

123 FERC ¶ 61,094
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. ER08-627-000

ORDER REJECTING IN PART AND ACCEPTING IN PART SCHEDULE 20A
TARIFF REVISIONS

(Issued April 29, 2008)

1. On February 29, 2008, NSTAR Electric Company (NSTAR) submitted changes to Schedule 20A of its ISO New England Inc. (ISO-NE) Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act.¹ Additionally, NSTAR proposed changes to the delivery date for non-firm transmission service and proposed adding peak and off-peak pricing. In this order, the Commission rejects the proposed Schedule 20A revisions, accepts the delivery rate revisions, effective March 1, 2008, and conditionally accepts the addition of peak and off-peak pricing subject to a compliance filing, as discussed below.

I. Background

2. The Hydro Québec High Voltage Direct Current Transmission Facilities (HQ Tie) interconnects the systems operated by ISO-NE and Hydro Québec TransÉnergie (Hydro Québec). The United States portion of the HQ Tie is owned by four companies that recover their costs for the interconnection from utilities who hold transmission rights on the HQ Tie, i.e., the Interconnection Rights Holders (IRHs).² The Canadian portion of the interconnection facilities is owned by Hydro Québec. The nominal transfer capacity of the HQ Tie is approximately 2,000 MW; however, for reasons of reliability, ISO-NE historically has allowed no more than 1,800 MW of capacity to be imported over the facility.

¹ 16 U.S.C. § 824d (2000).

² The four owners of the HQ Tie are New England Electric Transmission Corporation; Vermont Electric Transmission Company; New England Hydro-Transmission Electric Company, Inc.; and New England Hydro-Transmission Corporation. NSTAR is an IRH.

3. In return for the IRHs' financial support of the HQ Tie and the reliability benefit that the HQ Tie provides to New England through access to available generation in Canada, the IRHs—and by extension, their customers—have a right to receive Hydro Québec Interconnection Capability Credits (HQ Capability Credits or HQICCs).³ Each IRH is allocated a share of HQ Capability Credits approximately equal to its share of the support cost obligation. The IRHs' right to receive HQICCs is provided for under the ISO-NE OATT.

4. For the Power Year 2006/2007 the Commission approved 1,200 MW of HQICCs from March through November and 0 MW from December through February.⁴ The Forward Capacity Market (FCM) Settlement Agreement fixes this amount through May 2010.⁵ HQICCs historically have been credits against the Installed Capacity (ICAP) requirements that a load serving IRH otherwise would have. Thus, the HQICCs benefit the IRHs because the IRHs can use them to offset the capacity obligations that the IRHs (which are all load-serving entities) must meet. The value of HQICCs has been based on the market value of capacity in the ICAP market multiplied by the number of megawatts of HQICCs owned by each IRH. Further, as a transition mechanism to the FCM, the FCM Settlement Agreement provides that during the transition period (December 1, 2006, through May 31, 2010) all installed capacity will receive fixed payments starting at \$3.05 per kW-month and increasing to \$4.10 per kW-month.⁶

³ The HQ Capability Credits reflect the amount of potential resources available from Canada across the HQ Tie. Based upon its evaluation of capacity resources potentially available for sales from Québec, ISO-NE calculates that 1,200 MW of HQICCs are available and provides these credits to the IRHs. *See, e.g., ISO New England Inc.*, 114 FERC ¶ 61,055, at P 5 (2006).

⁴ A Power Year is the twelve-month period commencing June 1 and ending May 31.

⁵ The FCM Settlement Agreement was accepted in *Devon Power LLC*, 115 FERC ¶ 61,340, *reh'g denied*, 117 FERC ¶ 61,133 (2006). The FCM Settlement Agreement provides that “the total MW Value of HQICCs will be fixed at 1200 MW March through November and zero MW December through February.” FCM Settlement Agreement § 11.VIII.K.

