

125 FERC ¶ 61,371
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

NSTAR Electric Company

Docket No. ER09-207-000

ORDER ACCEPTING TRANSFER AGREEMENT

(Issued December 30, 2008)

1. On October 31, 2008, NSTAR Electric Company (NSTAR) filed an agreement between NSTAR and H.Q. Energy Services (U.S.) Inc. (HQUS), whereby NSTAR will transfer its transmission capacity use rights over the Hydro Québec Interconnection (HQ Interconnection or Phase I/II High Voltage Direct Current Transmission Facilities) to HQUS for a period of five years (Transfer Agreement). NSTAR requests that the Transfer Agreement become effective on January 1, 2009. The Commission will accept the Transfer Agreement subject to the modifications discussed herein.

I. Background

2. The HQ Interconnection was constructed in the 1980s to interconnect the electric systems in New England with the electric systems of Hydro Québec, and has a combined nominal transfer capability of 2000 megawatts (MW). The use of the HQ Interconnection is governed, in part, by support agreements between the four entities that own it (Asset Owners)¹ and various public utilities and non-jurisdictional utilities known as Interconnection Rights Holders. Under the support agreements, the Interconnection Rights Holders received capacity rights over the HQ Interconnection and agreed to pay, in return, their allocable share of the amortized costs of the HQ Interconnection. Each Interconnection Rights Holder has an entitlement percentage of the HQ Interconnection's nominal 2000 MW that corresponds to its financial support obligations.

3. NSTAR is a transmission owner and member of ISO New England Inc. (ISO-NE). NSTAR states that, in order to meet its state-mandated service obligations, it was among the original financial supporters of the HQ Interconnection and therefore awarded a

¹ The four Asset Owners are the New England Electric Transmission Corporation, the Vermont Electric Transmission Company, the New England Hydro-Transmission Company, and the New England Hydro-Transmission Corporation.

financially proportionate share of the use of the HQ Interconnection, as well as capacity credits associated with the import capacity of the transmission facilities. NSTAR provides transmission service over its share of the HQ Interconnection pursuant to the terms and conditions set forth in Schedule 20A and Schedule 20A-NSTAR of the ISO-NE open access transmission tariff (OATT).

II. Proposed Transfer Agreement

4. NSTAR submits a Transfer Agreement between it and HQUS, in which NSTAR proposes to transfer its rights to use a specified amount of transmission capacity (Use Rights) over the HQ Interconnection to HQUS for a period of five years, beginning on January 1, 2009.² NSTAR states that the proposed agreement is an arm's-length, negotiated, bilateral contract between NSTAR and HQUS as permitted under section 5 (Use of the Interconnection after Termination of the Firm Energy Contract) and section 6 (Entitlement Transactions) of the Restated Use Agreement.³

5. According to NSTAR, its Use Rights currently consist of 298 MW, of which 179 is firm capacity and 119 is non-firm capacity on the HQ Interconnection from Québec to New England (i.e., southbound); NSTAR also has Use Rights to 179 MW non-firm capacity from New England to Québec (i.e., northbound).⁴ NSTAR states that once transferred, HQUS may use or market and sell these Use Rights at its sole discretion, so long as it does so consistent with the Restated Use Agreement and/or in compliance with the ISO-NE OATT and Open Access Same Time Information System (OASIS) posting requirements. However, NSTAR proposes to retain all of its Interconnection Rights Holder's management committee voting rights, financial obligations, and all other rights and responsibilities provided for in its Support Agreement and Restated Use Agreement that are not directly related to the Use Rights and HQUS's exercise of them.

² NSTAR Filing, Transmittal Letter at 1. NSTAR states that pursuant to the "Third Amended And Restated Use Agreement With Respect To Use Of Quebec Interconnection," New England Power Pool, FERC Electric Tariff, Third revised Rate schedule No. 4 (Restated Use Agreement), NSTAR has rights to use a portion of the transfer capability on the HQ Interconnection, which are known as Use Rights. *Id.* at 1 n.1.

