

123 FERC ¶ 61,190
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.

ISO New England Inc. and
New England Power Pool

Docket No. ER08-697-000

ORDER APPROVING TARIFF CHANGES

(Issued May 20, 2008)

1. On March 21, 2008, ISO New England Inc. (ISO-NE) and New England Power Pool (NEPOOL) Participants Committee (collectively, Filing Parties) filed proposed revisions to Market Rule 1 and ISO-NE's Open Access Transmission Tariff (OATT) to revise the treatment of External Transactions in the New England capacity and energy markets. In this order, the Commission approves Filing Parties' proposed tariff revisions.

Background

2. On June 16, 2006, the Commission approved a contested settlement accepting a proposal by ISO-NE to create the Forward Capacity Market (FCM Settlement).¹ The FCM Settlement established a transition period from the current installed capacity (ICAP) market to the FCM, scheduled to begin June 1, 2010 (ICAP transition period). The FCM Settlement requires modifications to the market rules to provide greater parity between the manner in which generation resources located outside the New England control area (external resources) and generation resources located within the New England Control Area participate in the FCM and qualify for capacity payments during the ICAP transition period leading up to the first capacity commitment period in 2010.

3. Under the current market rules for the FCM and the ICAP transition period, any market participant with a capacity supply obligation in the ICAP transition period or a subsequent capacity commitment period (a capacity obligation) must submit a supply offer for a resource's available capacity in the day-ahead energy market. This requirement applies to capacity obligations for both internal resources and external resources. However, according to Filing Parties, additional market rules and ISO OATT requirements for external transactions and certain longstanding ISO-NE operating

¹ *Devon Power LLC*, 115 FERC ¶ 61,340 (2006) (June 16 Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006).

procedures have prevented market participants with external resources from participating in the capacity and energy markets on an equal footing with market participants that participate only with internal resources. In the instant proceeding, Filing Parties seek approval of changes to Market Rule 1 and the ISO-NE OATT that they assert will ensure that internal and external resources are treated equally.

Filing Parties' Proposal

4. Filing Parties state that they are proposing the market rule and ISO-NE tariff changes to comply with the requirements of section 11.VI of the FCM Settlement by modifying the offer and scheduling rules for importing energy into the New England control area via external transactions. Specifically, section 11.VI of the FCM Settlement provides:

Market Rules, operating procedures and manuals shall be changed to allow External Resources to participate in the FCM 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.

5. Filing Parties propose four changes to comply with section 11.VI of the FCM Settlement. First, they propose to allow market participants to submit transmission reservations associated with a priced external transaction supporting a capacity obligation up to an hour before it is to be scheduled in the real-time energy market, rather than at the time the external transaction is offered into the energy markets (Reservation Flexibility Changes). Second, the changes would enable market participants to modify the price portion of a supply offer for a priced external transaction during the re-offer period (Re-offer Changes). Third, the proposal would provide external transactions that clear in the day-ahead energy market with priority for scheduling over external transactions that clear only in the real-time energy market (Scheduling Priority Changes). Finally ISO-NE would limit the scheduling of external transactions that are submitted only into the real-time energy market if scheduling the transactions would cause or worsen a reliability condition within the New England control area (Scheduling Limitations Changes).

6. Filing Parties request an effective date of June 3, 2008, for all proposed changes except the Reservation Flexibility Changes. Filing Parties request waiver of the provisions of section 35.3(a) of the Commission's rules and regulations, 18 C.F.R. § 35.3(a) (2007), to allow the Reservation Flexibility Changes to become effective July 1, 2009. Filing Parties state that they want to delay implementation of the Reservation Flexibility Changes to provide ISO-NE's Internal Market Monitoring Unit with time to

develop a process to ensure that market participants with external transactions submit competitively priced energy offers in support of a capacity obligation. Given the outstanding priorities of the ISO-NE's Internal Market Monitoring Unit, Filing Parties state that good cause exists to grant waiver of the Commission's regulations to set an effective date of July 1, 2009 to allow sufficient time to develop and present such a process to NEPOOL for stakeholder review.

