BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY

Proposed Open Access Requirement for International Electric Transmission Facilities and Delegation to the Federal Energy Regulatory Commission	))))	**FE Docket No. 99-1**

MOTION TO INTERVENE AND COMMENTS OF THE ENERGY SERVICES GROUP OF HYDRO-QUÉBEC AND H.Q. ENERGY SERVICES (U.S.) INC.

On July 27, 1999, the Department of Energy (the "Department") issued a notice of its intention to amend existing Presidential permits to require the holders of such permits to provide non-discriminatory open access transmission services. The open access requirement would also be attached to the permit holder's authorization to export electricity. Notice also was given that the Secretary of Energy would delegate and assign to the Federal Energy Regulatory Commission (the "Commission") the authority to implement and enforce such open-access requirements by regulating the rates, terms and conditions for transmission services over those international transmission facilities. Notice of Proposed Amendment to Presidential Permits and Export Authorizations and Delegation and Assignment to the Federal Energy Regulatory Commission, 64 Fed. Reg. 40586 (July 27, 1999), (the "DOE Notice").

Hydro-Québec Energy Services Group, a division of Hydro-Québec, a Crown corporation in the right of Québec, and H.Q. Energy Services (U.S.) Inc., a power marketer,[1]

[1] H.Q. Energy Services (U.S.) Inc. is a power marketer authorized by the Commission to sell electricity at wholesale at market-based rates within the United States. H.Q. Energy Services (U.S.) Inc., 79 FERC ¶ 61,152 (1997); H.Q. Energy Services (U.S.) Inc., 81 FERC ¶ 61,184 (1997), reh'g denied, 82 FERC ¶ 61,234 (1998). It also holds authorizations to export electricity to Mexico and Canada under DOE Dockets EA-181 and EA-182 (1998).

(together, "HQ Energy Services") hereby submit this motion to intervene in the above-referenced proceeding in accordance with Section 385.214 of the Commission's Rules of Practice and Procedure, and comments on the subject matter of the DOE Notice in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.214 and 385.211).

I. Motion To Intervene.

HQ Energy Services satisfies the requirements for intervention and full party status in this proceeding. Hydro-Québec's transmission system is directly interconnected with facilities subject to several Presidential permits, including PP-56, PP-66, PP-69, PP-76, and PP-82, and supplies electricity under contracts with various U.S. utilities which rely upon permitted facilities to import electricity purchased from Hydro-Québec. H.Q. Energy Services (U.S.) Inc., as noted above, is a power marketer within the U.S. and is authorized to export electricity from the U.S. to Canada and Mexico. HQ Energy Services, therefore, has interests which are likely to be directly affected by the outcome of this proceeding within the meaning of Section 385.214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Accordingly, HQ Energy Services respectfully requests that it be permitted to intervene and be granted full party status in this proceeding.

II. Communications

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III. Comments.

A. Introduction.

As we saw in the case of El Paso Electric Company, it is possible for a utility to avoid open access requirements on cross-border facilities and thereby deprive other parties of the opportunity to compete on a equal footing in international transactions due to the gap between the jurisdiction of the Department and the jurisdiction of the Commission. Enron Power Marketing, Inc., 77 FERC ¶ 61,013 (1996). In that situation, the Department delegated to the Commission the necessary authority to require the utility to provide open access service on its cross-border facilities by amending the utility's Presidential permit and export authorization. Enron Power Marketing, Inc., 83 FERC ¶ 61,213 (1998). By the actions described in the DOE Notice, the Department intends to attach similar requirements to all Presidential permits and

associated export authorizations, and to authorize the Commission to implement and enforce these open access requirements.

HQ Energy Services strongly supports Department's proposal to amend all existing Presidential permits to incorporate an obligation to provide open access transmission service on all cross-border facilities and to include an open access obligation in all new Presidential permits. We submit these comments for three limited purposes.

First, HQ Energy Services seeks clarification that the open access requirements will apply to any entity holding a Presidential permit which is not otherwise subject to the Commission's jurisdiction as a "public utility" within the meaning of Section 201(e) of the Federal Power Act (16 U.S.C. § 824(e)), such as cooperatives, state or municipal entities, and non-utility public utility holding companies, as well as to permittees that are public utilities under the FPA. We do not oppose the Department's determination that the open access requirement will not be added to the Presidential permits of those specific permittees listed in the DOE Notice.

