

141 Tremont St., Boston, MA 02111

(t) 617-902-2354 (f) 617-902-2349

www.nepga.org

January 26, 2009

**VIA ELECTRONIC FILING
AND OVERNIGHT MAIL**

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: Petition for Declaratory Order filed by Northeast Utilities Service Company and
Nstar Electric Company in Docket No. EL09-20.**

Dear Secretary Bose:

In accordance with Rules 211, 212 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211, §385.212 and § 385.214), the Electric Power Supply Association, the New England Power Generators Association, Inc. and the Independent Energy Producers of Maine hereby file their Motion to Intervene, Protest and Alternative Request for Conditions in the above-captioned docket.

Copies of this transmittal letter and pleading are being sent to each person designated on the official service list in the above-captioned docket.

Sincerely,

Christopher P. Sherman
General Counsel
New England Power Generators Association, Inc.

Enclosures (1)

cc. Service List

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

**Northeast Utilities Service Company)
NSTAR Electric Company)**

Docket No. EL09-20-000

**MOTION TO INTERVENE, PROTEST
AND ALTERNATIVE REQUEST FOR CONDITIONS OF
ELECTRIC POWER SUPPLY ASSOCIATION,
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC. AND
INDEPENDENT ENERGY PRODUCERS OF MAINE**

Pursuant to Rule 211, 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure¹, and the Commission’s December 17, 2008, “Notice of Filing,” the Electric Power Supply Association (“EPSA”), the New England Power Generators Association, Inc. (“NEPGA”) and the Independent Energy Producers of Maine (“IEPM”) (hereinafter the “Competitive Suppliers”) hereby move to timely² intervene in and protest the above captioned proceeding.³ The Competitive Suppliers request that the Commission deny the Petition.

The Competitive Suppliers maintain that the Petition seeks a declaratory order in direct conflict with the open-access and non-discriminatory transmission requirements established by the Commission, which would transfer substantial costs and risks onto captive ratepayers and, in doing so, represents a dramatic reversal of federal and state energy policy encouraging the development of competitive energy markets. Alternatively, should the Commission grant the

¹ 18 C.F.R. §§ 385.211, 212, 214

² On December 19, 2008, New England ITC filed a motion for an extension of time to file comments in response to the Petition, and the Commission granted an extension of time for filing comments to and including January 26, 2009.

³ The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. The comments contained in this filing represent the position of The New England Power Generators Association, Inc. as an organization, but not necessarily the position of any particular member(s) with respect to any statement, concept, issue or position expressed herein.

Petition for Declaratory Order, the Commission should impose certain conditions, as discussed below.

I. NU AND NSTAR'S FILING

On December 17, 2008, Northeast Utilities Service Company ("NU") and Nstar Electric Company ("Nstar")(together, the "Petitioners") filed a Petition for Declaratory Order pursuant to Rule 217⁴ that the Petitioners may enter into a bilateral transmission services agreement with H.Q. Energy Services, Inc. ("HQUS") for 1,200 MW of firm and exclusive transmission service over a new direct current transmission tie line connecting New England with the Hydro-Quebec system ("the Petition"). Petitioners state that the exclusive firm service over this new tie would allow HQUS to sell and deliver firm "system power" from the Hydro-Quebec system to the Petitioners and other unnamed wholesale purchasers in New England. The Petitioners thus are seeking a waiver of the Order No. 890 requirement that all new transmission services be provided on an open access, competitive and non-discriminatory basis.

The Petition further sets forth a combination of inter-related transactions, including a Transmission Services Agreement ("TSA") and long-term Power Purchase Agreement ("PPA") for 1,200 MW of firm system power to be delivered via a new line from Quebec to southern New Hampshire. The proposed TSA would contain unspecified provisions for "risk sharing" between the parties related to completion of the line, such that it remains unclear who would be responsible for the risk of cost overruns, delays, etc. While neither the cost nor extent of the transmission facilities, nor the costs of the firm system power, are established in the filing, the

⁴ The Competitive Suppliers are unclear exactly what relief is sought as the Petition is cast as a request for declaratory judgment, but at FN 6 Petitioners state that "they are seeking permission to enter into this bilateral agreement in lieu of making transmission service over the Line available on an open access basis." The Competitive Suppliers view the request as much more than declaratory relief. 18 CFR385.207 (a)(2) A person must file a petition when seeking... a declaratory order or rule to terminate a controversy or remove uncertainty.