³ NSTAR explains that the Restated Use Agreement between the Interconnection Rights Holders and the Asset Owners entitles the Interconnection Rights Holders to use a share of the line in direct proportion to each member's financial support and provides the rules for exercising their Use Rights. NSTAR Filing, Transmittal Letter at 3.

⁴ See NSTAR Filing, Transfer Agreement § 2.01.

6. In addition to Use Rights, NSTAR states that New England Power Pool (NEPOOL) also allocates to Interconnection Rights Holders capacity credits (HQ Interconnection Capability Credits) in proportion to each one's share of rights to the benefits of the tie.

7. NSTAR explains that for the period from June 1, 2010, through the proposed termination date of this Transfer Agreement, HQUS will continue to pay the monthly value of any lost HQ Interconnection Capability Credits, which will be determined based upon the installed capacity clearing price for the applicable delivery year as established in the Forward Capacity Market auction.⁵ NSTAR states that during the Forward Capacity Market transition period, the monthly value of NSTAR's lost HQ Interconnection Capability Credits will be determined based upon the price per kW-month established for installed capacity under the Forward Capacity Market settlement agreement for the transition period, including the period from January 1, 2009, through May 31, 2010. NSTAR also states that the specific values for the HQ Interconnection Capability Credits lost during the transition period will equal the product of the lost HQ Interconnection Capability Credits (in megawatts) and the following transition period installed capacity values: \$3.75/kW-month for the period January 1, 2009, to May 31, 2009; and \$4.10/kW-month for the period June 1, 2009, to May 31, 2010. NSTAR adds that the proposed compensation under the Transfer Agreement is designed so that NSTAR only recovers those costs incurred as a result of the Use Rights.⁶

8. NSTAR acknowledges that it was approached by other interested entities seeking a similar arrangement with NSTAR as proposed in the instant filing. NSTAR states that it entertained HQUS's advances first, which resulted in the agreement at issue, before responding to the other inquiries because HQUS was the first of these entities to approach NSTAR regarding a direct transfer of its Use Rights in a transfer agreement without an associated power purchase contract.

9. With respect to potential concerns over whether the Transfer Agreement could be viewed as anticompetitive, NSTAR states that the Restated Use Agreement explicitly permits engaging in such transfer agreements under terms and conditions that, for the most part, are of the parties' own choosing. NSTAR contends that section 5 of the Restated Use Agreement does not place any limitations on the amount of Use Rights that can be transferred, at what price, and under what terms and conditions.⁷ NSTAR states

⁵ NSTAR Filing, Transmittal Letter at 5.

⁶ *Id.* at 6.

⁷ *Id.* at 8; *see also id.* at 6-7 (quoting section 5.5). We note that section 5.5 of the Restated Use Agreement provides five provisions that a transfer agreement shall contain. For example, "the parties to the Transfer Agreement shall provide advance notice of the
(continued...)

that the Commission has accepted such agreements in the past, where all of an Interconnection Rights Holder's Use Rights were allocated to one other party.⁸ NSTAR explains that, to address potential concerns over the hoarding of available transmission capacity in the market, the Transfer Agreement incorporates a provision requiring HQUS to resell any of its unused capacity at rates, terms, and conditions consistent with Order No. 890⁹ and to post such sales on the OASIS.

III. Notice and Responsive Pleadings

10. Notice of NSTAR's filing was published in the *Federal Register*, 73 Fed. Reg. 67,497 (2008), with interventions and protests due on or before November 21, 2008. National Grid USA, IRH Management Committee, Northeast Utilities Service Company, and HQUS filed timely motions to intervene. The Massachusetts Department of Public Utilities filed a timely notice of intervention. Brookfield Energy Marketing Inc. (Brookfield) filed a timely motion to intervene and protest.

11. Brookfield does not dispute that transfer agreements are allowed under the Restated Use Agreement,¹⁰ but Brookfield questions whether NSTAR's failure to conduct any sort of competitive bidding process for the transfer of its Use Rights comports with its obligations as a Commission-jurisdictional public utility subject to OATT requirements.¹¹ Brookfield contends that the Commission still must determine whether the Transfer Agreement comports with the requirements of section 205 of the

transfer, and such information as may be necessary for the administration of the Use Rights, to the ISO, or such other entity as may be administering the Use Rights.” Restated Use Agreement § 5.5(a).