Reservation Flexibility Changes

7. Market participants with capacity obligations must submit supply offers in both the real-time energy market and the day-ahead energy market. According to Filing Parties, market participants offering energy into the day-ahead energy market or real-time energy market from internal resources are not required to reserve transmission service on Pool Transmission Facilities (PTF)² in order for that energy to flow within the New England control area. Instead, transmission scheduling determinations are made as part of ISO-NE's process of determining which committed resources will be dispatched in real-time.

8. In contrast, external resources are required to reserve transmission service in advance. As a matter of longstanding practice, ISO-NE requires market participants that import energy via external transactions to provide any required advance transmission reservations at the time the energy offer is submitted to ISO-NE.³ For external transactions, the capacity-related supply offer currently must be submitted to the day-ahead energy market and real-time energy market by noon the day before the operating day. Therefore, ISO-NE's practice of requiring transmission reservations at the time an external transaction is offered into one of the energy markets, as applied to external transactions submitted in support of a capacity obligation, means that transmission reservations for each hour of an operating day must be submitted at noon on the prior day. Thus, because ISO-NE does not determine whether external transactions for a particular hour will be scheduled until an hour before the delivery hour, market participants with priced external transactions are required to reserve and submit transmission reservations well in advance of learning whether those transactions will be scheduled in real-time.

² Pool transmission facilities are transmission facilities over which ISO-NE exercises operating authority, and comprise the majority of the transmission facilities used to flow energy from internal generation resources.

³ Advance reservations are required on the HQ Interconnection, the Cross Sound Cable interface, and the Maine Electric Power Company (MEPCO) transmission system according to the terms set forth in Schedules 18, 20A and 20B of the ISO-NE OATT.

9. Filing Parties propose to allow a market participant to wait until one hour prior to the delivery hour before making and notifying ISO-NE of a transmission reservation. Filing Parties contend that this change will allow external resources to compete more fairly in the capacity and energy markets with market participants that have capacity obligations for internal resources by allowing the participant the discretion to determine whether their external transaction might be scheduled in real-time before deciding whether a reservation will be necessary. According to Filing Parties, this change reverses a practice of requiring market participants to purchase excess transmission during times when their resources are not required to serve the area's energy needs.

10. In the event the market participant fails to link a transmission reservation with a priced external transaction under conditions where the transaction would have been dispatched in real-time, the transaction will not be scheduled and the market participant will lose any energy market revenue to be derived from the transaction. During the ICAP transition period, the transaction will also be assessed a failure to deliver penalty, and in the FCM, if the failure occurs during a shortage hour, the external resource will be penalized accordingly.

Re-offer Changes

11. According to Filing Parties, under the current market rules, a market participant submitting a generation supply offer into the day-ahead energy market is permitted to modify that offer for the real-time energy market during the re-offer period between 4:00 p.m. and 6:00 p.m. on the day before the operating day. In contrast, under current ISO-NE operating procedures, when a market participant submits an offer to import energy via an external transaction to the real-time energy market, the offer must be submitted by noon the day before the operating day, and is not permitted to modify that offer once it is submitted.

12. Filing Parties propose to allow a market participant importing energy via an external transaction to modify the price portion of a supply offer submitted in the real-time energy market during the re-offer period. With this ability to modify the offer price, Filing Parties assert that external transactions can be re-priced once the day-ahead energy market has cleared, permitting market participants to submit more competitive offers to the real-time energy market and have offer flexibility that is comparable to market participants with internal resources.

Scheduling Priority Changes

13. Filing Parties propose to provide market participants that submit external transactions into the day-ahead energy market with scheduling priority over market participants that offer external transactions only into the real-time energy market. These changes are intended to provide continued incentives to market participants to participate in the day-ahead energy market, which, Filing Parties maintain increases the liquidity of

the market. The scheduling priority afforded by these changes is comparable to the real-time commitment certainty that is provided to offers for internal resources once they clear the day-ahead energy market.