Petitioners represent that “HQUS will recover the cost of transmission rights it acquires under the HQUS TSA through the price of power under the HQ PPA”⁵ and that the charges for transmission service under the TSA will be negotiated rates based on the cost of the line.⁶ Under the proposed combination of inter-related transactions, the Petitioners, both transmission owners, would thus not be disinterested participants. To the contrary, there would be an entirely circular arrangement whereby the Petitioners would, pursuant to the TSA, assess transmission costs (including substantial capital returns for Petitioners’ own shareholders) to HQUS, but then, under the PPA, fully reimburse HQUS for those very same costs, with all related expenses to then be borne by the captive ratepayers of the Petitioners. The potential for self-dealing, preferential and anti-competitive behavior is thus readily apparent.

The Petitioners do not identify unit specific power for the TSA or PPA, but indicate the power would be “system power” sourced from a broader system array, including the 4,000 MW of new surplus generation to be located in the Province of Quebec. Under the PPA, HQUS would sell 1,200 MWs of firm power to “NU, NSTAR and other interested New England entities”, although the mechanism by which other interested New England entities would purchase such power is unspecified.⁷

The DC line and converter stations anticipated under the TSA will be designed to have a transfer capacity of at least 1,200 MW, will originate at the Des Cantons substation in Quebec, and will terminate in southern New Hampshire at an interconnection into the existing New

⁵ Filing at Page 6

⁶ Petitioners describe the DC line, converter terminals and general location of the New England termination point. However, the Petition does not describe the extent of transmission system upgrades that would be required to the existing New England bulk system to accommodate a new injection of this magnitude, the intended character of interconnection (capacity or energy-only), nor the method of recovery of upgrades required beyond the New England converter station .

⁷ Petition at 5.

England system. HQ TransEnergie, a Crown corporation, will finance and own the portion of the facility located in the Province of Quebec, whereas the Petitioners will finance and own the portion of the facility located in the United States. The Petitioners anticipate that the amortization of the line could be up to a period of forty years and are proposing exclusive and discriminatory access during the entire period of the chosen amortization.

In seeking a declaration that they are not subject to the established “open access” requirement of Order No. 890, the Petitioners seek to provide HQUS with an exclusive bilaterally-negotiated transmission agreement, with pricing up to a Commission-approved cost-based ceiling, and the possibility of an open season only for a possible additional transmission increment. To the extent that HQUS is not using the facilities, however, the Petitioners propose to make transmission services available at rates, terms and conditions consistent with Order No. 890, but not at the rates established for the Petitioners under the TSA, thereby setting the stage for markedly different and discriminatory rates for the very same transmission service.

II. MOTION TO INTERVENE

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving global power markets. EPSA seeks to bring the benefits of competition to all power customers.

EPSA members have been active participants in the development of competitive wholesale electric markets in the United States, including the ISO-New England region. As part of this effort, EPSA and its members have participated in many of the Commission's proceedings on issues affecting the ISO-New England region. As a result, EPSA has a direct and substantial

interest in the instant proceeding that cannot be adequately represented by any other party, and allowing EPSA to actively participate in this proceeding would be in the public interest. Accordingly, EPSA respectfully requests that the Commission grant this timely motion to intervene.

NEPGA is the largest trade association of competitive electric generating companies in New England, representing approximately 26,000 megawatts of generating capacity throughout the region. NEPGA's member companies have been involved in the design and development of all of the competitive wholesale markets in the United States during the last ten years. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. In furtherance of that mission, NEPGA supports properly designed competitive markets (including open-access transmission provided in a non-discriminatory and disinterested manner) that enable all resources to participate and contribute to a reliable and affordable resource mix. A balanced playing field for all resources fosters competition in the wholesale power markets consistent with sound economic principles, long-standing national policy and the Commission's core responsibilities.