⁸ NSTAR Filing, Transmittal Letter at 8 (citing *Bangor Hydro-Electric Co.*, 86 FERC ¶ 61,281 (1999) (*Bangor*), and *New England Power Co.*, 83 FERC ¶ 61,326 (1998) (*NEPCO*)).

⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

¹⁰ Brookfield Protest at 4.

¹¹ *Id.* at 5.

Federal Power Act.¹² Brookfield maintains that, notwithstanding the Restated Use Agreement, the Commission is obliged to ensure that such Use Rights are not transferred or otherwise disposed of on an anti-competitive, discriminatory basis.¹³

12. Brookfield contends that NSTAR is now subject to Order No. 890 and, therefore, any transmission capacity associated with NSTAR's Use Rights under the Restated Use Agreement must be offered pursuant to the rates, terms, and conditions in Schedule 20A and Schedule 20A-NSTAR to the ISO-NE OATT.¹⁴ Thus, Brookfield maintains that NSTAR had an obligation to run a competitive bidding process. Brookfield concludes that the Commission should reject the proposed Transfer Agreement or, alternatively, refuse to accept it until NSTAR gives other potential bidders an opportunity to participate in a competitive bidding process. Finally, if the Commission accepts the Transfer Agreement, Brookfield requests that the Commission condition such acceptance on HQUS or any of its affiliates not selling power to NSTAR or any of its affiliates during the term of the Transfer Agreement; to do otherwise would increase the anti-competitive effect of the proposed Transfer Agreement on other potential power sellers.¹⁵

13. On December 8, 2008, NSTAR filed an answer to Brookfield's protest. NSTAR remarks that Brookfield's argument (with respect to open bidding) is peculiar coming from an entity that admittedly also recently sought to enter into a bilateral transfer agreement with NSTAR for its Use Rights with no mention of a bidding process.¹⁶ NSTAR contends that the filing of a freely negotiated, bilateral transfer agreement does not amount to anti-competitive behavior or create any anti-competitive effect in violation of the Commission's open access transmission policies. NSTAR quotes sections 5.4 and 5.5 (in relevant part) of the Restated Use Agreement.¹⁷ NSTAR avers that it was given

¹² 16 U.S.C. § 824d (2006).

¹³ Brookfield Protest at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 8.

¹⁶ NSTAR Answer at 3 (citing Brookfield Protest at 3-4).

¹⁷ *Id.* at 3. Section 5.4 reads:

Each [Interconnection Rights Holder] may transfer *or* make available its Use Rights, or any portion of those rights, for a specifi[ed] period of time either: (a) through a Transfer Agreement ... *or* (b) by making its Use Rights available to eligible transmission customers through an open access transmission tariff and over an open access transmission tariff administrator's OASIS.

(continued...)

the choice of transferring its Use Rights either by an agreement or through an open access tariff and that it chose the route of an agreement. NSTAR cites to Commission precedent for the right of Interconnection Rights Holders to transfer their transmission capacity entitlements through bilateral contracts without competitive bidding—and without any violation of the Commission’s anti-competitive open access policies.¹⁸ NSTAR also contends that Brookfield mischaracterizes the events leading up to the Transfer Agreement to portray NSTAR as having acted discriminatorily.¹⁹

14. NSTAR responds to Brookfield’s suggestion that a competitive bidding process would have been better for NSTAR’s ratepayers.²⁰ NSTAR contends that in developing the proposed rate design “NSTAR’s goal was simply to recoup its costs so as to make its customers whole, rather than make a profit.”²¹ NSTAR clarifies that it is proposing to transfer all of its Use Rights to HQUS and charge HQUS for those Use Rights based upon NSTAR’s existing, Commission-approved rate for transmission service over the HQ Interconnection under Schedule 20A-NSTAR of the ISO-NE OATT. NSTAR avers that the Schedule 20A-NSTAR rate is designed to recoup all of NSTAR’s support payment obligations and, thus, its revenue requirements. Therefore, according to NSTAR, HQUS is paying for the full cost of service for the HQ Interconnection, which is the maximum that NSTAR could recover if the transmission had been sold under Schedule 20A-NSTAR.

