

128 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc. and
New England Power Pool

Docket Nos. ER08-697-001
ER08-697-002

ORDER ON REHEARING AND COMPLIANCE

(Issued September 4, 2009)

1. On May 20, 2008, the Commission issued an order approving revisions to ISO New England Inc.'s (ISO-NE) 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.¹ In addition, the Commission directed ISO-NE to state in its tariff the timing requirement for when an external resource must provide information to ISO-NE regarding the transmission service that will be used to deliver the resource into ISO-NE in support of a capacity obligation. In this order, we deny requests for clarification or rehearing of our May 20, 2008 Order. We also accept for filing ISO-NE's compliance filing.

I. Background

2. On March 21, 2008, ISO-NE and New England Power Pool (NEPOOL) Participants Committee (collectively, Filing Parties) filed to revise the treatment of external transactions in the New England capacity and energy markets to implement a Commission-approved settlement pursuant to which ISO-NE created a Forward Capacity Market (Settlement or FCM Settlement).² The Settlement established a transition period from the current installed capacity market to the Forward Capacity Market, scheduled to

¹ *ISO New England Inc. and New England Power Pool*, 123 FERC ¶ 61,190 (2008) (May 20, 2008 Order).

² *Devon Power LLC*, 115 FERC ¶ 61,340 (2006), *order on reh'g*, 117 FERC ¶ 61,133 (2006).

begin June 1, 2010 (installed capacity transition period). The Settlement required 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 (internal resources) participate in the Forward Capacity Market and qualify for capacity payments during the installed capacity transition period leading up to the first capacity commitment period in 2010.

3. Filing Parties proposed four changes to comply with the Settlement. First, they proposed 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, they proposed that market participants be able to modify the price portion of a supply offer for a priced external transaction during the re-offer period. Third, they proposed to 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. Finally they proposed to 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.

4. Filing Parties requested an effective date of June 3, 2008 for all proposed changes except the Reservation Flexibility Changes. Filing Parties sought waiver of the Commission's notice requirements³ to allow the Reservation Flexibility Changes to become effective July 1, 2009. Filing Parties stated that they wanted 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.

5. The May 20, 2008 Order accepted these changes and required ISO-NE to file a compliance filing to incorporate the Reservation Flexibility Changes in the ISO-NE OATT.

II. Requests for Clarification and Rehearing

6. NSTAR Electric Company (NSTAR) filed a request for rehearing of the May 20, 2008 Order. The United Illuminating Company (United Illuminating) filed a request for clarification or, in the alternative, rehearing of the May 20, 2008 Order. On

³ 18 C.F.R. § 35.3(a) (2008).

July 7, 2008, ISO-NE filed an answer to United Illuminating's request for clarification. On July 22, 2008, United Illuminating and NSTAR filed a joint answer to ISO-NE's answer. ISO-NE, United Illuminating and NSTAR filed further responsive pleadings.

A. Procedural Matters

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2008), prohibits answers to a request for rehearing. Accordingly, we will reject the answers filed by ISO-NE, United Illuminating and NSTAR.

B. Requests for Clarification or Rehearing

8. We deny the requests for rehearing or clarification as discussed herein.

1. ISO-NE Does Not Require External Capacity Resources To Demonstrate That They Have Firm Transmission To the Border

9. United Illuminating requests that the Commission clarify that the Reservation Flexibility Changes do not affect the requirement that external resources demonstrate that they have firm transmission service to the border of the ISO-NE Pool Transmission Facilities (PTF) system for a period commensurate with their capacity obligations in order to participate in the ISO-NE capacity markets. If the Commission is unwilling to provide this clarification, then United Illuminating requests rehearing of the May 20, 2008 Order on the basis that it is inconsistent with Commission precedent. According to United Illuminating, the Commission failed to distinguish between the requirement that external resources have firm transmission service to the border of the ISO-NE PTF system in order to participate in the capacity market and "the timing for notification of ISO-NE concerning transmission reservations associated with a priced external transaction that supports a capacity obligation."⁴ Accordingly, United Illuminating seeks clarification.