IEPM is a not-for-profit association of renewable power producers, suppliers of goods and services to those producers, and other supporters of this industry. IEPM power producer members generate electricity in a sustainable manner from hydro, biomass, wind, tidal, and waste to energy. Located in Augusta, Maine, the IEPM represents the renewable power industry at the State Legislature and before the Maine Public Utilities Commission.

The Competitive Suppliers submit that their intervention in this proceeding is in the public interest and that no other entity can adequately represent their interests. The Competitive

Suppliers request that all further correspondence, communications and other documents relating to this matter be served upon the following individuals:

Nancy Bagot*
Vice President of Regulatory Affairs
Electric Power Supply Association
1401 New York Avenue, NW
11th Floor
Washington, DC 20005
(202) 628-8200
nancyb@epsa.org

Angela O'Connor, President
Christopher P. Sherman, General Counsel*
New England Power Generators
Association, Inc.
141 Tremont Street, Sixth Floor
Boston, MA 02111
(617) 902-2354
E-mail: aconnor@nepga.org
csherman@nepga.org

Jeremy N. Payne*
Executive Director
Independent Energy Producers of Maine
PO Box 743
Augusta, Maine 04332
207.626.0730 - P
207.626.0200 - F
jpayne@iepm.org
www.iepm.org

* *Designated for service*

III. PROTEST OF EPSA, NEPGA AND IEPM

The Competitive Suppliers disagree with the Petitioners that this is a case of first impression, but rather view the requests contained within the Petition as a distinct departure from well-established Commission policy and precedent. The proposed transactional structure has the potential for discriminatory and self-dealing abuses, and as such, the Competitive Suppliers ask the Commission to deny the Petition outright.

Through provisions of the Energy Policy Act of 2005 (“EPAct”), Congress sought to decrease America’s dependence on foreign energy sources by encouraging domestic production and continuing to foster competition in the energy markets. In order to facilitate the construction of new generation, the Commission has the authority to approve participant funded transmission

expansions provided that the funding plan results in rates that are just and reasonable and not unduly discriminatory, and consistent with §§ 205 and 206 of the Federal Power Act.⁸ For the following reasons the Competitive Suppliers maintain that the Petition is inconsistent with legislative authority and contrary to the Commission’s established policies and orders:

1. An Open-Season Process Must be Employed to Initially Allocate Transmission Rights.

The Commission has required the developers of merchant transmission facilities to hold an open season for capacity rights on the merchant line in order to establish a competitive market price. However, the Petition seeks authorization to enter into the TSA to grant exclusive and preferential use of the line to HQ USA⁹ in lieu of an open-access process.¹⁰ The Competitive Suppliers disagree with the Petitioners that the Commission has not addressed the rights that accrue to parties that accept responsibility for funding a new line, and note the contradiction by the Petitioners’ own reference to *Cross Hudson LLC et al.*, 123 FERC ¶61,001 (2008).¹¹ Indeed, the Petitioners’ use of *Cross Hudson* fails to identify the very relevant and obvious distinctions between the dedicated generator lead line approved by the Commission in *Cross Hudson* and the transmission facility in the Petition. Therefore, because such factual distinctions control this case, as consistent with the Commission’s statement of the relevant inquiry in *Cross Hudson*:

⁸ 2005 Energy Policy Act §1242

⁹ Petition FN 6.

¹⁰ While the Competitive Suppliers do not oppose the concept of an anchor tenant on a merchant-owned transmission line, the Petition seeks authorization to enter into the TSA to grant exclusive and preferential use of the line facially to HQ USA in lieu of an open-access process *See, e.g., Chinhook Power Transmission, LLC*, Docket ER09-432-000 (filed Dec. 19, 2008) and *Zephyr Power Transmission, LLC*, Docket No. ER09-433-000 (filed Dec. 19, 2008) (proposing an anchor tenant holding 50% of the transmission rights and the remaining transmission being subject to an open season).