14. Under the proposed changes, if two or more external transactions are tied on price and transmission priority for scheduling or curtailment in the real-time energy market, real-time energy market transactions that cleared the day-ahead energy market will have scheduling priority over transactions that did not clear the real-time energy market. In addition, to ensure that priced external transactions that clear in the day-ahead energy market qualify for the proposed scheduling priority, priced external transactions that clear in the day-ahead energy market will be treated for scheduling purposes as self-scheduled external transactions in the real-time energy market, unless the market participant requests otherwise during the re-offer period.

15. According to Filing Parties, these changes are intended to ensure that external transactions that clear in the day-ahead energy market will be on equal economic footing with self-scheduled external transactions that are offered only into the real-time energy market. Because the offer scheduling rules are based on price, transaction priority and timestamp, and because self-scheduled transactions always receive scheduling priority over priced transactions, the Filing Parties contend that treating priced external transactions that clear in the day-ahead energy market as self-scheduled external transactions will increase the likelihood that priced external transactions will be scheduled in real-time.

Scheduling Limitations Changes

16. Finally, Filing Parties propose to prohibit the scheduling of external transactions that would either cause or worsen a reliability condition that results when there is a lack of demand for energy in one or more locations (a minimum generation emergency), or would cause or worsen a reserve shortage condition. Under the proposed changes, an external transaction to import energy into the New England control area submitted only into the real-time energy market will not be scheduled if it would cause or worsen a minimum generation condition. Similarly, an external transaction to export energy from the New England control area submitted only into the real-time energy market will not be scheduled if it would cause or worsen a reserve shortage condition.

17. These proposed rules are comparable to ISO-NE practices that curtail the scheduling of offers to supply energy from internal resources when those offers would cause or worsen a reliability condition within the New England control area. According to Filing Parties, the proposed rule to reject energy imports that would cause a minimum generation condition is comparable to ISO-NE's rejection of a request by a market participant to self-schedule an internal generating resource when ISO-NE is forecasting a

minimum generation emergency. The proposed rule to reject exports is comparable to ISO-NE's rejection of a dispatchable asset related demand⁴ self-schedule when ISO-NE is forecasting a capacity deficiency.

Notice and Responsive Pleadings

18. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 17,967 (2008), with interventions and protests due on or before April 11, 2008. H.Q. Energy Services (U.S.), Inc. (HQUS) and Northeast Utilities Service Company (NUSCO), on behalf of Northeast Utilities Companies,⁵ filed timely motions to intervene and comments. NSTAR Electric Company (NSTAR) and The United Illuminating Company (United Illuminating) (collectively Movants) filed a timely motion to intervene and protest. The Interconnection Rights Holders Management Committee filed a timely motion to intervene.

19. HQUS and the Filing Parties filed motions for leave to answer the protests, and answers.

Comments/Protests

20. HQUS submitted comments in support of the proposed amendments to ISO-NE's market rules and tariff regarding the treatment of external resources in the New England power market. HQUS believes the tariff changes fulfill the requirements of the FCM Settlement, allowing external resources to be on a "more level playing field" with internal resources. HQUS also supports the earliest possible effective date for the rule changes, noting that half of the ICAP transition period has already passed.

21. NUSCO and Movants protest the proposal to eliminate the requirement that ICAP imports be supported with firm monthly transmission reservations for external resources to receive a monthly capacity credit. Movants and NUSCO argue that the proposal incorrectly interprets section 11.VI of the FCM Settlement. They assert that rather than requiring changes in the timing of transmission reservations, the FCM Settlement requires changes to the timing of real-time contract submittals by external resources. NUSCO further submits that transmission owners, particularly the interconnection rights

⁴ Dispatchable asset related demand refers to a qualified peak load greater than 5 MW that can receive and follow electronic dispatch instructions.

⁵ The Northeast Utilities Companies are: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Water Power Company, and Holyoke Power and Electric Company.

holders,⁶ have interpreted the “required transmission” reference in section 11.VI of the FCM Settlement to mean the transmission that must be reserved under schedule 20A of the ISO-NE OATT for every hour in the month in order to receive capacity credits for ICAP imports over the HQ Interconnection.

