Highgate Interconnection, and A/C to New Brunswick over the Northeast Reliability Interconnect).

point of location to a PTF line. The Local Service Schedule of each transmission service provider under its Schedule 21 tariff contains specific rates, terms and conditions applicable to local service over its local non-PTF lines. Whether, how, and when transmission service is arranged for any internal Resource on any local non-PTF line is not a component of New England's market design or rules. Market Participants utilizing local non-PTF lines, including those with capacity Resources, are not required to notify the ISO if a transmission reservation is made.

Therefore, for all capacity Resources, *other than* External Resources that interconnect over a non-PTF line requiring advance transmission reservations, notification to the ISO of a transmission reservation is either not necessary or a reservation is created (which includes notice thereof) only *after* dispatch. In contrast, the ISO Operating Practice as applied to priced External Transactions in support of a Capacity Obligation requires notification of a transmission reservation well in advance of the time at which dispatch determinations are made. As noted above, this vast discrepancy in notification requirements finds no basis or justification in the Capacity Market Rules, is completely unnecessary, and requires Market Participants that submit priced External Transactions in support of Capacity Obligations over non-PTF lines that require advance reservations to purchase excess, unutilized transmission service in order to participate in the Capacity market. The Reservation Flexibility Changes, which merely change the *timing* for when a Market Participant must notify the ISO of a transmission reservation, provide significantly greater parity between Market Participants submitting priced External Transactions in support of a Capacity Obligation and other Market

Participants with Capacity Obligations simply by better aligning the timing for submitting transmission-related data with the time for the dispatch process.

B. The Motions Should Be Denied Because They Do Not Demonstrate that the Reservation Flexibility Changes Are Unjust and Unreasonable.

The movants attempt to discredit the Reservation Flexibility Changes by countering that the changes remove important reliability mechanisms that are mandated by the FCM Settlement Agreement, take away revenues from transmission providers, and relieve External Resources from having to contribute to New England's transmission infrastructure costs in a manner that creates unequal treatment for internal Resources. For the reasons stated below, each of these arguments is unfounded and creates no basis for calling into question the justness and reasonableness of the proposed changes.

1. The proposed Reservation Flexibility Changes pose no threat to system reliability and are consistent with the current market-based approach to addressing reliability concerns.

The NSTAR and UI Motion attempts to paint a picture in which the current ISO Operating Practice is an integral reliability feature that was built into the Capacity Market as envisioned under the FCM Settlement Agreement, and argues that removal of this practice by implementation of the Reservation Flexibility Changes would jeopardize system reliability.²⁷ These arguments mischaracterize the terms of the FCM Settlement Agreement and the manner in which energy markets in general, and the Capacity Market in particular, address reliability concerns.

As a preliminary matter, it should be noted that the ISO Operating Practice is not directed to capacity Resources in particular. The practice pre-dates the existence of the

²⁷ NSTAR and UI Motion at pp. 12-15. Notably, Northeast Utilities Service Company does not propose this or a similar argument in the NU Motion.

Capacity Market and applies generally to any External Transaction, whether or not it supports a Capacity Obligation. Moreover, while the NSTAR and UI Motion claims that this practice is integral to the reliability features of the Capacity Market,²⁸ it is not mandated by any provision of the FCM Settlement Agreement or the Capacity Market Rules. More generally, neither the FCM Settlement Agreement nor the Capacity Market Rules (nor, for that matter, the market rules for the energy markets) addresses the timing for providing information related to transmission service, requires the purchase of firm transmission service or imposes any other specific transmission service requirements.²⁹ This is not an omission and is indeed consistent with the market design.

Under the market rules that implement the FCM Settlement Agreement, Market Participants with capacity Resources are required to satisfy a range of criteria set forth in Section 8 (for ICAP Resources) and Section 13 (for Capacity Resources in the Forward Capacity Market) of Market Rule 1. These requirements pertain to how and when a Market Participant must offer its Resource into the energy markets and specify information relating to outages and historical performance data that must be submitted to the ISO.³⁰ They do not, however, tell Market Participants how they must operate or maintain their Resources, what type of fuel they must use or when they must procure it, *or what type of transmission service they must procure or when it should be procured.*

²⁸ NSTAR and UI Motion at p. 12.