¹¹ *Contrast*, “the Commission has not addressed the rights that accrue to parties that accept responsibility for funding a new line” (Petition P. 2) and “the Commission recently addressed the rights that accrue to a party that supports a participant funded transmission tie line...” (Petition P. 20)

“Before determining whether negotiated, non-cost based compensation is appropriate ... we first examine whether the project is more properly characterized as a generator lead line or a merchant transmission facility.”¹²

Most prominent is the distinction between the capacity in *Cross Hudson* and the capacity proposed under the TSA in the Petition. The Commission noted that *Cross Hudson* had characteristics of both a merchant transmission project and a generator lead line, but ultimately granted the waiver from Order 890 because it was not part of an integrated transmission grid and was built to serve a single generator - PSEG Fossil’s Bergen 2.¹³ The Commission clearly recognized the unique circumstances of the *Cross Hudson* proposal and limited the decision to the specific circumstances identified therein. More importantly, the Commission limited the waiver by declaring that in the event that any electric energy being transmitted along the project come from a source other than Bergen 2, the Commission would need to reevaluate the project’s transmission rates.¹⁴ Such is the case in the Petition.

The Petitioners propose a DC tie between control areas that is remarkably different from the generator lead proposed in *Cross Hudson*. Most notably, the Petition vaguely identifies surplus system power that is to be made available from the Province of Quebec, as opposed to the interconnection of a particular generator.¹⁵ By their own admission Petitioners also acknowledge that the proposed facility may have excess capacity that could be used to transmit the additional output from other sources along the line that would be sold into the New England

¹² *Id.* at ¶ 19.

¹³ 123 FERC ¶61,001 P. 20, 22

¹⁴ *Id.* P. 22

¹⁵ Petition, Page 3.

market. Additionally, the Petitioners also state that flow on the line will be bi-directional and will be used to export power to Québec as well as to import power.¹⁶

A line is considered a dedicated line when it is to be used for a specific customer or purpose, as demonstrated by *Cross Hudson's* use of the line for the singular purpose of a specific and dedicated generator. Here, however, Petitioners seem to be arguing that the line is both dedicated to HQUS and yet also open to deliver output from Hydro-Québec system power, as well as deliver power to Québec on a bidirectional basis. Absent a showing that the line is in fact dedicated to the interconnection of a particular generator, as in *Cross Hudson*,¹⁷ the Commission should not treat the line as a generator lead, nor conclude that third party interconnection requests would interfere with the Petitioners' ability to meet prior firm contractual commitments to others.¹⁸

Furthermore, the energy transmitted into the Petitioners' proposed transmission facility will be delivered "into the New England backbone 345kV transmission system..."¹⁹ In contrast, the Commission in *Cross Hudson* held that such waivers of open access requirements under Order No. 888 are only granted for generator lead lines "that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated

¹⁶ *Id.*, P 19 ("the Line . . . is designed to provide for the importation of power from [Hydro-Québec] (as well as the export of power to Hydro-Québec)").

¹⁷ 123 FERC ¶61,001 P. 28.

¹⁸ See *Aero Energy, LLC*, 115 FERC ¶ 61,128 (2006) (stating the Commission required that interstate transmission facilities must be made available for open access transmission service); *CED Rock Springs Inc.*, 101 FERC ¶ 61,325 (2002) (stating that an interconnection line that connected generation to the PJM grid was found to be an integral part of the PJM grid and not the type of facilities for which waiver of Order Nos. 888 and 889 are granted); and *Northeast Utilities Service Co.*, 62 FERC ¶ 61,294 (1993) (stating that generator lead facilities were part of the integrated transmission grid when facilities performed a transmission function by transmitting reactive power).

¹⁹ *Id.*, Page 4.

transmission grid), until such time as the public utility receives a request for transmission services.”²⁰ While the Petition is silent on the interconnect at the New Hampshire terminus of the line, the Petitioners’ assertions indicate that the line will not qualify as a limited and discrete transmission facility not forming integrated transmission facilities, as was established by the Commission in *Cross Hudson*.²¹ Accordingly, the Petition should thus be summarily rejected as fundamentally deficient.