Second, the DOE Notice does not specify the language it intends to include in existing and future Presidential permits and export authorizations. HQ Energy Services seeks clarification that the Department intends the open access requirements to provide third party transmission customers with rights on cross-border facilities that are no less restricted than those available on interstate transmission facilities under Order Nos. 888 and 889.[2]

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[2] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. [Regs. Preambles 1991-1996] ¶_31,036 (1996); Order No. 888-A, order on reh'g, III FERC Stats. & Regs. ¶ 31,048 (1997); Order No. 888-B, order on reh'g, 81 FERC ¶ 61,248 (1997); Order No. 888-C, order on reh'g, 82 FERC ¶ 61,046 (1998), appeal pending, Transmission Access Policy Study Group et al. v. FERC, No 97-1715, et al. (D.C. Cir., April 30, 1998) ("Order No. 888"); Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, FERC Stats. &

(continued...)

Third, HQ Energy Services believes that the Department's proposal may be insufficient to achieve its policy goals with respect to the high voltage direct current transmission line and related facilities associated with Presidential permit PP-76 (the "HVDC Line")[3] unless the Department also requires the adoption of more streamlined procedures for third parties to obtain access to the HVDC Line. The remainder of these comments explain the need for such requirements and offer a proposal for procedures that would improve the efficiency with which the HVDC Line may be used by third parties participating in the wholesale power markets.

B. Development And Use Of The HVDC Line.

1. Facilities authorized by PP-76.

In the 1980s, the utilities in New England entered into several agreements for the purchase, sale and exchange of energy with Hydro-Québec (the "HQ Agreements"). The HQ Agreements are: the Energy Contract, the Energy Banking Agreement, the Interconnection Agreement, and the Firm Energy Contract. The Energy Contract expires by its terms in 2004, but no transactions currently are taking place under this agreement. Purchases from Hydro-Québec currently are taking place pursuant to the Firm Energy Contract, which is expected to expire by 2001.

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Regs. [Regulations Preambles 1991-1996] ¶ 31,035 (1996), order granting request for clarification, 77 FERC ¶ 61,335 (1996), Order No. 889-A, order on reh'g, III FERC Stats. & Regs. ¶ 31,049 (1997), Order No. 889-B, reh'g denied, III FERC Stats. & Regs. ¶ 61,253 (1997), appeal pending, Transmission Access Policy Study Group et al. v. FERC, No 97-1715, et al. (D.C. Cir., April 30, 1998) ("Order No. 889").

[3] Presidential Permit PP-76 Authorizing The Vermont Electric Transmission Company To Construct, Connect, Operate And Maintain Electric Transmission Facilities Across The International Border Between The United States And Canada (dated April 5, 1984); Amendment To Presidential Permit PP-76 (dated September 16, 1988).

To facilitate transactions under the HQ Agreements, the utilities, referred to herein as the "HQ Participants" developed a 450 kV HVDC Line from the Canadian border to Massachusetts. On April 5, 1984, the DOE issued presidential permit PP-76 to the Vermont Electric Transmission Company ("VETCO") for the facilities extending approximately 60 miles from the border between the United States and Québec near Norton, Vermont, to the AC/DC converter at the Comerford generating station in Monroe, New Hampshire. On September 16, 1988, the DOE amended PP-76 to allow the HVDC Line to be extended approximately 133 miles to the DC/AC converter at the Sandy Pond substation near Groton, Massachusetts. The facilities authorized by PP-76 include the entire 450 kV DC transmission line from the international border to Sandy Pond, the converter stations at Comerford and Sandy Pond, and two 345 kV AC line transmission lines extending from Sandy Pond to the Millbury No. 3 substation in Millbury, Massachusetts and from the Millbury No. 3 substation to the West Medway substation in Medway, Massachusetts. Although the transfer capability of the HVDC Line is rated at 2000 MW, the line currently is operated in the range of 1200 MW to 1800 MW as a result of limitations related to conditions in the neighboring regions governed by the independent system operators for the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") and New York (NYISO").

2. Ownership and control of the HVDC Line.

The HQ Participants formed four shell companies to develop, finance, construct and operate separate geographic segments of the HVDC Line. VETCO owns the facilities within Vermont between the Québec border and New Hampshire; the New England Electric Transmission Corporation ("NEET") owns the facilities located within New Hampshire between

the Vermont border and the Comerford station; New England Hydro-Transmission Corporation ("NEH-NH") owns the portion of the HVDC Line within New Hampshire from Comerford to the border between New Hampshire and Massachusetts; and New England Hydro-Transmission Electric Company ("NEH-MA") owns the facilities within Massachusetts from the New Hampshire border to the Sandy Pond substation. VETCO, NEET, NEH-MA and NEH-NH are collectively referred to herein as the "NE TransCos."