⁶ Section VIII.B of the FCM Settlement Agreement provides the following fixed payments for ICAP during each Power Year of the transition period, referred to as the settlement interim payment rates:

December 1, 2006 to May 31, 2007	\$3.05/kW-month
June 1, 2007 to May 31, 2008	\$3.05/kW-month
June 1, 2008 to May 31, 2009	\$3.75/kW-month
June 1, 2009 to May 31, 2010	\$4.10/kW-month

5. Although the IRHs were granted a waiver from the requirement to file an OATT for transmission service over the HQ Tie, the Commission directed those public utility IRHs with “control” over HQ Tie transmission service to include terms and conditions governing access to the HQ Tie in their individual OATTs.⁷ As part of the formation of the regional transmission organization in New England, these rates, terms, and conditions for HQ Tie transmission service were incorporated into Schedule 20A of the ISO-NE OATT. Schedule 20A sets forth the rates, terms, and conditions for transmission service provided over the United States portion of the HQ Tie. The IRHs that are Schedule 20A Service Providers (SSP) have exclusive filing rights under section 205 of the Federal Power Act to make changes to Schedule 20A.⁸

II. NSTAR s’ Proposal

6. NSTAR explains that the Commission has concluded that the FCM Settlement Agreement requires a reduction of HQICCs to the extent that HQ Tie capacity imports exceed 600 MW during the transition period.⁹ NSTAR explains that, as would be anticipated, the increase in the price of installed capacity resulting from implementation of the transition period has increased the demand for transmission service over the HQ Tie. This, in turn, has led to reductions in the amount of HQICCs allotted to the IRHs.

7. NSTAR states that, like all of the IRHs, it uses HQICCs to reduce the cost of reliably serving load in their respective service areas. It states that the loss resulting from HQICC reductions translates directly into an increase in the cost to serve customers in New England. NSTAR contends that the benefits of the HQ Tie capacity lost by the IRHs and their customers are transferred to the users of the line for transmission service. According to NSTAR, such a penalty imposed on the New England customers who support the HQ Tie is unfair and directly contrary to the Commission’s policies and to the intent of the FCM Settlement Agreement. NSTAR avers that the only way to preserve

⁷ See *Northern States Power Co. (Minn.)*, 76 FERC ¶ 61,250, *order on reh’g sub nom. Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,943 (1996).

⁸ Sections 3.05 and 11.03(f)(i)(B) of the Transmission Service Administration Agreement provide that each SSP or its permitted designee may revise its Schedule 20A Service Schedule. *ISO New England Inc.*, 111 FERC ¶ 61,244 (2005).

⁹ See *NSTAR Elec. Co. v. ISO New England Inc.*, 120 FERC ¶ 61,261 (2007) (Netting Order). ISO-NE computes the reduction in HQICCs as follows. For each IRH, ISO-NE calculates that IRH’s megawatt share per month. If an IRH that is an SSP sold a total amount of transmission rights greater than its allocated megawatt share of the 600 MW limit during a given month, that SSP would be subject to an HQICC reduction if the total megawatt amount for all firm transmission service over the HQ Tie exceeds the 600 MW HQ Interconnection Excess. The netting function during the transition period is reflected in section III.8.3.7.2.1(e) of the ISO-NE OATT.

the Commission's policies and the FCM Settlement Agreement's intent, while at the same time observing the Commission's interpretation of the requirements of the FCM Settlement Agreement during the transition period, is to allow NSTAR to modify its Schedule 20A provisions to permit it to recover any losses it suffers as a result of the loss of some or all of its HQ Capability Credits.

8. NSTAR asserts that such a modification in transmission rates across the HQ Tie to recompense NSTAR and its customers for the loss of HQICCs is fully consistent with the FCM Settlement Agreement and with the Netting Order allowing the reduction of HQICCs during the transition period.¹⁰ NSTAR states that the FCM Settlement Agreement's treatment of HQICCs during the transition period was intended to prevent double-counting of reliability benefits and capacity resources and argues that no arrangement was made or contemplated in the FCM Settlement Agreement that would limit changes to the transmission rates on the HQ Tie to compensate SSPs and their customers for these losses.

9. NSTAR asserts the considerations leading the Commission to reject NSTAR's complaint are not at play here, where the issue is not whether HQICCs should be reduced as provided in the FCM Settlement Agreement but whether NSTAR and its customers may be compensated for the losses they incur as a result of those reductions. NSTAR further asserts that such compensation has not been the subject of prior Commission proceedings or orders, so the present filing is not a collateral attack of any kind. Further, NSTAR asserts that the FCM Settlement Agreement neither provides nor contemplates that such compensation shall not take place. The proposed compensation is thus consistent with the intent and reliance interests of the parties to the FCM Settlement Agreement. In sum, NSTAR maintains that the circumstances that led the Commission to allow displacement of HQICCs during the transition period have no bearing on the issue of allowing fair compensation for such reduction for parties that support the HQ Tie.