22. Movants and NUSCO contend that the proposal creates inequities between external and internal resources. Specifically, in order to ensure deliverability of their capacity, internal resources are required to make financial contributions for upgrades to interconnect with PTF, whereas the proposal allows external resources to be deliverable without making similar contributions and eliminates the long-standing requirement that external resources support their capacity obligations with firm transmission. Movants explain that internal resources must pay interconnection costs, or costs for required services, under the applicable tariff whether interconnecting to PTF or non-PTF. In addition, Movants claim that the proposal introduces further disparities by requiring internal resources to reserve and pay for transmission service over non-PTF facilities, while allowing external resources not to reserve and pay for service over such facilities, such as the HQ Interconnection.

23. Movants and NUSCO assert that the proposal harms retail customers of the interconnection rights holders. The protestors explain that revenues received by the interconnection rights holders from third-parties taking firm transmission over the HQ Interconnection are passed on in the rates of the retail customers of the interconnection rights holders. Relieving external resources of the obligation to make advance reservations of firm transmission capacity will reduce or eliminate the revenue requirement offsets received by the retail consumers.⁷

24. Additionally, Movants contend that the proposal is at odds with long-standing reliability principles and the ISO-NE OATT. Historically, Movants claim, generating

⁶ Interconnection Rights Holders are those parties that financially support the Hydro Quebec Interconnection (HQ Interconnection) in return for use rights over the HQ Interconnection. In addition to use rights, interconnection rights holders are awarded capacity credits, referred to as HQ Interconnection Capability Credits (HQICCs), which allow the interconnection rights holder to reduce its capacity requirement obligation in proportion to its HQICC entitlement. Service over the HQ Interconnection is governed by schedule 20A of the ISO-NE OATT. The interconnection rights holders are referred to as schedule 20A service providers (SSPs) under schedule 20A.

⁷ For capacity over the HQ Interconnection, the proposal eliminates only the requirement that External Resources make advance firm transmission reservations for service over the HQ Interconnection Excess, which is the difference between the total capacity of the HQ Interconnection and the total HQICCs allocated to the interconnection rights holders.

capacity was deemed available if (1) the generation resource was located within NEPOOL, or (2) the external resource was supported by firm transmission.⁸ Further, for a network transmission customer to designate an off-system resource as a network resource, the customer must demonstrate deliverability supported by transmission service that is not interruptible for economic reasons.⁹ Allowing an external resource with an ICAP obligation to arrange firm transmission only an hour ahead of dispatch in the real-time market makes the availability of such resource uncertain and beyond the power of ISO-NE to compel. Movants submit that, in effect, the proposal does not require the external resource to actually be available to support the reliability needs of New England since the proposal will pay external resource owners for their capacity in all hours every day of the year, yet allows the owner the hour-to-hour flexibility of determining whether to make those resources available. Movants argue that because ISO-NE is powerless to compel the availability of such resources, the “must offer” requirement is rendered meaningless under this proposal. Moreover, Movants state that the proposal disregards concerns regarding the unavailability of external capacity during system emergencies.¹⁰

25. Finally, Movants claim that SSPs hold specific FPA section 205 filing rights to change schedule 20A,¹¹ and any provision of the FCM Settlement that would have impacted these rights would have stated explicitly that the SSPs would make a filing to effect such a change. Moreover, section 4.1 of the FCM Settlement provides that where ISO-NE makes a filing under section 205 of the FPA to modify market rules that address terms of the FCM Settlement, ISO-NE must demonstrate that failure to implement the proposed change in the market rules would have a negative effect on (1) system reliability or security, or (2) the competitiveness or efficiency of the FCM or forward reserve market. Movants state that the proposal does not address either of the required elements.

⁸ Section 42.1 of the ISO-NE OATT provides that “Network resources may not include resources, or any portion thereof, that...cannot be called upon to meet the Customer’s Network Load on a non-interruptible basis.”