Additionally, the Petition notes that one of the Petitioners has already received an expression of interest in acquiring capacity rights on the proposed facility from another supplier.²² While the Competitive Suppliers recognize that this is “not the structure that the Petitioners are proposing,” we find this inconsistent with the Commission’s unconditional mandate that in the limited circumstances that a waiver is granted, such a waiver will only be granted until a request is made by a third party seeking access.²³

FERC Order Nos. 888, 889 and 890 put in place, and reaffirm, a regulatory open access, non-discriminatory transmission service framework designed to prevent undue discrimination.²⁴ Most importantly, Order No. 890 seeks to (1) strengthen the pro forma ... OATT to ensure that it achieves its original purpose of remedying undue discrimination’ (2) provide greater specificity

²⁰ 123 FERC ¶61,001 P. 25, citing Jersey Central Power & Light Co., 87 FERC ¶ 61,014, at 61,042.

²¹ *Id.* P. 26

²² Petition, FN 14.

²³ 123 FERC ¶61,001 P. 22

²⁴ The Commission issued the pro forma Open Access Transmission Tariff (OATT) in 1996 under Order 888. ¶ 61,078. The OATT set the default rules for how owner of transmission assets must offer their services in a non-discriminatory manner to users of the transmission system. The Commissions issued a notice of inquiry to reform the OATT on September 16, 2005, and ultimately determined that Order 888 leaves transmission owners with sufficient discretion to continue discriminating against users. The Commission issued a Notice of Proposed Rulemaking in May 2006. The Commission issued the Finale Rule, Order 890, on February, 2007.

to reduce opportunities for undue discrimination; and (3) increase transparency in the rules applicable to planning and use of the transmission system.²⁵ In essence, Petitioners ask the Commission to ignore each of these requirements in granting their request.

For example, what the Petition seeks to accomplish by denying the access request of the third-party supplier is to usurp the authority of the Commission based upon their unilateral assertion that that request does not represent a more attractive commercial arrangement to New England electric consumers. By its very nature, such a denial discriminates against that supplier, chills future requests for access by additional suppliers, and eradicates any transparency in the use of the transmission system. As such, the Petition is contrary to both Commission holdings and the best interests of New England consumers.

Furthermore, the Petitioners have not adequately demonstrated why it is necessary to make the line exclusively available for their own use and, as such, the facility is an open access transmission system that should more appropriately seek authority under § 205 of the Federal Power Act²⁶ to sell transmission rights at negotiated rates as a merchant transmission project. Again, the relevant distinction between the Petition and *Cross Hudson* is that Petition seeks to transmit system power. As such, the Petitioners cannot provide support for their assertion that exclusive use of the line is necessary to meet commitments under the TSA with HQ.

Additionally, the Petitioners in *Cross Hudson* successfully demonstrated that the financial underpinnings of the associated generation project were contingent on the ability to transmit power on the proposed transmission facility.²⁷ The stark contrast in the Petition is that

²⁵ Order 890 Preamble

²⁶ 16 U.S.C. § 824d (2000).

²⁷ 123 FERC ¶61,001 P. 10.

there is no associated generation project, only the proposed transmission facility. The Petitioners have made no demonstration in the Petition why the power transmitted on the line would ensure the viability of the proposed transmission facility any more than power from other competitive supplier offerings. While the commercial arrangements provided for by the Petitioners' transaction structure likely provide more attractive returns for the Petitioners, this is not a compelling reason to deny competition.

2. The Petitioners Should Not be Allowed to Escape Evaluation of the Proposed Transaction under the Commission's Criteria By Providing a Bundled Product.