Public utilities, or affiliates of public utilities, hold the majority of the equity interests in the NE TransCos. VETCO is a wholly-owned subsidiary of Vermont Electric Power Company, Inc. ("VELCO"), which is owned by three investor-owned public utilities, eleven municipal utilities and two cooperative utilities operating in Vermont. The New England Electric System ("NEES")[4] owns 100 percent of the equity interests in NEET and 51 percent of the equity securities in each of NEH-MA and NEH-NH. Other public utilities or utility affiliates and municipal utilities hold the remaining equity interests in NEH-MA and NEH-NH.

The HQ Participants financed construction of the HVDC Line through Transmission Support Agreements with each of the NE TransCos.[5] Under these agreements, each

[4] NEES is being acquired by The National Grid Company in a transaction approved by the Commission in Docket No. EC99-49-000. For convenience in this pleading, we will continue to refer to the entity as NEES.

[5] The NE TransCos are parties to the following Transmission Support Agreements are: (1) the Phase I Terminal Facility Support Agreement, dated as of December 1, 1981, between NEET and certain HQ Participants, as amended June 1, 1982, November 1, 1982, and January 1, 1986; (2) Phase I Vermont Transmission Line Support Agreement, dated as of December 1, 1981, between VETCO and certain HQ Participants, as amended June 1, 1982, November 1, 1982 and January 1, 1986; (3) the Phase II Massachusetts Transmission Facilities Support Agreement, dated as of June 1, 1985 among NEH-MA and certain HQ Participants, as amended May 1, 1986, February 1, 1987, September 1, 1987, October 1, 1987, August 1, 1988, and January 1, 1989; and (4) the Phase II New Hampshire Transmission Facilities Support Agreement, dated as of June 1, 1985 among NEH-NH and HQ Participants, as amended May 1, 1986, February 1, 1987, June 1, 1987, September 1, 1987, October 1, 1987, August 1, 1988, January 1, 1989, and January 1, 1990.. The Transmission Support Agreements have been filed with the Commission.

of the HQ Participants pays a share of the costs of building, owning and operating the HVDC Line in proportion to its share of energy to be purchased from Hydro-Québec under the HQ Agreements and its rights to use a corresponding proportion of the total transfer capability of the HVDC Line. Through these and other agreements among the parties, the HQ Participants exercise management and decision-making authority over the HVDC Line.

3. The HQ Participants' use of the HVDC Line.

After the issuance of Order No. 888, the HQ Participants entered into the Second Amended and Restated Agreement With Respect to the Use of Québec Interconnection by and among the HQ Participants, dated as of November 19, 1997, and further amended as of April 8, 1998, ("Interconnection Use Agreement").[6] The Interconnection Use Agreement became effective on May 1, 1999, the NEPOOL Second Effective Date, and, by its terms, will continue in effect until the last of the Transmission Support Agreements to expire, which is expected to be in 2020. However, the HQ Participants have an option to extend the Transmission Support Agreements, and thus the Interconnection Use Agreement, for an additional 20 years.[7] The Interconnection Use Agreement is administered by a committee comprised of representatives of the HQ Participants, plus a non-voting representative of the New England ISO.[8] Only entities

[6] The Interconnection Use Agreement was accepted for filing in Docket No. ER98-1106-000 as Supplement No. 2.1 to the New England Power Pool ("NEPOOL") Rate Schedule FERC No. 4. New England Power Company, et al., 83 FERC ¶ 61,328 (1998).

[7] Direct Testimony of Masheed H. Rosenqvist and Steven S. Garwood, filed as Exh. NPL-8 in Docket Nos. OA97-237-000, ER97-1079-000, ER97-3574-000, OA97-608-000, ER97-4421-000 and ER98-499-000 (Aug. 4, 1998).

[8] Section 5 of the Interconnection Use Agreement.

which are parties to the Transmission Support Agreements and members of NEPOOL are participants in the Interconnection Use Agreement.[9]

The Interconnection Use Agreement provides that the transfer capability of the HVDC Line will be used by the HQ Participants, or their transferees, in order of priority, for: (1) "Entitlement Transactions", which are any transactions other than NEPOOL Energy Transactions or Participant Transactions, (2) "NEPOOL Energy Transactions," which are transactions undertaken by NEPOOL on behalf of its members under the Energy Banking Agreement, the Interconnection Agreement, the Energy Contract, the Firm Energy Contract, or any other agreement covering energy and operating reserves entered into by NEPOOL or the New England ISO on behalf of its members; and (3) "Participant Energy Transactions", which are economy or other energy transactions between individual HQ Participants and Hydro-Québec.