10. In its filing, NSTAR proposes to amend its Schedule 20A-NSTAR regarding two separate items. First, NSTAR proposes to amend Schedule 20A-NSTAR to provide a new rate mechanism by which NSTAR may be compensated for the value of HQICCs that may be lost due to capacity import contracts in excess of 600 MW. Second, NSTAR proposes changes to its existing formula rate from Schedule 20A-NSTAR (1) to correct the formula used to calculate the Yearly Delivery Rate (to include a denominator), (2) to make modifications in the calculations for monthly, weekly, daily, and hourly delivery rates to account for the Yearly Delivery Rate, and (3) to add peak and off-peak pricing for daily and hourly non-firm transmission service.

¹⁰ *NSTAR Elec. Co. v. ISO New England Inc.*, 120 FERC ¶ 61,261 (2007) (Netting Order).

11. Asserting that the Commission agreed with NSTAR that the FCM Settlement Agreement should not allow for the netting of capacity import contracts against HQICCs, NSTAR explains that in Docket No. EL07-81-000 it filed a complaint against ISO-NE in July 2007 seeking to conform the treatment of HQICCs during the transition period to be consistent with the FCM. NSTAR notes that the Commission denied the complaint,¹¹ finding *inter alia* that the FCM Settlement Agreement distinguishes between the transition period and the subsequent FCM implementation phase that begins on June 1, 2010, and noting that the treatment of HQICCs during each period could be different.

12. NSTAR contends that in its ruling, the Commission did not find that HQICCs could be “expropriated without compensation,” nor did the Commission specifically hold that IRHs could be required to relinquish HQICCs involuntarily.¹² As such, NSTAR states that its proposed amendment to Schedule 20A-NSTAR in this docket provides an “HQICC relinquishment charge,” which will provide fair compensation for HQICCs that may be expropriated during the FCM transition period or voluntarily surrendered during the implementation phase in order to accommodate additional capacity imports offered into the FCM.

13. NSTAR states that the amendment provides that, to the extent NSTAR’s HQICC entitlements are reduced as a result of a transmission customer’s capacity imports above the HQ Interconnection Excess, the transmission customer will be responsible for compensating NSTAR for its loss of HQICCs in the form of this relinquishment charge. During the FCM transition period, the HQICC relinquishment charge will be equal to the price per kW-month established for installed capacity during the transition period under the FCM Settlement Agreement adopted in Docket No. ER03-563-000, as approved by the Commission on June 16, 2006. After the implementation of FCM, NSTAR contends that if it elects to relinquish HQICCs in order to accommodate capacity imports in amounts greater than the HQ Interconnection Excess, the price per kW-month for HQICCs relinquished will be equal to the clearing price for the applicable delivery year as established in the FCM auction.

14. In support of its proposed amendment, NSTAR states that HQICCs are contractual rights of IRHs that are valued at the price of capacity in NEPOOL and that the Commission has directly and repeatedly rejected every effort to take away their value. NSTAR contends that the cost of providing service to support excess capacity imports offered into the FCM is the value of the transmission service itself plus the value of the expropriated HQICCs. Thus, NSTAR argues that without the relinquishment charge, NSTAR’s retail customers would not be held harmless.

¹¹ *See id.*

¹² NSTAR seeks rehearing or clarification on both of these points, pending on rehearing of the Netting Order in Docket No. EL07-81-001.

15. Thus, NSTAR contends that to make the HQICC holder whole, the capacity importer must compensate the IRH for both the basic transmission service it has acquired and the value of the generation-related service that it has taken from the holder. NSTAR avers that the critical point concerning the Commission's policy forbidding "and" pricing is that the "or/and" dichotomy applies to different uses of the same product—transmission—and not to the sale of multiple products, such as (a) transmission sold at embedded cost rates and (b) rights to generation sold at the cost of installed capacity in the case of HQICCs. Finally, NSTAR maintains that its proposal satisfies the three goals announced in *Northeast Utilities Service Company*:¹³ (1) it will hold native customers harmless; (2) transmission customers will continue to be charged the lowest cost-based rate; and (3) the relinquishment charge will not restrict access to the market.