Commission Determination

10. United Illuminating reiterates its position that external resources should be required to demonstrate that they have firm transmission service to the border of the ISO-NE PTF system in order to participate in the capacity market. Yet United Illuminating acknowledges that the filing and the May 20, 2008 Order did not raise or address this issue; i.e., the May 20, 2008 Order agrees with the Filing Parties that the proposed

⁴ United Illuminating Request for Clarification at 5, citing May 20, 2008 Order, 123 FERC ¶ 61,190 at P 41.

Reservation Flexibility Changes “merely change the timing for notification of ISO-NE concerning transmission reservations associated with a priced external transaction that supports a capacity obligation.”⁵ Further, United Illuminating notes that the Commission found in the May 20, 2008 Order 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.”⁶

11. Nevertheless, United Illuminating points to the following statement from the May 20, 2008 Order as evidence that the Commission intends that external resources be required to demonstrate that they have firm transmission service to the border of the ISO-NE PTF system in order to participate in the capacity market:

[T]he 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 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.⁷

12. United Illuminating reads more into that statement than was intended. The May 20, 2008 Order found the proposed market rule changes, including the Reservation Flexibility Changes, to be just and reasonable.⁸ In reaching this conclusion, we noted that, in contrast to the protestors’ position, the proposed Reservation Flexibility Changes would not address what type of transmission service capacity resources must procure, or when the reservation must be procured, as these are not part of the ISO-NE OATT.⁹ The Commission’s intent in the statement that United Illuminating highlights from the May 20, 2008 Order was merely that ISO-NE should codify in its tariff its business practice regarding the timing for submitting notice of transmission reservations. We did not intend to require that external resources demonstrate that they have firm transmission

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 4, citing May 20, 2008 Order, 123 FERC ¶ 61,190 at P 45.

⁸ May 20, 2008 Order, 123 FERC ¶ 61,190 at P 39.

⁹ *Id.* P 41.

service to the border of the ISO-NE PTF system in order to participate in the capacity market. Such a requirement did not exist prior to the issuance of the May 20, 2008 Order, nor did we establish such a requirement therein.

2. The Reservation Flexibility Changes Are Not Unduly Discriminatory and Preferential

13. On rehearing, United Illuminating contends that the Reservation Flexibility Changes unlawfully discriminate against internal resources that (whether connected to PTF or non-PTF facilities) are obligated to pay for connection either through interconnection costs or through the reservation of transmission service over non-PTF facilities under the tariffs of the New England transmission owners. United Illuminating contends that parity existed prior to the introduction of the Reservation Flexibility Changes since both internal and external resources were required to pay for transmission service over non-PTF facilities. United Illuminating argues that, by contrast, the Reservation Flexibility Changes allow external resources to reserve and pay for transmission service over non-PTF facilities (i.e., the Hydro-Quebec Interconnection) only in the select hours when ISO-NE dispatches such external resources, and no comparable option exists for internal resources.

14. Similarly, United Illuminating contends that the Reservation Flexibility Changes discriminate against the Interconnection Rights Holders (IRH) and their customers who support the Hydro-Quebec Interconnection (HQ Interconnection).¹⁰ Specifically, United Illuminating maintains that, while the Reservation Flexibility Changes allow external resources to participate in the ISO-NE capacity markets without having to reserve transmission service over a period corresponding with their capacity obligation, the IRH are required to make their HQICCs available throughout the period during which they receive the capacity offset or payment. United Illuminating contends that this disparate treatment is unduly preferential and discriminatory.

15. Citing the language in section 11.VI of the FCM Agreement, United Illuminating suggests that parity between internal and external resources will only exist if both

¹⁰ Interconnection Rights Holders are those parties that financially support the HQ Interconnection in return for use rights over the HQ Interconnection. In addition to use rights, IRHs are awarded capacity credits, referred to as HQ Interconnection Capability Credits (HQICCs), which allow an IRH 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 IRHs are referred to as schedule 20A service providers under schedule 20A.

resources are required to demonstrate that they have firm transmission over non-PTF facilities to the ISO-NE PTF facilities in order to participate in the capacity markets. United Illuminating and NSTAR contend that this consistent treatment is a requirement of Order Nos. 888 and 890¹¹ and the *pro forma* OATT. Citing to Commission orders involving PJM and MISO,¹² NSTAR similarly argues that firm transmission is necessary to ensure that energy from external resources reaches the pool.