15. Finally, with respect to conditioning acceptance of the Transfer Agreement on HQUS or any of its affiliates not selling power to NSTAR or any of its affiliates during the term of the Transfer Agreement, NSTAR contends that there is no justification for

(Emphasis in original filing; reference omitted.) Section 5.5 reads:

Each [Interconnection Rights Holder] shall have the right to enter into an agreement with another entity for the transfer of its Use Rights (a “Transfer Agreement”) to permit all or part of the [Interconnection Rights Holder’s] Combined Percentage Interest to be used by the other entity (the “Transferee”, which for the period of the transfer becomes an Indirect [Interconnection Rights Holder]) for a specified period of time of not less than one full calendar day.

(Reference omitted.)

¹⁸ *Id.* at 4 (citing *Bangor*, 86 FERC ¶ 61,281; *NEPCO*, 83 FERC at 61,658-59).

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 5 (citing Brookfield Protest at 7).

²¹ *Id.*

limiting such potential opportunities between the parties in the future. NSTAR states, *inter alia*, that limiting the ability of NSTAR and HQUS to engage in power sales under the Transfer Agreement would be inconsistent with the parties' right to contract.

16. On December 15, 2008, Brookfield filed a response to NSTAR's answer in which, *inter alia*, Brookfield discredits NSTAR's use of precedent to support its right to transfer transmission capacity entitlements via bilateral contracts and again explains the e-mail interchange between Brookfield and NSTAR about Brookfield's interest in NSTAR's Use Rights. Further, Brookfield maintains that NSTAR's behavior will artificially increase the transmission cost to competitors. Specifically, Brookfield explains that, by giving HQUS, the single largest customer of northbound non-firm service on the HQ Interconnection, the right to free northbound service under the proposed Transfer Agreement, NSTAR will depress the price of, and demand for, northbound service and thereby reduce revenues for the remaining Interconnection Rights Holders that provide service under Schedule 20A of the ISO-NE OATT (Schedule 20A Service Providers). Brookfield makes the point that the Schedule 20A Service Providers, in turn, will need to increase prices for firm and non-firm southbound services in order to recoup their support payments, due to this market distortion for northbound service.²²

17. On December 16, 2008, Brookfield supplemented its December 15 response, explaining that it had been unaware when it filed the earlier response that NSTAR and Northeast Utilities Service Company had filed a petition for a Commission determination as to whether they could enter into a bilateral transmission services agreement with HQUS.²³ Brookfield contends that, as evidenced by this petition, "the anticompetitive effect of the proposed Transfer Agreement is even more likely" than it anticipated.²⁴

18. On the same date, NSTAR submitted a request that the Commission issue an order on this matter on or before December 30, 2008, to allow sufficient time to complete its OASIS postings.

19. On December 18, 2008, NSTAR filed a response to Brookfield's response and to its supplemental response. NSTAR characterizes Brookfield's supplemental response essentially as a "protest to an application pending in an unrelated docket."²⁵ NSTAR

²² Brookfield Response at 6.

²³ Brookfield Supplemental Response at 3. The petition, filed on December 12, 2008, was docketed as EL09-20-000.

²⁴ *Id.* at 5.

²⁵ NSTAR Response to Supplement at 6.

maintains that Brookfield confuses the issues by introducing the project proposed in Docket No. EL09-20-000, which is “a new, yet-to-be constructed facility premised on novel arrangements.”²⁶ Among other things, NSTAR addresses Brookfield’s rate design argument. NSTAR states that its interest was limited to ensuring that it collected at least its full cost of service. NSTAR asserts that it is “not obliged to adopt a rate design to prop up revenue collections by other [Interconnection Rights Holders].”²⁷ NSTAR adds that most Interconnection Rights Holders are selling their transmission service at full cost-of-service rates, without discounts. Therefore, NSTAR concludes that Brookfield’s argument that Interconnection Rights Holders will have to increase their southbound service rates is unfounded; they cannot raise their rates above their full cost of service.²⁸

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NSTAR’s answer and Brookfield’s response because they have provided information that assisted us in our decision-making process. We are not persuaded to accept Brookfield’s supplemental response or NSTAR’s response to Brookfield’s response and supplemental response and will, therefore, reject them.