16. In addition to amending Schedule 20A-NSTAR by adding this HQICC relinquishment charge, NSTAR also proposes to modify certain components of the existing formula rate and rate categories for transmission service over the HQ Interconnection. NSTAR is proposing to (1) correct the formula used to calculate the Yearly Delivery Rate to include a denominator; (2) modify the calculations for monthly, weekly, daily, and hourly delivery rates to account for the Yearly Delivery Rate; and (3) add peak and off-peak pricing for daily and hourly non-firm transmission service. NSTAR also proposes to re-designate the facilities expense component of the transmission service charge as a delivery rate.

17. NSTAR states that the Yearly Delivery Rate correction is intended to fix the language from Schedule 20A to properly determine a customer's service charge based on the product of the yearly facilities expense and the transmission customer's percentage of the company's allocated transfer capability.¹⁴ Similarly, NSTAR states that with the revisions to the Yearly Delivery Rate calculation, the remaining delivery rates accordingly have been modified to reflect the revised Yearly Delivery Rate divided by their individual numerical values within a given year (*e.g.*, the monthly delivery rate is equal to the Yearly Delivery Rate divided by 12).

¹³ 56 FERC ¶ 61,269 (1991), *on reh'g*, 58 FERC 61,070 (1992).

¹⁴ NSTAR notes that the current tariff language states that a customer's service charge is determined as the product of the yearly facilities expense and the transmission customer's reserved capacity. Without the revised language, NSTAR states that Schedule 20A-NSTAR can be read in a manner that (i) would result in a value with units expressed as "MW-dollars," rather than "dollars;" (ii) could result in an over-collection of NSTAR's annual embedded transmission expense; and (iii) is not reflective of how NSTAR has actually calculated the charge.

18. In addition, NSTAR states that for non-firm transmission service, the daily and hourly delivery rates have been expanded to include both on-peak and off-peak conditions. In support of these changes, NSTAR notes that the addition of peak and off-peak pricing comports with long-standing Commission precedent and is consistent with provisions the Commission has accepted for other SSPs.¹⁵ Last, NSTAR proposes ministerial revisions to Schedule 20A-NSTAR to create a more consistent and clearly worded service schedule.

III. Notice and Responsive Pleadings

19. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 13,878 (2008), with answers and interventions due on or before March 21, 2008, and subsequently (for the March 7, 2008 amended filing) notice was published in the *Federal Register*, 73 Fed. Reg. 14,465 (2008), with answers and interventions due on or before March 28, 2008.

20. On March 7, 2008, ISO-NE filed a motion to intervene. On March 20, 2008, New England Conference of Public Utilities Commissioners, Inc. filed a motion to intervene.

21. On March 21, 2008, the Maine Public Utilities Commission (Maine PUC) submitted a notice of intervention, and “Certain Schedule 20A Service Providers” filed a motion to intervene. On the same date, Brookfield Energy Marketing Inc. (Brookfield) and Hydro Québec filed motions to intervene and protests; the IRH Management Committee filed a motion to intervene and comments.

22. On April 7, 2008, NSTAR and the IRH Management Committee filed answers to the protests.

23. Hydro Québec asserts the effect of NSTAR’s proposed rate increase would be to eliminate generation capacity importers’ ability to recover the value of their capacity sales above 600 MW on the HQ Tie.¹⁶ Generation capacity still would have value (determined in advance in the FCM Settlement Agreement during the FCM transition period), but all of that value would automatically be transferred to the IRHs. Thus, Hydro Québec argues there would be no reason for capacity importers like Hydro Québec

¹⁵ NSTAR cites *Appalachian Power Co.*, 39 FERC ¶ 61,296, at 61,965 (1987), and *Northeast Utilities Service Co.*, 89 FERC ¶ 61,184, at 61,572 (1999). NSTAR also cites Schedule 20A-VEC; Schedule 20A-CV; Schedule 20A-NU.