Commission Determination

16. We addressed this precise concern in the May 20, 2008 Order, and nothing raised on rehearing persuades us that we wrongly decided the issue. In the May 20, 2008 Order, we stated that neither the FCM Settlement nor the ISO-NE capacity market rules address whether energy delivery must be supported by PTF or non-PTF facilities, or what type of transmission service is required for either internal or external resources using non-PTF facilities.¹³ Thus, we found no support for claims that the proposed Reservation Flexibility Changes create undue inequities between external and internal resources.¹⁴ By contrast, we determined that the Filing Parties demonstrated that (1) internal resources utilizing non-PTF facilities are under no obligation to notify ISO-NE of a transmission reservation, and (2) for all capacity resources, with the exception of external resources that interconnect over non-PTF facilities requiring advance transmission reservations,

¹¹ *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); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

¹² NSTAR cites *PJM Interconnection, LLC*, 106 FERC ¶ 61,253, at P 49 (2004) and *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283, at P 280 (2008).

¹³ May 20, 2008 Order, 123 FERC ¶ 61,190 at P 41.

¹⁴ *Id.*

notification to ISO-NE of a transmission reservation is either unnecessary or required only after dispatch.¹⁵ United Illuminating raises no arguments here that require the Commission to revisit that decision.

17. United Illuminating voluntarily entered into agreements where it (and other IRH) receives exclusive rights to the transfer capability of the HQ Interconnection in the form of capacity credits, and has a corresponding obligation to pay a share of the support costs. While United Illuminating claims undue discrimination by contrasting this fact with external resources' ability to participate in the ISO-NE capacity markets without having to reserve firm transmission service, we find this comparison has little relevance. We note that the Reservation Flexibility Changes will not affect United Illuminating's ability to receive monthly capacity credits to offset its capacity obligation, nor will it impinge on United Illuminating's use rights. The ISO-NE OATT does not specify the type of transmission service necessary to support capacity obligations over non-PTF facilities (like the HQ Interconnection). Instead, the terms and conditions for transmission reservations over these facilities, including whether such reservations must be made in advance and what type of service is necessary, are specified under the transmission providers' tariffs. The Reservation Flexibility Changes do not change these terms and conditions, but rather simply affect the timing for notifying ISO-NE when reservations are made for a priced external transaction that supports a capacity obligation.

18. As we stated previously, prior to the issuance of the May 20, 2008 Order, external resources were not required to purchase firm transmission service over non-PTF facilities in order to participate in New England capacity markets. The Reservation Flexibility Changes did nothing to change this. Rather, the intent of the Reservation Flexibility Changes simply was to revise ISO-NE's historical notification deadline from noon on the prior day to up to one hour before the delivery hour. 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 previously were required to reserve and submit transmission reservations well in advance of learning whether those transactions would be scheduled in real-time. As we stated in the May 20, 2008 Order, such a requirement likely results in the purchase of excess transmission service.¹⁶ United Illuminating's premise here, that internal and external resources must obtain firm transmission over non-PTF facilities to participate in the capacity markets, is a different issue from the Reservation Flexibility Changes.

¹⁵ *Id.*

¹⁶ *Id.* P 42.

19. NSTAR and United Illuminating cite to Order Nos. 888 and 890 as evidence that a firm transmission requirement should be in place for external resources participating in New England capacity markets. However, as we noted in the May 20, 2008 Order, the Reservation Flexibility Changes to ISO-NE's OATT do not (and cannot) address the terms of other, non-PTF facilities tariffs.¹⁷