⁹ See *Wisconsin Pub. Power System v. Wisconsin Pub. Serv. Corp.*, 84 FERC ¶ 61,120 (1998); section 29.2(v) of the *pro forma* OATT.

¹⁰ *ISO New England Inc. and New England Power Pool Participants Committee*, 121 FERC ¶ 61,250 (2007). In this proceeding, the Commission accepted a probabilistic calculation of tie-benefits that accounts for the unavailability of external capacity during system emergencies.

¹¹ Movants note that SSPs, including NSTAR and United Illuminating, have sole authority to file section 205 changes to schedule 20A of the ISO-NE OATT, which provides for the rate, terms and conditions of transmission over the HQ Interconnection. See HQ Interconnection Transmission Service Administration Agreement at §3.05(a).

Answers

26. In their answer, the Filing Parties argue that the proposed Reservation Flexibility Changes are just and reasonable and should be accepted as filed. The Filing Parties state that the continuation of the current transmission reservation practice is inconsistent with the FCM Settlement. They state that under the FCM Settlement 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 any transmission service purchased. They note that neither the FCM Settlement nor the capacity market rules address 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 using non-PTF lines. Thus, the Filing Parties contend that despite the protestors' arguments, there is no 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.

27. In addition, the Filing Parties contend that it is not reasonable for the FCM to include practices that may unnecessarily increase energy prices from external resources. In support, the Filing Parties note that as a result of the current operating practice, market participants may be required to purchase transmission service that will not be used if the external resource is ultimately not dispatched when ISO-NE makes its scheduling decisions one hour prior to the delivery. The Filing Parties note that to recover these costs, market participants could increase their supply offers in the energy markets, with the unintended consequence of higher energy prices if the resource is scheduled in real-time as the marginal unit.

28. Finally, the Filing Parties maintain that the proposed Reservation Flexibility Changes address the requirement from the FCM Settlement that rules be developed to provide more equal treatment between internal and external resources. The Filing Parties demonstrate that the current timing of the reservation requirement for non-PTF external resources is unique relative to reservation and notice requirements for internal resources using either PTF or non-PTF lines and for external resources using PTF lines. Specifically, the Filing Parties state that for all capacity resources other than external resources that interconnect over a non-PTF line requiring advance transmission reservations, ISO-NE notification of a transmission reservation is either not necessary or a notice is created only after dispatch. The Filing Parties contend that this discrepancy in notification requirements has no basis in the capacity market rules and requires the purchase of unnecessary and unutilized transmission service in order to participate in the capacity market.

29. In addition to offering additional support for the proposed Reservation Flexibility Changes, the Filing Parties argue that the protests fail to demonstrate that the proposed Reservation Flexibility Changes are unjust and unreasonable. For example, in contrast to

the arguments offered by Movants that the removal of the current reservation practice would jeopardize reliability, the Filing Parties note that the transmission reservation practice is not directed towards capacity resources, pre-dates the capacity market, and applies generally to any external transaction. Further, the Filing Parties reiterate that there is no requirement in either the FCM Settlement or the capacity market rules that addresses what type of transmission service capacity Resources must procure or when it should be procured. Instead, the Filing Parties argue that these matters are determined by the provisions of the tariffs of transmission providers that operate the non-PTF lines. The Filing Parties maintain that the capacity market rules, by contrast, are intended to provide market participants with financial incentives to make their resources available when called upon.

30. In response to the Movants' arguments that firm transmission service reserved in advance of the operating day for all hours of the operating day ensures the availability of external resources, the Filing Parties contend that the use of non-PTF interconnections by external resources does not raise any special reliability concerns that require continuation of the current transmission reservation practice. The Filing Parties note that market participants using local non-PTF lines are not required to notify ISO-NE of a transmission reservation. The Filing Parties maintain that 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 economically dispatched to provide energy, it must provide the energy or else face losing its capacity payments.