¹⁶ Hydro Québec filed its protest in this docket in response to NSTAR’s filing, and in Docket No. ER08-615-000 in response to a filing by Central Vermont Public Service Corporation, Green Mountain Power Corporation, New England Power Company d/b/a National Grid, Northeast Utilities Service Company, and The United Illuminating Company (collectively, the Filing Parties).

to continue to offer capacity imports above 600 MW on the HQ Tie during the FCM transition period. Hydro Québec asserts this result is contrary to the FCM Settlement Agreement and the Netting Order and should be rejected. Hydro Québec states the FCM Settlement Agreement unambiguously requires the netting of HQICCs during the FCM transition period. It provides that capacity imports above 600 MW “*will result in reductions in HQICCs as provided for under current procedures.*”¹⁷

24. Hydro Québec states the calculation and allotment of HQICCs has a long and contentious history.¹⁸ The FCM Settlement Agreement sought to avoid all such controversy during the FCM transition period by carrying forward the existing treatment of HQICCs in the FCM transition period through May 31, 2010; namely, to permit capacity imports up to 1,800 MW on the HQ Interconnection and reduce HQICCs when imports exceeded 600 MW. Hydro Québec asserts that until the end of the FCM transition period, the IRHs only have a right to *net* HQICCs.¹⁹ Hydro Québec argues this was the treatment before the FCM Settlement Agreement, it was the treatment carried forward by the FCM Settlement Agreement during the FCM transition period, and it was the treatment upheld by the Commission in the Netting Order.

¹⁷ FCM Settlement Agreement § 11, Part VIII.K. (emphasis added).

¹⁸ Hydro Québec Protest at 7 (citing *PG&E Nat’l Energy Group, et al. v. ISO New England Inc.*, 99 FERC ¶ 61,187, *on reh’g*, 100 FERC ¶ 61, 227 (2002); *NSTAR Elec. & Gas Corp., et al. v. New England Power Pool*, 102 FERC ¶ 61,107, *on reh’g*, 103 FERC ¶ 61,093; *New England Power Pool*, 104 FERC ¶ 61,204 (2003); *New England Power Pool*, 106 FERC ¶ 61,185 (2004); *New England Power Pool*, 111 FERC ¶ 61,132 (2005). During negotiations of the FCM Settlement Agreement, the Commission issued an order approving HQICC values for the 2006/2007 Power Year. *ISO New England Inc.*, 114 FERC ¶ 61,055 (2006). In that order, the Commission directed ISO-NE “to file supporting studies and details no later than October 2, 2006,” in the event that “the parties [were] unable to agree” on HQICC values for the 2007/2008 Power Year. *Id.* P 16).

¹⁹ *Id.* (citing “HQ Phase I/II Interconnection Capability Credit Procedures and Requirements,” approved by the IRH Management Committee on May 30, 2007 (setting forth the IRHs’ internal procedures for reducing HQICCs during the 2007/2008 Power Year, the first full year of the FCM Transition), at http://www.iso-ne.com/markets/othrmkts_data/inst_cap/icap/hqicc_reduction_doc_clean_py07-08_05302007.doc).

25. Hydro Québec asserts that the instant rate filings (i.e., in this docket and in Docket No. ER08-615-000) insinuate that the reduction of HQICCs is a new occurrence.²⁰ Hydro Québec states they likewise repeat a misleading claim that “the Commission has firmly, directly and repeatedly rejected every effort of ISO-NE and NEPOOL to derogate, either directly or indirectly, the value of HQICCs.”²¹ Hydro Québec argues these statements are inaccurate and misleading. Netting—reducing HQICCs as capacity imports exceed 600 MW on the HQ Tie—has long been permitted and upheld by the Commission, as recently as in the Netting Order. Thus, according to Hydro Québec, no current rights of NSTAR are being “expropriated.”

26. Hydro Québec states the plain intent of the FCM Settlement Agreement was to preserve this *status quo* with respect to netting. In arguing that NSTAR’s proposal is consistent with the FCM Settlement Agreement, however, Hydro Québec points out that NSTAR instead asserts that the intent of the settlement “was to protect New England customers.”²² The FCM Settlement Agreement, however, includes specific provisions that expressly preserve the *status quo* reduction of HQICCs during a brief transition period—that was the understanding on which the settling parties relied.