²⁹ As noted above, the rules for the ICAP Transition Period state only that a Market Participant with an ICAP Obligation "is responsible for making any and all transmission arrangements needed for the transactions." Market Rule 1, Section 8.3.7.2.2(e).

³⁰ Section 8.3 of Market Rule 1 defines the obligations that Market Participants with capacity Resources in the ICAP Transition Period must satisfy in order to qualify for an ICAP Payment. Section 8.3.7 addresses these obligations for External Resources. Section 13.6 defines a range obligations that Market Participants with capacity Resources in the Forward Capacity Market must satisfy in order to qualify for capacity payments. Section 13.6.1.2. addresses these requirements for External Resources.

Instead, as is typically the case with any market-based service, the Capacity Market Rules are intended to provide Market Participants with financial *incentives* to make their resources available when called upon, i.e., to have acquired the necessary fuel, to have maintained the facility in accordance with adequate maintenance and operating procedures, and to have purchased any necessary transmission service. These incentives include both the capacity and energy payments that Market Participants receive when their Resources do deliver, as well as capacity penalties that are applied when their Resources fail to deliver.³¹ Ultimately, under the Capacity Market Rules, a Market Participant must take the steps necessary to provide energy when actually called upon to do so. Therefore, the Capacity Market structure as designed, agreed upon by NEPOOL stakeholders, and approved by the Commission, provides the appropriate financial incentives to ensure performance by capacity Resources, and the Reservation Flexibility Changes do not change these performance standards.³²

It is also important to note that the proposed Reservation Flexibility Changes do not dictate, or change, the type of transmission service that must be procured, when that reservation must be made, or for what period of time it must be made. *These matters are*

³¹ Section 8.3.7.3 of Market Rule 1 describes the penalties to which Market Participants with External Resources are subject in the event of a failure to schedule or deliver. Section 13.7.2.7.1.2 of Market Rule 1 explains the adjustments and penalties that will apply in the event a capacity Resource fails to meet availability requirements. The suggestion in the NSTAR and UI Motion that the penalties provided for under the Capacity Market Rules are somehow lacking, *see* NSTAR and UI Motion at p. 14, is a misguided, collateral attack on the highly negotiated and Commission-approved FCM Settlement Agreement and is irrelevant to the issue of whether the proposed changes are just and reasonable.

³² The NSTAR and UI Motion argues, in effect, that the proposed changes would provide the *wrong* incentives by permitting “an External Resource [to] submit Day-Ahead and Real-Time energy bids at high prices essentially guaranteeing its Resource will not be called upon for dispatch.” NSTAR and UI Motion at p. 13. In recognition of this concern, the Filing Parties have requested that implementation of the Reservation Flexibility Changes be delayed, one reason for such delaying being to provide the ISO’s Internal Market Monitoring Unit the time necessary to develop and implement “a process to ensure that Market Participants with External Transactions submit competitively priced energy offers in support of a Capacity Obligation.” *See* Joint Filing at p. 10.

all determined by the provisions of the tariffs of transmission service providers that operate the non-PTF lines. The proposed changes merely determine when information about the transmission service reservation should be submitted to support the dispatch of energy for priced External Transactions supporting a Capacity Obligation.

2. The use of non-PTF interconnections by External Resources does not raise any *special* reliability concerns that require continuation of the ISO Operating Practice.

The NSTAR and UI Motion nevertheless argues that *firm* transmission service, reserved well in advance of the Operating Day for all hours of the Operating Day, ensures the availability of the External Resource in a manner necessary to support the reliability needs for capacity Resources.³³ To date, this has not been a requirement in the ISO Tariff or Market Rule 1 and, given the expressed agreement to move for greater comparability between internal and external Resources, it is not reasonable to require it in the market rules now.