31. The Filing Parties dispute the Movants' argument that the costs of the excess transmission service charged to market participants with external resources (who pay only for transmission to reach the grid), places these participants on an equal footing with those that pay interconnection costs inside New England. The Filing Parties contend that 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 or external resource. The Filing Parties state that transmission service is separate and distinct from interconnection. They note that the instant proposal 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.

32. In response to the Movants' argument that the Reservation Flexibility Changes are inappropriate because they will increase the rates for certain network load customers that are passed on the costs of the HQ Interconnection, the Filing Parties contend that the region should not be forced to design fair and efficient markets to satisfy the unique

financial arrangements of a limited number of its participants, especially where those arrangements may hinge on maintaining practices that may unfairly disadvantage other market participants. The Filing Parties argue that requiring one set of parties to pay for a service that they will not use as a means of increasing the revenues of the service provider is antithetical to a market-based system. The Filing Parties note that 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.

33. The Filing Parties contend that the Movants incorrectly focus on the second sentence of section 11.VI of the FCM Settlement in their argument that the only change required by this sentence relates to the timing of energy offers into the real-time energy market 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.” The Filing Parties state that they are proposing the Reservation Flexibility Changes (along with the other changes proposed in the 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.” The Filing Parties state that the second sentence does not require any particular change to market rules or operating procedures but it is intended to recognize that in order to carry out the comparability mandate in the first sentence of section 11.VI, ISO-NE’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. Contrary to NUSCO’s argument, the Filing Parties state that the reference to “the purchase of required transmission” cannot refer to maintaining the current ISO-NE policy for the purchase of required transmission, because ISO-NE’s operating procedures do not require (and never have required) the purchase of transmission service.

34. The Filing Parties also dispute the Movants’ argument that the proposed Reservation Flexibility Changes do not meet the standards contained in section 4.A of the FCM Settlement which addresses the authority of ISO-NE to file modifications to market rules that address the terms of the FCM Settlement. Under section 4.A, if ISO-NE 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 FCM or forward reserve market. The Filing Parties contend that section 4.A is irrelevant to the proposed Reservation Flexibility Changes since they have been proposed to implement the provisions of the FCM Settlement, and thus can not be a proposed modification. In support, the Filing

Parties reiterate that the transmission reservation requirements that are affected by the Reservation Flexibility Changes are not addressed in the FCM Settlement and are not contemplated in the current market rules.

35. The Filing Parties maintain that the proposed Reservation Flexibility Changes allow transmission providers to propose their own transmission reservation requirements for external transactions that support capacity obligations, as the instant 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. Instead, the Filing Parties note that they are only changing the timing of when this data is provided to ISO-NE. The Filing Parties state that if the Movants wish to alter the terms of their tariffs to address the timing or duration for procuring transmission reservations, they are free to do so under section 205 of the FPA.

36. In its answer, HQUS argues that, contrary to statements of NUSCO and Movants, there is no requirement currently for external resources to secure firm transmission to sell capacity in New England. Thus, modifying the current advance reservation requirements as proposed by the Filing Parties will not degrade the level of transmission service needed to import capacity. HQUS notes that under actual longstanding practice, external resources only need a valid transmission reservation, either firm or non-firm, to supply capacity. In addition, HQUS states that NUSCO and Movants ignore that the plain objective of the FCM Settlement provision was to give external resources comparable treatment to internal resources. Specifically, HQUS contests their view that all that is required to comply with this provision is to allow for reservations one hour before the operating hour, but they would still require transmission to be purchased in every circumstance, even if it was clear the energy was not needed to flow. HQUS argues that this position would maintain the *status quo*, requiring external resources to continue to pay for unneeded standby transmission service. HQUS states that this would ignore the primary distinction in the treatment of external versus internal resources; the requirement for external resources to secure advance transmission reservations before it is known whether the energy will flow. Finally, HQUS states that the proposal was approved by stakeholders (including other entities that would stand to profit from continuation of the existing requirement) as necessary to implement the mandate of the FCM Settlement, and arguments that these provisions contradict the FCM Settlement, made by three parties with "admitted pocketbook concerns" are unavailing and should be rejected.