20. In addition, ISO-NE explained in its compliance filing for Order No. 890 the difference between its Regional Network Service (RNS) (which does not require network customers to designate external resources to provide energy under a specific type of transmission service) and the point-to-point system described in the *pro forma* OATT. In our order accepting that compliance filing, we acknowledged this difference, noting that "ISO-NE explains that it does not offer *pro forma* OATT-type transmission service" and that "RNS does not use advance reservations, [and] does not distinguish between 'firm' and 'non-firm' transmission service."¹⁸ In that order accepting the compliance filing, we stated that "we recognize that ISO-NE's proposed deviations from the *pro forma* OATT reflect the market design used by ISO-NE, and we find these deviations to be consistent with or superior to the *pro forma* OATT...."¹⁹

21. Thus, we reject United Illuminating's and NSTAR's contentions on rehearing that external resources must demonstrate that they have firm transmission over non-PTF facilities to the ISO-NE PTF facilities in order to participate in the ISO-NE capacity markets.

3. Native Load Subsidization

22. On rehearing, United Illuminating contends that the Reservation Flexibility Changes require United Illuminating and its native load customers to bear the cost of the HQ Interconnection for all hours in a month other than those hours in which ISO-NE may call on external resources to provide needed energy. United Illuminating argues that this situation is unjust and unreasonable since United Illuminating and its native load customers are subsidizing the external resources that participate in the ISO-NE capacity markets.

¹⁷ *Id.* P 41.

¹⁸ *ISO-New England Inc.*, 123 FERC ¶ 61,133, at P 14 (2008).

¹⁹ *Id.* P 17.

Commission Determination

23. Again, we emphasize that the Reservation Flexibility Changes revise the timing for submitting notice of transmission reservations for external transactions that support a capacity obligation – from noon on the prior day to up to one hour before the delivery hour – and do not revise the terms and conditions of non-PTF facility transmission service provider tariffs like those that govern service over the HQ Interconnection. Participants with external resources that interconnect over non-PTF facilities will continue to pay for transmission service in accordance with the relevant transmission service providers’ tariffs. United Illuminating’s argument - that without the HQ Interconnection these external resources would not be able to reach ISO-NE’s PTF facilities - is not relevant in this context. Similarly, United Illuminating’s claim that the costs of jurisdictional facilities should be allocated to the beneficiaries of those facilities goes to whether the rate schedules for service over non-PTF facilities are just, reasonable and not unduly discriminatory or preferential, which is not before the Commission.

4. The Commission Did Not Find that IRH Agreements Are Unique

24. In the May 20, 2008 Order, the Commission addressed and rejected United Illuminating’s contention that the Reservation Flexibility Changes would harm its native load customers by eliminating revenue from third party transmission users, which has been used as a credit against the native load revenue requirement. The Commission explained that requiring external resources to continue to pay for excess transmission service over the HQ Interconnection on the ground that IRHs have “unique” agreements whereby their retail customers fund the HQ Interconnection was not a rational basis for continuing the current scheduling practice.²⁰ In its rehearing request, United Illuminating contends that these agreements are not, in fact, unique, but rather are consistent with the ISO-NE cost recovery structure found to be just and reasonable by the Commission.

Commission Determination

25. In rejecting United Illuminating’s argument in the May 20, 2008 Order, the Commission used the word “unique” in describing an argument about the arrangements applicable to the HQ Interconnection whereby Interconnection Rights Holders that pay certain costs receive rights to offer transmission service over those lines did not apply to all non-PTF facilities. We did not make a legal finding that such agreements are “unique,” and did not intimate that the cost recovery mechanism in such agreements is not just and reasonable. Rather, in response to arguments made to us, we simply were

²⁰ May 20, 2008 Order, 123 FERC ¶ 61,190 at P 42.

noting that our basis for approving the Reservation Flexibility Changes was independent of consideration of specific contractual arrangements between one set of parties, and found that the Reservation Flexibility Changes were just and reasonable and consistent with section 11.VI of the FCM Settlement. Whether more rather than less revenues flow to IRHs and their customers, in turn, would not have been a rational – indeed, not a relevant – basis to continue the then-current practice of requiring reservation of transmission earlier, given that it lead to requiring reservation of excess transmission service.