The proposed transactional structure set forth for approval represents an awkward and confusing methodology that appears designed to escape evaluation by the Commission under the criteria that have been developed for proposals to charge negotiated rates for new transmission facilities.²⁸ The Petitioners indicated that the line is not intended to be a merchant line based principally on the fact that it will not seek cost-based pricing for transmission service. However, they state that the charges for transmission service will be "negotiated rates" but will be subject to a Commission-approved cost-based ceiling.²⁹ The Petitioners conveniently refrain from putting any specifics before the Commission at this time regarding the transmission proposal except for the fact that it may "embody rates, terms and conditions that differ from those set forth in the Commission's *pro forma* OATT."³⁰

What is clear from the Petitioners' proposal is the bundled nature of the transaction. The PPA will establish a market-based price for delivered power at the southern terminus of the

²⁸ See, e.g. *Northeast Utilities Service Co.*, 97 FERC ¶ 61,026 (2001) at 61,075 .

²⁹ Petition at ¶2.

³⁰ *Id.*

line, and HQUS will recover the cost of the TSA through the price of the power under the PPA. The Petitioners identify the transactional structure as “a combined transmission investment and wholesale power transaction,”³¹ thus, it will be impossible to determine whether the transmission component is “market-based” as the Petitioners claim. If the transmission component was a market-based rate, the Commission would evaluate the proposed transaction under ten criteria it has applied to other merchant transmission facilities.

The criteria include: (1) that the merchant transmission facility must assume full market risk; (2) that the service should be provided under the open access transmission tariff (“OATT”) of the Independent System Operator (“ISO”) or Regional Transmission Organization (“RTO”) that operates the merchant transmission facility and that operational control be given to that ISO or RTO; (3) that the merchant transmission facility should create tradable firm secondary transmission rights; (4) that an open season process should be employed to initially allocate transmission rights; (5) that the results of the open season should be posted on the Open Access Same-Time Information System (“OASIS”) and filed in a report to the Commission; (6) that affiliate concerns should be adequately addressed; (7) that the merchant transmission facility not preclude access to essential facilities by competitors; (8) that the merchant transmission facilities should be subject to market monitoring for market power abuse; (9) that physical energy flows on merchant transmission facilities should be coordinated with, and subject to, reliability requirements of the relevant ISO or RTO; and (10) that merchant transmission facilities should not impair pre-existing property rights to use the transmission grids of inter-connected RTOs or utilities.³²

³¹ *Id.* at ¶ 18

³² *Supra*

The Commission is, of course, free to depart from these criteria based on specific circumstances but the Applicants have failed to make an adequate showing that these criteria are irrelevant to the proposed transaction. Accordingly, if the Commission does not summarily reject the Petition, it should require the Petitioners to address why each of these criteria is not relevant to the proposed transaction.

IV. ALTERNATIVE REQUEST FOR CONDITIONS

The Competitive Suppliers request that the Commission deny the Petition because it proposes a structure that is at odds with established Commission policies regarding open access to transmission service, competitive wholesale markets, and restrictions on self-dealing. However, if the Commission does not deny the Petition outright, the Competitive Suppliers request that the Commission impose the following conditions with regard to the Petition:

First, to the extent the Petition is granted, the Competitive Suppliers request that the Commission clarify that the requested waiver only applies to the use of the merchant funded DC line and its converter terminals, and does not provide priority or otherwise assure access into the ISO-NE system for purposes of participation in ISO energy or capacity markets. The Petitioners propose for the DC line to terminate in southern New Hampshire, where the ISO New England grid is already congested. While the Competitive Suppliers, as explained *supra*, do not believe this to be a generation tie line, the ISO New England OATT specifies the interconnection procedures and standards that all new resources must satisfy. These interconnection procedures were recently reformed to add the Capacity Network Resource (“CNR”) service which requires adherence to specific rules regarding the interconnection queue and achievement of CNR status

ultimately through the Forward Capacity Auction.³³ The Commission should direct that these standards and procedures would apply equally to any capacity value attributed to the resources under the contemplated transaction and any grant of the waiver in this docket would not cause them to be treated preferentially.