Commission Determination

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

38. 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 or an answer unless otherwise ordered by the decisional authority. We will accept the answers from HQUS and the Filing Parties because they have provided information that assisted us in our decision-making process.

39. We find the proposed tariff and market rule changes submitted by the Filing Parties to comply with section 11.VI of the FCM Settlement to be just and reasonable, as these modifications will lead to a more uniform treatment of external and internal resources. We note that the subsequent discussion will focus on the proposed Reservation Flexibility Changes, as this is the only aspect of the instant proposal that was challenged.

40. As noted by the Filing Parties, the basis for the proposed Reservation Flexibility Changes stems directly from section 11.VI of the FCM Settlement which provides:

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.

We find the language from section 11.VI of the FCM Agreement to be unequivocal in its direction that market rules, procedures, and manuals be changed in order for external resources to compete on an equal basis with internal resources. While Movants and NUSCO would have us focus solely on the second sentence of the settlement language to argue that any proposed changes should only address the timing of real-time contract submittals by external resources, this sentence only provides examples of the changes required by the settlement. The first part of the settlement language provides that ISO-NE “shall” change its practices to treat internal and external resources similarly in the FCM and ICAP transition period. It does not limit what practices must be changed or be left unchanged, so long as internal and external resources are treated comparably. As such, we find no merit in the argument offered by NUSCO that “required transmission” as defined in section 11.VI of the FCM Settlement refers to the retention of the present practice regarding transmission reservations for external resources.

41. The Commission agrees with the Filing Parties that the proposed Reservation Flexibility Changes do not (and cannot) address the terms of the transmission service provider tariffs of non-PTF, but instead merely change the timing for notification of ISO-

NE concerning transmission reservations associated with a priced external transaction that supports a capacity obligation. As the Filing Parties (and Movants) note, the terms that address what type of transmission service capacity resources must procure or when the reservation should be procured are determined by the provisions of the tariffs of transmission providers that operate the non-PTF lines, and are not specified in the ISO-NE OATT. Importantly, we note that neither the FCM Settlement nor the capacity market rules address whether energy delivery must be supported by PTF or non-PTF infrastructure, or what type of transmission service is required for either internal or external resources using non-PTF lines. Thus, we find no support for NUSCO's and Movants' claims that because many internal resources have been required to pay interconnection costs to PTF facilities to ensure that their capacity is deliverable while the external resources would be allowed "a la carte" transmission payments, the proposed Reservation Flexibility Changes create inequities between external and internal resources. Movants and NUSCO have provided no support for their claim that the current transmission reservation requirements for external resources with capacity obligations were developed to place these resources "on an equal footing" with internal resources who may have originally paid interconnection costs to access PTF facilities. By contrast, the Filing Parties have demonstrated that (consistent with the proposed Reservation Flexibility Changes) internal resources utilizing local non-PTF lines are under no obligation to notify ISO-NE of a transmission reservation. Further, the Filing Parties have shown that for all capacity resources with the exception of external resources that interconnect over a non-PTF line requiring advance transmission reservations, notification to ISO-NE of a transmission reservation is either unnecessary or required only after dispatch.

42. In addition, the current ISO-NE practice of requiring external resources to submit a transmission reservation in support of a capacity obligation at the time of energy offer submittal requires transmission reservations for each hour of an operating day to be submitted by noon on the prior day. As such, the current transmission reservation practice does not consider whether a resource will actually be called upon to provide energy in any given hour. Instead, the current reservation practice likely increases the price of these energy offers to account for the "excess" transmission reservations. We agree with the Filing Parties that the Reservation Flexibility Changes will allow offers from external resources to be more consistent with those from internal resources. Further, the fact that any loss of revenue under the proposed Reservation Flexibility Changes may affect interconnection rights holders, including Movants and NUSCO, is not persuasive. As the Filing Parties note, requiring external resources to continue to pay for excess transmission service over the HQ Interconnection simply because the interconnection rights holders have unique agreements whereby interconnection rights holders' retail customers fund the HQ Interconnection is not a rational basis for continuing the current scheduling practice.