5. The Commission Did Not Abdicate its Statutory Obligation

26. NSTAR contends that the Commission failed to consider the physical difference between external and internal resources from a reliability standpoint and accepted the Reservation Flexibility Changes based solely on the fact that they were consistent with section 11.VI of the FCM Settlement. NSTAR argues that the May 20, 2008 Order did not address whether reliability would be compromised by decoupling external resources from a transmission path. Further, NSTAR states that the treatment of external resources was not a debated provision of the FCM Settlement but rather was one of several “seemingly innocuous provisions” that “crept into the Settlement document. . . at the eleventh hour.”²¹

Commission Determination

27. The cornerstone of NSTAR’s argument is that ISO-NE’s current business practice – requiring market participants that import energy via external transactions to provide transmission reservations at the time the energy offer is submitted to ISO-NE – is fundamentally a reliability requirement and that the Reservation Flexibility Changes fail to maintain reliability and thus should not have been accepted. However, as we held in the May 20, 2008 Order, “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.”²² On rehearing, NSTAR has presented nothing that contradicts this finding.

²¹ NSTAR Protest at 4. NSTAR does not dispute, however, that any treatment of external resources provided for in the FCM Settlement was indeed a part of the FCM Settlement, which the Commission approved.

²² May 20, 2008 Order, 123 FERC ¶ 61,190 at P 41.

28. In addition, while it is clear that, all other things being equal, the Reservation Flexibility Changes will impact revenues NSTAR currently is receiving, NSTAR has failed to demonstrate that the Reservation Flexibility Changes will adversely affect reliability.

29. Also, and contrary to NSTAR's argument, the basis for approving the Reservation Flexibility Changes was not simply that they were consistent with section 11.VI of the FCM Settlement. Although the Filing Parties submitted the Reservation Flexibility Changes in compliance with section 11.VI of the FCM Settlement, the Commission determined that the Reservation Flexibility Changes were just and reasonable on their merits. Indeed, we specifically held that the proposal would allow offers from external resources to be more consistent, i.e., competitive, with those from internal resources.²³ For example, the prior ISO-NE business practice required external resources to submit a transmission reservation in support of a capacity obligation at the time of energy offer, which required transmission reservations for each hour of an operating day to be submitted by noon on the prior day. We reasoned that such a practice did not consider whether a resource actually would be called upon to provide energy in any given hour, and thus likely increased the price of energy offers to account for the "excess" transmission reservations.²⁴

30. Lastly, we find NSTAR's arguments regarding the alleged lack of debate over the treatment of external resources, and when the provision was added, unpersuasive. NSTAR does not claim that any party was precluded from timely raising objections regarding this provision, either before signing the FCM Settlement or after it was submitted to the Commission and the Commission found the FCM Settlement to be just and reasonable, without reservations related to the timing of the inclusion of any particular provision.²⁵

6. Performance Incentives

31. On rehearing, NSTAR argues that the Commission's finding in the May 20, 2008 Order that external suppliers have an incentive to fulfill their capacity obligations to avoid a potential loss of revenue for non-performance does not address the fact that this is a weak incentive. NSTAR argues that the penalties for non-performance are an insufficient incentive because they are limited to the shortfall as a percentage of the total

²³ *Id.* P 42.

²⁴ *Id.*

²⁵ *Devon Power LLC*, 115 FERC ¶ 61,340 (2006).

delivery. NSTAR states that, in practice, external suppliers used only a few hours a month will still collect most of the capacity payment while adding nothing to the reliability of the system. According to NSTAR, the steady collection of capacity payments for “doing nothing” will more than offset a lack of energy revenue in the event that interruptible transmission is not available during crisis periods. Further, NSTAR states that the Commission does not address what happens to system reliability if a substantial amount of pledged capacity does not respond when called.

Commission Determination

32. We deny rehearing on this issue. NSTAR provides nothing that persuades us to reconsider our position. NSTAR assumes that the intent of the current business practice is to act as an incentive for capacity suppliers to meet their energy obligation (despite the fact that this business practice pre-dates the FCM Settlement). NSTAR offers no evidence to support its assumption. Further, the current pre- and post-FCM non-performance penalty provisions are not at issue in this proceeding. Importantly, the effective date for this provision has been delayed until July 1, 2009, in order to allow ISO-NE’s Internal Market Monitoring Unit to develop a process to ensure that market participants with external transactions submit competitively priced energy offers in support of a capacity obligation.²⁶ Thus, we find NSTAR’s concerns over capacity payments for “doing nothing” to be misplaced in this proceeding.