Second, to the extent the Petition is granted, the Competitive Suppliers request that the Commission direct that the Petitioners shall be responsible for the cost of any deliverability enhancements that are required for participation in ISO-NE markets and for any upgrades necessary for delivery of electricity into the New England bulk power system, pursuant to the Commission's well-established cost-causation principles. NEPGA views the proposed arrangement as an opportunity for the Petitioners to enter into a bundled arrangement whereby they are provided with an unencumbered opportunity to earn a guaranteed return on a large transmission investment (DC Line). This arrangement requires confirming access to this line's capability to the Petitioners' co-partner in the transaction, ostensibly HQUS, though in reality Petitioners' captive customers. Under this transaction structure, there is a tremendous incentive for the Petitioners to strategically propose Pool Transmission Facility improvements (the costs of which are socialized) to pre-build the reinforcements otherwise required for interconnection to qualify the resources coming over the new DC line for participation in the ISO-NE energy or capacity markets. Such an arrangement is contrary to the Commission's non-discriminatory policy.

³³ The Competitive Suppliers maintain that the Line is subject to all the interconnection requirements consistent with the Forward Capacity Market Rules (MR1 Section 13) for new resources seeking to participate in the FCM.

Because the Petitioners, as transmission owners, know the details of other interconnection requests on their systems (NU/PSNH for example), they know the upgrades that, if suggested, would help their proprietary projects without benefitting other interconnection requests. The Competitive Suppliers are concerned that the Petitioners will have the incentive to engage in such activities in an effort to reduce the ultimate cost to interconnect this “participant-funded upgrade,”³⁴ reduce the cost of the bundled deal, make it appear under-market, and, therefore, attractive to the participant states. The Competitive Suppliers interpret open access policies as a way to provide transmission owners with some discipline and fairness in the location and timing of their upgrades. As a result, while the cost of the bilateral supply and the tie line itself would not be socialized, the Competitive Suppliers have concerns that other costs related to the delivery of resources imported over that line into the ISO-NE system may be socialized and that the Petitioners may get preferential access or preferential financing.

Third, to the extent the Petition is granted, the Competitive Suppliers request that the Commission direct that the transaction be structured so as to prevent approval of a transactional structure that provides the Petitioners, or their contractual affiliates, with the exclusive option to deliver power beyond the term of the PPA. As stated, HQUS will have the rights, but not the obligation, to deliver power after the proposed twenty-year term of the PPA based upon their own arbitrary amortization of the cost of the line. This subsequent twenty-year period represents a period by which ratepayers are captive to the potential of out of market resources that can exercise market power to influence the development of new resources.

³⁴ The term “participant funded” is generally used to refer to internal network upgrades. The participant funding label is important to those upgrades because the funding party neither owns the line nor has operating control over the line. The funding party receives Qualified Upgrade Awards (and at some point the Incremental Auction Revenue Rights under the pending Long-term Financial Transmission Rights proposal) and perhaps Capacity Transfer Rights. These rights would not accrue to the facilities proposed in the Petition since it would be a DC Tie between two systems.

V. CONCLUSION

The Competitive Suppliers respectfully request that the Commission grant this motion to intervene in the proceeding, deny the Petition or, alternatively, impose the conditions sought herein.

/S/

Nancy Bagot
Vice President of Regulatory Affairs
Sharon Theodore
Director of Regulatory Affairs
Electric Power Supply Association
1401 New York Avenue, NW
11th Floor
Washington, DC 20005



Christopher P. Sherman
General Counsel
New England Power Generators
Association, Inc.
141 Tremont Street
Boston, MA 02111

/S/

Jeremy N. Payne
Executive Director
Independent Energy Producers of Maine
PO Box 743
Augusta, Maine 04332

Dated: January 26, 2009

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

**Northeast Utilities Service Company)
NSTAR Electric Company)**

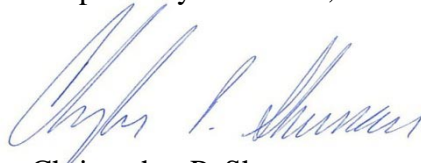
Docket No. EL09-20-000

CERTIFICATE OF SERVICE

Pursuant to the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts on this 26th day of January 2009.

Respectfully submitted,



Christopher P. Sherman
General Counsel
New England Power Generators Association
141 Tremont Street
Boston, MA 02111
(617) 902-2354
csherman@nepga.org