B. Commission Determination

22. We accept the proposed Transfer Agreement, subject to modifications, as discussed below.

23. In 2005, the Commission accepted agreements and tariff rules to incorporate a single set of terms and conditions for transmission service over the HQ Interconnection.²⁹ This set of tariff rules and agreements included Schedule 20A to the ISO-NE OATT.

²⁶ *Id.* at 7.

²⁷ *Id.* at 3.

²⁸ *Id.* at 4.

²⁹ *ISO New England Inc.*, 111 FERC ¶ 61,244 (2005).

Prior to Schedule 20A, NSTAR and other Interconnection Rights Holders offered transmission service under the terms and conditions of their individual OATTs. To comply with Order Nos. 890 and 890-A, the Interconnection Rights Holders (or Schedule 20A Service Providers) revised Schedule 20A's provisions for the sale, assignment, or transfer of transmission capacity associated with the Interconnection Rights Holder's Use Rights on the HQ Interconnection, pursuant to Schedule 20A of ISO-NE's OATT and subject to the requirements of the Restated Use Agreement.³⁰

24. Under the proposed Transfer Agreement, NSTAR is transferring transmission capacity associated with its Use Rights pursuant to the terms in the Restated Use Agreement and Schedule 20A and Schedule 20A-NSTAR. Schedule 20A and Schedule 20A-NSTAR permit NSTAR to offer its Use Rights to transmission customers on a voluntary basis.³¹ Transmission customers may obtain service by reserving all or a portion of NSTAR's Use Rights, including the transfer of transmission capacity pursuant to a transfer agreement in accord with the Restated Use Agreement, as in the present case.

25. NSTAR proposes to make this transfer to HQUS via a bilateral contract (i.e., the Transfer Agreement), which NSTAR states is permitted under section 5 of the Restated Use Agreement. We agree that section 5.4 permits NSTAR to

transfer or make available its Use Rights, or any portion of those rights, for a specified period of time either: (a) through a Transfer Agreement ... or (b) by making its Use Rights available to eligible transmission customers through an open access transmission tariff and over an open access transmission tariff administrator's OASIS.[³²]

NSTAR selected option (a): through a transfer agreement. Further, NSTAR's proposed Transfer Agreement makes the transmission capacity available for a five-year period (*viz.*, December 31, 2008, to December 31, 2013, with an option to extend the term), which enhances the ability of HQUS to obtain rollover rights to resell the capacity if opportune.³³

³⁰ *ISO New England Inc.*, 123 FERC ¶ 61,133 (2008).

³¹ ISO-NE OATT, Schedule 20A § II.

³² NEPOOL, FERC Electric Tariff, Third Revised Rate Schedule No. 4, Restated Use Agreement § 5.4, Original Sheet Nos. 12-13.

³³ *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 810.

26. The Restated Use Agreement was originally proposed and accepted on December 1, 1981,³⁴ prior to the issuance of Order Nos. 888³⁵ and 890, which also deals with the transfer of transmission capacity. Nevertheless, NSTAR, as an Interconnection Rights Holder, has obligations under Order No. 890 with respect to a reassignment or transfer of transmission capacity Use Rights. Order No. 890 permits a transmission customer to negotiate the terms of an assignment bilaterally, but places certain requirements on all sales or assignments of capacity in order to ensure that participants are not exercising market power.³⁶

27. With respect to the Transfer Agreement's proposed rate design, Order No. 890 permits the use of negotiated rates for reassigned transmission capacity.³⁷ Additionally, section 5 of the Restated Use Agreement provides considerable flexibility for Interconnection Rights Holders to transfer their Use Rights.³⁸