7. Transmission Incentives

33. NSTAR states that, rather than achieving the goal of providing incentives for new transmission, the Commission’s acceptance of the Reservation Flexibility Changes abrogates the schedule 20A service providers’ section 205 filing rights, denying NSTAR and its retail customers the right to recover the full value of their investments.

Commission Determination

34. We deny rehearing on this issue. We addressed this argument in the May 20, 2008 Order, holding that, given that the current business practice was likely increasing energy offers for external resources, it was not reasonable to require external resources to continue to pay for excess transmission service over the HQ Interconnection simply because the IRHs fund the HQ Interconnection.²⁷ NSTAR nevertheless essentially

²⁶ The Commission accepted ISO-NE’s proposal for such a process on June 11, 2009 in *ISO New England Inc. and New England Power Pool*, 127 FERC ¶ 61,235 (2009).

²⁷ May 20, 2008 Order, 123 FERC ¶ 61,190 at P 42.

argues that external resources with capacity obligations should continue to purchase a service that they will not use as this practice provides an incentive for transmission investment. We reject that argument. While NSTAR argues that it has “lost the right” to recover the value of its investment, NSTAR ignores the fact that external resources with a capacity obligation that interconnect over non-PTF facilities still need to pay for transmission service over such facilities, at rates specified in the transmission service providers’ tariffs. As suggested previously, the Reservation Flexibility Changes would not undo the rates of those tariffs.

III. Compliance Filing

35. On July 21, 2008, the Filing Parties submitted a filing in response to the Commission’s directives in the May 20, 2008 Order to reflect transmission reservation notification requirements for external transactions in the ISO-NE Tariff.

36. First, the Filing Parties propose modifications to section III.1.10.7(d) of Market Rule 1, which would become effective on July 1, 2009 as described below, to include transmission reservation notification requirements for all classes of external transactions being submitted to the real-time energy market, rather than just the requirements for priced and self-scheduled external transactions submitted in support of capacity obligations. As a result of this change, the Filing Parties state, section III.1.10.7(d) will reflect the current ISO-NE business practice requiring that, for all classes of external transactions submitted to the real-time energy market (other than priced external transactions in support of a capacity obligation which are the subject of the Reservation Flexibility Changes), notification of any transmission reservation required by the transmission service provider for the non-PTF tie that interconnects with the PTF system must be provided to ISO-NE at the time the transaction is submitted to the real-time energy market.

37. Second, the Filing Parties propose an interim version of section III.1.10.7(d) that would be effective for the period of July 21, 2008 until July 1, 2009. According to the Filing Parties, this new version of section III.1.10.7(d) will detail the current transmission reservation notification requirements for all classes of external transactions, which is that notification of any required transmission reservation for all classes of external transactions submitted to the real-time energy market must continue to be provided to ISO-NE at the time the transaction is submitted to the real-time energy market. The Filing Parties state that the version of section III.1.10.7(d) that is to become effective July 1, 2009 (accepted by the Commission in the May 20, 2008 Order) changes these requirements for one class of external transactions only – priced external transactions submitted in support of a capacity obligation.

38. The Filing Parties also propose to provide additional detail in section III.1.10.7(a) of Market Rule 1, which was modified by the original March 21, 2008 filing and became effective June 3, 2008. According to the Filing Parties, the further modifications will

codify the existing ISO-NE business practice requiring that priced external transactions for the real-time energy market be submitted by the deadline of noon of the day before the operating day. The Filing Parties state that these proposed revisions do not modify those practices beyond the specific modifications accepted by the Commission in its May 20, 2008 Order.

39. ISO-NE requests an effective date of July 1, 2009 for the revisions to the version of section III.1.10.7(d) that is to become effective on July 1, 2009. The Filing Parties note that, as addressed in the original March 21, 2008 filing, the July 1, 2009 effective date for this version of section III.1.10.7(d) is necessary to provide the ISO'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.