As discussed above, Market Participants with internal Resources that interconnect via local non-PTF interconnections may need to reserve transmission service in advance pursuant to the tariffs of the transmission service providers that provide service over those lines. Neither ISO operating procedures nor the market rules addresses whether, how, and when this transmission service is to be arranged, and Market Participants utilizing local non-PTF lines are not required to notify the ISO of a transmission reservation. Under this structure, the reliability standards are no less for an External Resource than they are for an internal Resource, whether connected directly to the PTF or remotely via a local non-PTF line. If a capacity Resource, internal or external, is

³³ See NSTAR and UI Motion at pp. 12-13.

economically dispatched to provide energy it must provide the energy or else face losing its capacity payments.³⁴

3. The Reservation Flexibility Changes have nothing to do with interconnection costs, which are incurred for the interconnection of any generating Resource, whether internal or external.

The movants nevertheless maintain that the Reservation Flexibility Changes unfairly burden Market Participants with internal Resources because they may be required to pay interconnection costs to connect their Resources to the PTF system.³⁵ They argue that the costs of the excess, unutilized transmission service charged to Market Participants with External Resources, who pay only “for transmission to reach the grid,” places these Market Participants on an equal footing with those that pay interconnection costs inside New England.³⁶ This argument conflates interconnection costs with transmission service costs and ignores the basic premise that interconnection costs may be incurred whenever a Resource interconnects, whether it is an internal Resource or External Resource.

Interconnection costs can include a host of costs that are incurred when a generating Resource connects to the grid. These costs include the costs of studies to

³⁴ In the face of the wide range of transmission service options that both internal and External Resources are faced with, the references in the NSTAR and UI Motion to provisions of the ISO OATT addressing the need for Network Resources to meet Network Load on a “noninterruptible basis” and provisions of the *pro forma* OATT requiring that any application for network transmission service identify “transmission arrangements on the external transmission system(s)” are irrelevant. *See* NSTAR and UI Motion at pp. 12-13. While *pro forma* OATT transmission service with advanced reservation and physical rights characteristics exists over the non-PTF systems in and around New England, under the ISO OATT, the ISO offers non-*pro forma* regional transmission service over the PTF with terms and conditions that significantly differ from the terms and conditions of the *pro forma* OATT transmission services. Moreover, nothing in the Commission-approved Capacity Market, even without the changes we are proposing, nor any other market rule, requires firm transmission service, and there simply is no market-based firm transmission service requirement.

³⁵ NSTAR and UI Motion at pp. 9-12, NU Motion at pp. 8-9.

³⁶ NSTAR and UI Motion at pp. 10-11.

determine the impact of the interconnection on the transmission system, the costs to upgrade the transmission system, as necessary, to address those impacts, and the costs for the physical interconnection itself. Contrary to the suggestions of the movants, interconnection costs are not unique to the New England Control Area, but may be incurred whenever a generating Resource interconnects with a transmission system, and they may be borne either by Market Participants with interconnecting generating Resources or by the Network Load that ultimately benefits from the energy that is produced by that generating Resource. Thus, a Market Participant presumably faces the same potential for paying interconnection costs, albeit within its own control area, that an internal Resource faces within the New England Control Area.

Transmission service is separate and distinct from interconnection. For both internal Resources and External Resources, transmission service over the PTF system is paid for by consumers through a rate based on their Regional Network Load, allowing the ISO to collect the revenue requirements from the PTF on behalf of the Participating Transmission Owners. Similarly, for both internal Resources and External Resources, transmission service over non-PTF lines is paid for directly by the Market Participants that contract for such service, and is reflected in the Supply Offers of those Resources in the energy markets.

The proposal of the Filing Parties is not about minimum interconnection standards of internal and external resources within a particular control area. A one-time interconnection cost to enable a Resource to connect to the transmission system is simply not relevant to whether the Capacity Market should effectively mandate the purchase of daily transmission service by certain Market Participants with External Resources for

energy that may not need to be delivered. In short, nothing can be inferred about the appropriateness of the Reservation Flexibility Changes from the fact that some internal Resources pay interconnection costs.

4. The proposed Reservation Flexibility Changes leave transmission providers free to propose their own transmission reservation requirements for External Transactions that support Capacity Obligations.