28. Moreover, under the Transfer Agreement, HQUS will be subject to NSTAR's Schedule 20A monthly facilities expense rate for firm and non-firm point-to-point transmission service. These rates are derived from NSTAR's total cost paid in support of the HQ Interconnection. According to NSTAR's second exhibit, the estimated revenue from NSTAR's Use Rights for 2009 is \$9,530,040. As a result, the monthly firm and non-firm service delivery rate is \$2.665/kW-month (i.e., \$9,530,040 divided by 298 MW

³⁴ The original Use Agreement, accepted for filing in *New England Power Co.*, 20 FERC ¶ 61,286 (1982), was amended and restated on September 1, 1985, November 19, 1997, April 8, 1998, and April 23, 2002. *NEU Mgmt. Comm.*, 96 FERC ¶ 61,258, *order on reh'g*, 97 FERC ¶ 61,233 (2001) (accepting current agreement for filing).

³⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 815.

³⁷ *Id.*

³⁸ For example, section 5.5 of the Restated Use Agreement provides that a "Transfer Agreement may be on such terms as the transferring [Interconnection Rights Holder] (the 'Transferor') determines," subject to certain provisions.

divided by 12).³⁹ Additionally, contrary to Brookfield's assertion that the Transfer Agreement provides HQUS with free non-firm, northbound service for the delivery rates, the delivery rates for firm and non-firm service are the same. As demonstrated above, NSTAR's firm and non-firm delivery rates are derived from the total cost paid in support of the HQ Interconnection totaling \$9,530,040 in 2009.⁴⁰ Notwithstanding that Brookfield acknowledges that NSTAR would not be individually in breach of its rate recovery requirements by providing the northbound service for free,⁴¹ Brookfield claims that the free service will have a negative effect on rates. We disagree. As stated above, we find that the delivery rates for firm and non-firm service are the same.

29. As to HQ Interconnection Capability Credits, the Transfer Agreement provides that in the event NSTAR's HQ Interconnection Capability Credits are reduced, HQUS will pay NSTAR for the lost value. With respect to HQ Interconnection Capacity Credits, we find that NSTAR's negotiated rate proposal permits NSTAR's retail customers to be made whole for the support payments associated with NSTAR's Use Rights and any lost HQ Interconnection Capability Credits as a result of the transaction.⁴²

³⁹ See NSTAR Filing, Ex. NSTAR-2. This exhibit indicates that the 2009 estimated revenue from Use Rights for both firm (179 MW) and non-firm (119 MW) service is \$9,530,040. In addition, the exhibit indicates that the 2009 estimated values for lost HQ Interconnection Capability Credits is \$3,208,575. The exhibit states that this estimate assumes that 50 percent of the 179 MW are lost and the HQ Interconnection Capability Credits are zero in December, January, and February.

⁴⁰ There is a discrepancy between the transmittal letter and Transfer Agreement with respect to the northbound capacity. NSTAR states that "NSTAR's Use Rights currently consist of 298 MW, of which 179 is firm capacity and 119 is non-firm capacity on the Interconnection from Quebec to New England (southbound), and 179 MW is non-firm capacity from New England to Quebec (northbound)." Transmittal Letter at 3. However, section 2.01 of the Transfer Agreement states, in part, that "NSTAR's Use Rights currently consist of 298 MW, of which 179 is firm capacity and 119 is non-firm capacity on the Interconnection from Quebec to New England (southbound), and 105 MW is firm capacity and 74 MW is non-firm capacity from New England to Quebec (northbound)." We direct NSTAR to clarify the discrepancy in the description of the firm and non-firm Use Rights from New England to Quebec (northbound) in the transmittal letter and Transfer Agreement, stating which is correct, within 30 days of the date of this order.

⁴¹ Brookfield's Response at 6.