27. Hydro Québec explains that another essential part of the treatment of HQICCs carried forward during the FCM transition period is that sellers of capacity imports are paid for their capacity. Otherwise, there would be no reason for sellers to care about importing capacity into New England, and certainly no reason for them to insist upon an FCM Settlement Agreement provision preserving the reduction of HQICCs during the FCM transition period. The unstated but obvious intent of the FCM Settlement Agreement was that sellers of capacity imports would be paid.

28. Hydro Québec asserts the proposed rates would have the effect of eliminating netting. Hydro Québec states that if they go into effect, sellers would have to forward *all* of their revenues for capacity imports above 600 MW to the SSPs and NSTAR. In effect, sellers would no longer be paid for their capacity imports above 600 MW, which eliminates any rationale for selling capacity above 600 MW. Hydro Québec states there is no point to selling a product if the seller knows that it will not be paid for it. This is particularly true here, where sellers would have to purchase transmission service from the SSPs and NSTAR, and then turn around and sell generation capacity for free; or in other words, to pay for transmission to give away generation capacity to New England.²³

²⁰ *Id.* at 8 (citing NSTAR Filing at 5; *see also* Filing Parties Transmittal Letter at 2. Both omit the fact that HQICCs were netted prior to the FCM Settlement).

²¹ *Id.* (citing NSTAR Filing at 7; *see also* Filing Parties Transmittal Letter at 7).

²² *Id.* (citing to Filing Parties Transmittal Letter at 15).

²³ *Id.* at 9. NSTAR actually proposes to charge capacity importers for both the transmission capacity *and* the revenues for “generation-like” service.

29. Hydro Québec explains that while NSTAR is not explicitly seeking to eliminate the reduction of HQICCs during the FCM transition period in this proceeding, it is doing so on rehearing in Docket No. EL07-81-000; therefore, granting the rate increase proposed in this filing would accomplish the same objective. Hydro Québec asserts that NSTAR's proposal would eliminate any rationale for selling capacity above 600 MW and thus fundamentally change the FCM Settlement Agreement's negotiated bargain to preserve the *status quo* during the FCM transition period. Moreover, Hydro Québec states that this issue has already been decided.²⁴ Hydro Québec states that past practice and decisions permitting capacity imports to reduce HQICCs obviously assumed that sellers would be paid for their capacity imports. Hydro Québec further states that capacity importers fought hard and won the right in the FCM Settlement Agreement to continue to sell generation capacity above 600 MW over the HQ Tie.²⁵

30. Hydro Québec also states there is no justification to change the rate treatment of HQICCs midway through the FCM transition period, which ends on May 31, 2010. The Commission has ruled that, beginning on June 1, 2010, the netting of HQICCs will be prohibited.²⁶ The Commission previously has held that the FCM transition period and the period of time commencing with the FCM have distinct rules.²⁷ Hydro Québec explains it has lock-step rates for generation capacity, which have been known since the FCM Settlement Agreement was being negotiated, yet NSTAR only now makes this rate increase filing, midway through the FCM transition period (with only two years remaining). Hydro Québec asserts that capacity importers, meanwhile, have relied on the written rules of the FCM transition period—including payment for capacity imports—in securing long-term transmission reservations and otherwise making commercial arrangements for the remaining duration of the FCM transition period, and all of these commercial arrangements for the remainder of the FCM transition period will be affected by the new rates.

31. Hydro Québec asserts the lost opportunity costs theory of NSTAR seems to be that it is somehow entitled at all times to 1,200 MW of HQICCs, and that when it sells transmission to third parties and HQICCs are reduced through netting, NSTAR loses the

²⁴ Hydro Québec Protest at 10. “To be clear, if the Commission had granted NSTAR's complaint (which the SSPs supported, and the Commission rejected in the Netting Order), the rate increases at issue here would never have been made.” *Id.* at 10 n.21.

²⁵ *Id.* at 11 (citing FCM Settlement, § 11, Part VIII.K).

²⁶ *Id.* at 14 (citing *ISO New England Inc.*, 119 FERC ¶ 61,045, at P 167-68 (2007), *on reh'g*, 120 FERC ¶ 61,087, at P 88-92 (2007)).