The Filing Parties underscore that they are not changing any transmission requirements for the Capacity Market. The Commission-approved FCM Settlement Agreement and Capacity Market Rules contain no requirement for Market Participants to obtain firm transmission service on any non-PTF line (whether local or external). Moreover, the proposal is not changing the terms of transmission service provider tariffs that require advance reservations, or the individual transmission service provider's tariff requirements regarding the timing for such reservation purchases, or the types of services offered under those tariffs. The Filing Parties are only changing the timing of when such data is provided to the ISO, while still requiring that the reservation data be submitted in order for a resource to be economically dispatched and thus meet its performance requirements to be available when called under the Capacity Market Rules. If the movants wish to alter the terms of their tariffs to address the timing or duration for procuring transmission reservations, they are not restricted from doing so.³⁷

The decision by the Filing Parties to submit the proposed changes reflects the determination that the ISO Operating Practice, as applied to priced External Transactions submitted in support of Capacity Obligations, is not needed to fulfill the capacity needs

³⁷ The Filing Parties note that any such proposal would be made pursuant to the Section 205 filing rights of those transmission providers, which would require meeting the "just and reasonable" standard and would expose the proposal to the appropriate level of scrutiny that is afforded under Section 205 of the FPA and rate-making procedure.

of the New England region and, in the context of the capacity and energy markets, is inefficient and unfair to Market Participants utilizing External Resources in the Capacity Market. The ISO Operating Practice also prevents comparable treatment between internal and External Resources. Therefore, there is no justification or support for requiring adherence to the practice for the use of priced External Transactions in the Capacity Market.

5. The Capacity Market cannot be designed to satisfy the singular financial interests of a limited subset of its participants to the unfair disadvantage of others.

The movants argue that the Reservation Flexibility Changes are inappropriate because they will increase the rates for Network Load customers that are passed on the costs of the Phase I/II HVDC-TF.³⁸ Requiring one set of parties to pay for a service that they will not utilize simply as a means to increasing the revenues of the service provider is antithetical to a market-based system. This argument cannot withstand scrutiny as a legitimate basis for continuing the ISO Operating Practice for priced External Transactions submitted in support of Capacity Obligations.

The perspective offered by the movants is relevant only for the Interconnection Rights Holders (“IRH”) that pay certain costs for the Phase I/II HVDC-TF and have rights to offer transmission service over those lines. The proposed rule changes are not about whether the financing arrangements agreed upon by the IRH for the Phase I/II HVDC-TF are just and reasonable, and the region should not be forced to design fair and efficient markets to satisfy the unique financial arrangements of a limited number of its

³⁸ NSTAR and UI Motion at pp. 15-16; NU Motion at p. 9.

participants, especially where those arrangements apparently hinge on maintaining practices that may unfairly disadvantage other Market Participants.

Moreover, the Reservation Flexibility Changes do not change the fact that Market Participants with External Resources that interconnect over non-PTF ties will need to pay for transmission service in accordance with the tariffs of transmission service providers in order to flow energy when called to back their capacity obligation. The proposed changes address only when notice of a transmission reservation on those ties must be submitted to the ISO in order to qualify for capacity payments, which will provide greater comparability between the treatment of External Resources and internal Resources in the Capacity Market pursuant to the mandates of the FCM Settlement Agreement.

6. The Reservation Flexibility Changes comply with the express terms of the FCM Settlement Agreement.

The movants also claim that, contrary to the assertions of the Filing Parties, the Reservation Flexibility Changes do not comply with Section 11.VI of the FCM Settlement Agreement.³⁹ Focusing on the second sentence of Section 11.VI, they argue that the only change required by this sentence relates to the timing of energy offers into the Real-Time Energy Market,⁴⁰ and that the reference to “required transmission” in that second sentence refers to “transmission required to be reserved under ISO-NE operating policy in effect at the time the FCM Settlement was signed.”⁴¹

³⁹ Section 11.VI reads: “Market Rules, operating procedures and manuals shall be changed to allow External Resources to participate in the Forward Capacity Market and Transition Period on a basis comparable to internal generation Resources. Among the changes that are required are that the timing for Real Time contract submittals be modified to allow them to be made after the Day Ahead Energy Market closes and as soon as one hour before an operating hour in order to allow for the purchase of required transmission.”

⁴⁰ NSTAR and UI Motion at pp. 16-17; NU Motion at pp. 7-8.