43. We are also not persuaded by the Movants' argument that the proposed Reservation Flexibility Changes create potential uncertainty in the availability of an external resource to support its capacity obligation. We note that failure to link a transmission reservation with a priced external transaction under conditions where the transaction would have been dispatched in real-time will terminate the transaction, and the market participant will lose any energy market revenue to be derived from the transaction. Further, and consistent with internal resources, during the ICAP transition period, the transaction will also be assessed a failure-to-deliver penalty, and in the FCM, if the failure occurs during a shortage hour, the external resource will be penalized accordingly. In addition, Movants express concern that the proposed Reservation Flexibility Changes would allow an external resource with a capacity obligation to receive capacity payments while offering inflated day-ahead and real-time energy bids, guaranteeing that its resource would not be dispatched, while also eliminating the need for the resource to reserve transmission. The Commission does not believe that Movants have provided sufficient justification for their claim that external resources will engage in strategic bidding behavior as a result of the proposed Reservation Flexibility Changes. Further, this argument ignores that the Filing Parties have requested that the effective date of the Reservation Flexibility Changes be delayed until July 1, 2009 "to provide the ISO's Internal Market Monitoring Unit (MMU) with time to develop a process to ensure that Market participants with External Transactions submit competitively priced energy offers in support of a Capacity Obligation."¹² If the MMU determines that OATT revisions are necessary to ensure that energy offers in support of a Capacity Obligation are competitively priced, then the Filing Parties could file those revisions under section 205 of the FPA.

44. We agree with the Filing Parties that the proposed Reservation Flexibility Changes are implementing the provisions of the FCM Settlement Agreement (specifically, section 11.VI) and are not a modification of the currently implemented market rules. As noted by the Filing Parties, ISO-NE's February 15, 2007 filing to submit the rules implementing the FCM Settlement Agreement (Docket Nos. ER07-546-000, ER07-547-000) intentionally did not address section 11.VI of the FCM Settlement Agreement. Thus, we find section 4.A of the FCM Settlement Agreement, which addresses ISO-NE's authority to file modifications to market rules that implement the FCM Settlement Agreement, does not apply to the proposed Reservation Flexibility Changes, and therefore, the Filing Parties are under no obligation to satisfy section 4.A requirements.

45. Finally, while the Filing Parties indicate that the Reservation Flexibility Changes reflect a change to an ISO-NE practice and that ISO-NE's manuals and practices will be revised accordingly, the Commission believes that these rules should be in its tariff. These practices are analogous to the Commission's requirement that information, such as

¹² Filing letter at 10.

external transmission arrangements and operating restrictions, on the firm transmission service used to deliver external network resources used to serve internal network load must be in the tariff. That requirement is explicitly stated in the *pro forma* OATT.¹³ Similarly, the Commission believes that the requirement for an external resource to provide information to ISO-NE regarding the firm transmission service used to deliver the resource into ISO-NE also should be stated in the tariff. Therefore, ISO-NE is required to file a compliance filing within 60 days of the date of this order implementing its Reservation Flexibility Changes.

46. Therefore, we accept Filing Parties' proposed changes, except the Reservation Flexibility Changes, effective June 3, 2008. We find that good cause exists to grant Filing Parties' request for waiver of the Commission's 120-day advance notice requirement to permit an effective date of July 1, 2009 for the Reservation Flexibility Changes.

The Commission orders:

(A) Filing Parties' proposed Re-offer Changes, Scheduling Priority Changes and Scheduling Limitations Changes are hereby accepted, effective June 3, 2008, as discussed in the body of this order.

(B) Filing Parties' proposed Reservation Flexibility Changes are hereby accepted, effective July 1, 2009, as discussed in the body of this order.

(C) Filing Parties are directed to revise ISO-NE's tariff to include the Reservation Flexibility Changes within 60 days of the date of this order.

(D) Waiver of the 120-day advance notice requirement is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ See, e.g., *Pro Forma* OATT, Original Sheet No. 16.