⁴² For background and description related to NSTAR's HQ Interconnection Capability Credits, see *NSTAR Elec. Co. v. ISO New England Inc.*, 125 FERC ¶ 61,187

30. Brookfield raises concerns about the lack of a competitive bidding process. But the Restated Use Agreement does not oblige Interconnection Rights Holders necessarily to engage in a competitive bidding process for every proposed transfer. In fact, Brookfield recognizes that NSTAR, an Interconnection Rights Holder, has the option of using the transfer agreement to transfer its transmission capacity.⁴³ Brookfield acknowledges that it sought to enter into a transfer agreement with NSTAR for its Use Rights—not through a competitive bidding process as it contends NSTAR is obligated to do.⁴⁴ As discussed above, section 5.4 of the Restated Use Agreement permits NSTAR to transfer capacity through a bilateral contract (i.e., a transfer agreement) instead of “making its Use Rights available to eligible transmission customers through an open access transmission tariff and over an open access transmission tariff administrator’s OASIS.” Thus, it is permissible for NSTAR to transfer transmission capacity to a willing customer that values the capacity at negotiated rates pursuant to a bilateral agreement.

31. Brookfield requests that if the Commission accepts the Transfer Agreement, it condition such acceptance on HQUS or any of its affiliates not selling power to NSTAR or any of its affiliates during the term of the Transfer Agreement. Brookfield fails to persuade us to depart from Order No. 890-A, which allows multiple reassignments under the *pro forma* OATT.⁴⁵ As we found in Order No. 890-A, denying the assignee’s right to further assign its scheduling rights would inhibit customers who value the capacity most from accessing it and thereby contradict the Commission’s goal of creating a competitive secondary market for transmission capacity.⁴⁶ In this vein, if HQUS anticipates not utilizing any portion of the Use Rights for a given period, HQUS commits in the Transfer Agreement to make such Use Rights available to third parties and will post any resulting agreement as a reassignment on the OASIS under the existing OASIS reservation.⁴⁷ In

(2008); *NSTAR Elec. Co.*, 123 FERC ¶ 61,094, *order on reh’g*, 125 FERC ¶ 61,221 (2008).

⁴³ Brookfield Protest at 4.

⁴⁴ Brookfield states that it is “a user of the Phase II facility [i.e., HQ Interconnection] and was one of the entities that was and remains interested in negotiating a transfer agreement or other transmission arrangements over the HQ Interconnection with NSTAR.” Brookfield Protest at 3.

⁴⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 427.

⁴⁶ *Id.*

⁴⁷ NSTAR Filing, Transfer Agreement § 2.04. NSTAR commits to revise Schedule 20A-NSTAR Section II of the ISO-NE OATT to reflect that NSTAR, on behalf
(continued...)

addition, we find that Brookfield's request to limit the ability of NSTAR or HQUS from engaging in power sale agreements lacks support. Thus, we deny Brookfield's requests to prevent HQUS from selling power to NSTAR under a separate agreement.

32. It is not clear, however, whether NSTAR has identified in its business practices (even on an interim basis) any procedures necessary to accomplish the reassignment of capacity by its customers over the HQ Interconnection.⁴⁸ Therefore, we direct NSTAR to post such procedures on its and on ISO-NE's website within 30 days of the date of this order.

33. In addition, it is not clear whether NSTAR intends to aggregate and summarize in an Electronic Quarterly Report (EQR) the data contained in the Transfer Agreement. Consistent with Order No. 890, we direct NSTAR to revise the Transfer Agreement to reflect the EQR data (i.e., reassigned transmission capacity), within 30 days of the date of this order.⁴⁹

34. Lastly, the proposed Transfer Agreement does not contain designations as required by the Commission in Order No. 614.⁵⁰ Order No. 614 required that, effective June 1, 2000, all rate schedule sheets (i.e., tariff sheets, rate schedules, and service agreements) be designated. Accordingly, we direct NSTAR to file the Transfer Agreement with designations and formatting consistent with Order No. 614's requirements within 30 days of the date of this order.

of HQUS, will offer point-to-point service over the Phase I/II High Voltage Direct Current Transmission Facilities for those Use Rights that HQUS anticipates not utilizing. *Id.*

⁴⁸ See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 428.

⁴⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 394.

⁵⁰ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

The Commission orders:

NSTAR's proposed Transfer Agreement is hereby accepted, subject to the modifications directed herein, to be submitted within 30 days of the date of this order, as discussed in the body of this order, to be effective January 1, 2009, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.