40. ISO-NE requests an effective date of July 21, 2008 for both the version of Section III.1.10.7(d) that reflects the current ISO-NE business practices regarding transmission reservation notification requirements as well as the revisions to section III.1.10.7(a) discussed above. Both of these modifications are intended to reflect in the ISO-NE Tariff existing business practices relating to external transactions. To the extent necessary, ISO-NE requests waiver of any prior notice requirement, for good cause shown. ISO-NE states that an immediate effective date for these revisions is consistent with the Commission's determination in P 45 of its May 20, 2008 Order that notification-related requirements regarding external transactions should be reflected in the ISO-NE OATT, and constitutes good cause for waiver.

Notice and Responsive Pleadings

41. Notice of the compliance filing was published in the *Federal Register*, 73 Fed. Reg. 44,715 (2008), with interventions and protests due on or before August 13, 2008. NSTAR and United Illuminating (collectively, Protestors) filed a joint protest (Protest). On August 26, 2008, NEPOOL Participants filed a motion for leave to answer the protests and an answer. On September 11, 2008, Protestors filed an answer to the NEPOOL Participants answer.

42. Protestors argue that the Commission should reject the compliance filing because it fails to comply with the Commission's stated directives.²⁸ Protestors state that the Commission directed ISO-NE to revise its Tariff in two specific respects. First, the Commission required ISO-NE to include the Reservation Flexibility Changes in its Tariff. Second, Protestors argue that the Commission required ISO-NE to "amend its

²⁸ Protest at 4.

Tariff to comply with the Commission's requirement that information 'on the firm transmission service used to deliver external network resources used to serve internal network load must be in the tariff.'"²⁹ Protestors claim that the Commission directed ISO-NE to submit proposed Tariff revisions making both these changes. According to Protestors, the Filing Parties have failed to comply.

43. Protestors argue that the Filing Parties propose an amendment to Market Rule 1 that addresses the timing of when a Market Participant must notify ISO-NE of a transmission reservation supporting an external resource.³⁰ However, they claim that the proposed revisions do not include the requirement that market participants relying on external resources must provide information to ISO-NE regarding the firm transmission service used to deliver energy from the resource to the ISO-NE border.

44. Thus, Protestors maintain that ISO-NE has failed to comply with the May 20, 2008 Order and, hence, they ask the Commission to reject the compliance filing and order further compliance.

Commission Determination

45. 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 and an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.

46. We accept the Filing Parties' compliance filing. Contrary to the Protestors' assertions, the compliance filing accomplishes the directive contained in the Commission's May 20, 2008 Order to include the Reservation Flexibility Changes in ISO-NE's tariff. As discussed herein, the Reservation Flexibility Changes do not alter the terms of transmission service, only the timing for providing transmission reservation

²⁹ *Id.* at 2.

³⁰ For example, they state that the Filing Parties propose to amend section III.1.10.7(d) to Market Rule 1 to provide that: "A Market Participant submitting a priced external Transaction supporting an ICAP Import Contract or Capacity Supply Obligation to the Real-Time Energy Market must link the transaction to the associated NERC E-Tag and transmission reservation, if required, no later than one hour before the Operating Hour in order to be eligible for scheduling in the Real-Time Energy Market" Protestors at 5, citing *ISO New England Inc., et al.*, Market Rule 1 Revisions Relating to Treatment of External Transactions in the Capacity and Energy Markets at Attachment 1, filed July 21, 2008, Docket No. ER08-697-002 (emphasis added by Protestors).

data to ISO-NE. As stated previously, neither the ISO-NE Tariff nor the FCM Agreement requires a firm transmission commitment in support of a capacity obligation in New England. Further, as noted elsewhere in this order, the intent of the May 20, 2008 Order was simply that ISO-NE reflect its business practice regarding the timing for submitting notice of transmission reservations in its tariff.

The Commission orders:

(A) The requests for clarification and rehearing are hereby denied, as discussed in the body of this order.

(B) The Filing Parties' compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.