⁴¹ NU Motion at p. 7.

As discussed above in Section A.1 of this Answer, the Filing Parties are proposing the Reservation Flexibility Changes, along with the other changes proposed in the Joint Filing, to comply with the requirement in the first sentence of Section 11.VI of the FCM Settlement Agreement, which states that “Market Rules, operating procedures and manuals shall be changed to allow External Resources to participate in the Forward Capacity Markets and Transition Period on a basis comparable to internal generation Resources.” As explained throughout this Answer, the change to the ISO Operating Practice regarding the timing for submitting transmission service reservations squarely provides for such parity.

The Filing Parties do not dispute that the second sentence in Section 11.VI is, in part, intended to address changes to the timing of Supply Offers by External Resources in the Real-Time Energy Market. The Joint Filing implements these changes by providing Market Participants with External Resources the ability to modify their Supply Offers during the re-offer period. However, the second sentence of Section 11.VI also⁴² addresses modifications to permit the purchase of any required transmission service “as soon as one hour before an operating hour.” This clause does not require any *particular* modification to market rules or operating procedures. Rather, it is intended to recognize that in order to carry out the comparability mandate in the first sentence of Section 11.VI, the ISO’s operating procedures cannot serve as a barrier to providing Market Participants with the flexibility to purchase any required transmission service as soon as one hour before the Operating Hour. In addition, contrary to the argument in the NU Motion, *see* the NU Motion at pp. 7-8, the reference to “the purchase of required transmission” *cannot*

⁴² Use of the phrase “Among the changes that are required *are...*” in the second sentence of Section 11.VI indicates that the sentence contains *two* illustrative changes that are to be implemented to meet the mandate of the first sentence, the timing for Real time contract submittals and the purchase of required transmission.

be a reference to maintaining the current ISO operating policy for the purchase of required transmission, because the ISO's operating procedures do not require (and never have required) the purchase of transmission service. The requirements for purchasing transmission service come from the transmission service providers' own tariffs.

The NSTAR and UI Motion further claims that the Filing Parties have not met the standards contained in Section 4.A of the FCM Settlement Agreement.⁴³ Section 4.A addresses the authority of the ISO to file modifications to market rules that address the terms of the FCM Settlement Agreement. Accordingly, if the ISO wishes to change any of the market rules that implement the FCM Settlement Agreement, it must demonstrate that failure to implement the change will negatively impact system reliability or security or the competitiveness or efficiency of the Forward Capacity Market or Forward Reserve Market.⁴⁴

Section 4.A is irrelevant to the Reservation Flexibility Changes, which have been proposed in order to comply with and implement the provisions of the FCM Settlement Agreement, and not as a modification to rules that were expressly contemplated in the FCM Settlement Agreement and previously implemented. As addressed above, the transmission reservation requirements that are impacted by the Reservation Flexibility Changes are not addressed in the FCM Settlement Agreement and are not contemplated in the current market rules. The ISO's February 15, 2007 filing in Docket Nos. ER07-546-000, ER07-547-000, in which the rules implementing the FCM Settlement Agreement were initially submitted to the Commission, did not address Section 11.VI of the FCM Settlement Agreement or otherwise propose the market rules contemplated by

⁴³ NSTAR and UI Motion at pp. 17-18.

⁴⁴ FCM Settlement Agreement at Section 4.A.

Section 11.VI. Rather, implementation of those rules was held for a subsequent filing. The Joint Filing, including the Reservation Flexibility Changes, is that subsequent filing. Therefore, the proposed changes are not “*modifications* of the Market Rules that address the terms of the Settlement Agreement,”⁴⁵ and Section 4.A of the FCM Settlement Agreement is not applicable to the proposed changes.

⁴⁵ FCM Settlement Agreement, Section 4.A (emphasis added).

IV. CONCLUSION

For the foregoing reasons, the Filing Parties respectfully request that the Commission: (i) grant the ISO's *Motion for Leave to Answer*; and (ii) reject the protests and relief sought in the NSTAR and UI Motion and the NU Motion.

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Dated: April 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 28th day of April, 2008.

/s/ Sherry A. Quirk
Sherry A. Quirk

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