²⁷ *Id.* (quoting Netting Order, 120 FERC ¶ 61,261 at P 35).

value of the reduction. Thus, according to Hydro Québec, NSTAR argues that this is a lost opportunity for which it must be compensated under the Commission's transmission pricing policies.²⁸

IV. Discussion

A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), timely, unopposed motions to intervene and timely notice of intervention serve to make the entities that filed them parties to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept NSTAR's and the IRH Management Committee's answers and will, therefore, reject them.

B. Commission Determination

34. The Commission rejects NSTAR's proposed relinquishment rate. The FCM Settlement Agreement specifically allows netting during the transition period and does not imply any form of compensation. Therefore, the Commission must interpret this to be a deliberate outcome of the negotiations and that further compensation during the transition period is not warranted under the terms of the settlement.

35. At the outset, the filing is a collateral attack on the Commission's June 16 and October 31, 2006 Orders, which approved the FCM Settlement Agreement and implemented the FCM transition period rules.²⁹ NSTAR had the opportunity to raise its concern with the provision regarding HQICCs both when it was filed as a part of the FCM Settlement Agreement and when ISO-NE made its section 205 filing implementing the transition period rules. The Commission notes that NSTAR participated in the FCM

²⁸ The Commission has allowed opportunity cost, "or" pricing, when the lost opportunity claimed is both legitimate and verifiable. *Id.* at 16 (citing *Northeast Utils. Serv. Co.*, 62 FERC ¶ 61,294 (1993), *order on reh'g*, 83 FERC ¶ 61,124 (1998); *Penn. Elec. Co.*, 58 FERC ¶ 61,278, at 61,871, *reh'g denied*, 60 FERC ¶61,034 (1992), *aff'd. sub nom. Penn. Elec. Co. v FERC*, 11 F.3d 207 (D.C. Cir. 1993) (1992); *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)).

²⁹ *Devon Power LLC*, 115 FERC ¶ 61,340 (June 16, 2006 Order), *order on reh'g*, 117 FERC ¶ 61,133; *ISO New England Inc.*, 117 FERC ¶ 61,132 (2006) (October 31, 2006 Order).

Settlement Agreement proceeding, but did not raise any concern with regard to HQICCs. Further, we note that NSTAR did not participate in the transition period rules proceeding in which the Commission conducted its review of the HQICC transition period rules under section 205 of the FPA. Moreover, NSTAR presents no materially changed circumstances that would merit a revisiting of either of these Commission orders. Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.³⁰ The Commission finds this particularly true with respect to the FCM Settlement Agreement and the tariff provisions arising from that settlement, given that they represent “difficult compromises among the diverse parties to [the FCM Settlement Agreement] proceeding that, if found just and reasonable, should be honored.”³¹ The Commission found these provisions, including the provisions related to HQICCs in the transition period, just and reasonable and, therefore, will honor them.

36. In any event, we find that NSTAR’s proposal put forth here is inconsistent with the FCM Settlement Agreement. As we stated in the Netting Order, the FCM Settlement Agreement contained two distinct time periods—the transition period and the implementation phase—and different rules pertain to each.³² Section III.8.3.7.2.1(e) of the ISO-NE OATT, which is applicable to the transition period and which NSTAR seeks to modify, specifically allows reductions in HQICCs (emphasis added):

The remaining 600 MW of transmission may be used for UCAP over the Phase I/II HVDC-TF interconnection by any Market Participant that arranges for transmission over the interconnection without reductions in the Hydro Quebec Interconnection Capability Credits. UCAP above 600 MW may be transmitted only in those months when the Hydro

³⁰ See, e.g., *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,117, at P 12 (2005).

³¹ June 16, 2006 Order, 115 FERC ¶ 61,340 at P 66.

³² There is nothing inherently inappropriate in the FCM Settlement Agreement’s doing so, or in the Commission’s allowing so. Transition mechanisms of one form or another are an accepted practice in the face of industry and regulatory changes. See *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 699-700, 704 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002); *accord, e.g., PJM Interconnection, LLC*, 119 FERC ¶ 61,318, at P 85 (2007); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 19 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105, at P 49-50, *order on reh’g*, 105 FERC ¶ 61,212, at P 38, 43 (2003). The FCM Settlement Agreement includes such mechanisms. See *ISO New England Inc.*, 119 FERC ¶ 61,044 (2007).

Quebec Interconnection Capability Credits are 1,200 MW and *will result in a like reduction in the total Hydro Quebec Interconnection Capability Credits* available for the holders of those credits.

In contrast, section 11, part III.B.3.b of the FCM Settlement Agreement, which is applicable to the implementation phase, expressly limits imports over the HQ Tie and thereby prevents netting of HQICCs:

The total amount of accepted Import Bids over the Phase I/II tie plus approved HQICCs cannot exceed the approved Phase I/II transfer limit. If the accepted Import Bids exceed the difference between the approved Phase I/II transfer limit and the approved MW of HQICCs (the “HQI Excess”), the capacity requirement for those [Interconnection Rights Holders] or their designees that sold their transmission rights for the subject period will be increased by the difference between the total amount of accepted Import Bids and the HQI Excess. These capacity requirement increases will be allocated among the IRH or their designees in a manner to be determined by the [Interconnection Rights Holders].

Thus, for the two separate time periods, two separate and different provisions are applicable. Indeed, both ISO-NE and the Commission have stated that the transition period and the later implementation phase are intended to be substantially different.³³

37. We agree with Hydro Québec that the proposal offered by NSTAR could have the effect of limiting imports in excess of 600 MW over the HQ Tie during the transition period, albeit through a revised transmission rate rather than through an explicit tariff provision limiting these imports. In the Netting Order, we expressly rejected NSTAR’s proposal to restrict the netting of HQICCs during the transition period. While the instant filing proposes a different mechanism to preserve the value of the HQICCs during the transition period, our reasoning for denial—that the instant proposal would overturn the HQICC netting provisions of the FCM Settlement Agreement—is the same as in the Netting Order.

38. We recognize that under Schedule 20A NSTAR has the right to file to recover lost opportunity costs; however, we do not consider NSTAR’s proposed relinquishment charge to be just and reasonable because that charge would nullify the concessions negotiated by all parties in FCM Settlement Agreement. NSTAR’s proposal would, in effect, modify the FCM Settlement Agreement. The plain language of the FCM Settlement Agreement clearly implies a reduction in the financial value of those HQICCs reduced through netting. Contrary to their statements, NSTAR has not shown the

³³ See October 31, 2006 Order, 117 FERC ¶ 61,132 at P 43.

“intent” of the settlement to be otherwise. In a broad and complex filing of the magnitude of the FCM Settlement Agreement which includes an intricate financial balance, the potential reduction of HQICCs was among the various negotiated trade-offs. Initiating compensation mid-stream in the transition period would negate considerable efforts and understandings of settling parties and we will not now approve terms that were not included in the FCM Settlement Agreement as negotiated.

39. NSTAR also proposed changes to the rate calculations contained in Attachment A of Schedule 20A-NSTAR. We accept NSTAR’s proposal to re-designate the facilities expense component of the transmission service charge as a delivery rate, i.e., modifications to the Yearly Delivery Rate to include a denominator, and the directly related modifications in the calculations for monthly, weekly, daily, and hourly delivery rates. We approve these changes since they simply correct a previous oversight and reflect ongoing accepted practice.

40. However, NSTAR’s calculation of its Annual Embedded Transmission Expense that is used in the derivation of its proposed firm delivery rate does not appear to take into account revenue from non-firm local point-to-point service. We conditionally accept these proposed changes subject to a compliance filing. We direct NSTAR to revise the Annual Embedded Transmission Expense to take into account such revenues since this may lead to over-recovery. Likewise, while we conditionally accept the proposed addition of peak and off-peak pricing, we also direct NSTAR to incorporate off-peak revenues into the determination of on-peak rates. NSTAR is directed to file these changes within 30 days from the date of this order.

The Commission orders:

(A) NSTAR’s proposed relinquishment charge in Schedule 20A is hereby rejected, as discussed in the body of the order.

(B) The yearly, monthly, weekly, daily, and hourly delivery date changes are hereby accepted and made effective March 1, 2008, as requested, as discussed in the body of this order.

(C) The calculation of NSTAR’s Annual Embedded Transmission Expense is hereby accepted subject to a compliance filing, within 30 days, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.