There are more than 50 entities participating in the Transmission Support Agreements and the Interconnection Use Agreement, of which 10 are public utilities which have an open access transmission tariff with provisions regarding the HVDC Line. HQ Participants which are public utilities have rights to use approximately 94 percent of the transfer capability of the HVDC Line, the remaining capacity has been allocated to the HQ Participants that are municipal utilities and other non-jurisdictional entities. At the present time, the HQ Participants use the HVDC Line principally in the north-to-south direction to receive electricity purchased from Hydro-Québec pursuant to the Firm Energy Contract. However, transfer capability generally is available in all hours in the south-to-north direction and also is available in the north-

[9] Section 6 of the Interconnection Use Agreement authorizes any HQ Participant to transfer its right to use the transfer capability of the HVDC Line to another Participant or any other electric utility. The transfer may be for any period of time of one week or longer, and on any terms agreed to by the HQ Participant.

to-south direction during hours in which deliveries under the Firm Energy Contract are not scheduled. The Firm Energy Contract will expire when the contractually specified quantity of electricity has been delivered, which HQ Energy Services expects will occur in 2001. Thus, in a few years all or most of the transfer capability of the HVDC Line in both directions will be available to be used for other wholesale market transactions.

C. The Commission's Orders Regarding Open Access On The HVDC Line.

The Commission directed the public utilities owning equity interests in the NE TransCos to comply with Order Nos. 888 and 889 with respect to their respective interests in the HVDC Line. VETCO, the permittee under PP-76, and the other NE TransCos requested that the Commission waive any obligation to file an open access transmission tariff or maintain an OASIS site for posting available transmission capacity ("ATC") for the HVDC Line. They argued that they lacked sufficient "operational control" over the facility, did not engage in any power transactions over the facility, and had assigned operational control and usage rights in their respective portions of the HVDC Line to the HQ Participants. The Commission granted these requests for waiver, stating that:

> [W]e believe waiver is appropriate for the applicants in this category, so long as the public utility owners in [the NE TransCos] include access to these projects under their own open-access tariffs. These entities are simply a more formal type of joint ownership arrangement for which open-access solutions must be proposed under Order No. 888.

Northern States Power Company (Minnesota), et al., 76 FERC ¶ 61,250 at p. 62,296 (1996).

The NE TransCos filed a request for clarification that the Commission's order applied to each of the public utilities which holds rights to use the HVDC Line, whether or not those utilities also hold an equity interest in the NE TransCos. The Commission said that:

> The New England Transmission Companies . . . request that we clarify that the obligation to file the open access tariff applies not only to the owners of the New England Transmission Companies but also to the New England Power Pool utilities who sponsored the construction and operation of the facilities and are now customers, but not owners (Unaffiliated Customers) . . . .We decline to expand our order to include the Unaffiliated Customers. If the contractual arrangements between the New England Transmission Companies and their customers give the Unaffiliated Customers control over the facilities, Order No. 888 already applies to the Unaffiliated Customers (to the extent they are public utilities).

Black Creek Hydro, Inc., et al., 77 FERC ¶ 61,232 at p. 61,943 (1996).

Thus, the public utility HQ Participants are individually responsible for providing open access service, posting ATC and otherwise complying with Order Nos. 888 and 889 for their separate interests in the transfer capability of the HVDC Line. NEPOOL has not designated the HVDC Line as a pool transmission facility ("PTF") and, therefore, it is not subject to NEPOOL's open access transmission tariff. In New England Power Pool, 83 FERC ¶ 61,045 (1998), the Commission accepted NEPOOL's proposal that access over HVDC Line be provided under the separate tariffs filed by individual HQ Participants which are public utilities, rather than the NEPOOL tariff, but stated that it may require the NEPOOL tariff to be revised after evaluating the individual tariffs of the public utility owners of the NE TransCos.

D. ISO New England Should Be Authorized To Maintain A Single OASIS Site And Administer Transmission Requests For The HVDC Line

1. Benefits of a single OASIS site and a single administrator.

The Commission has taken the position that an independent regional transmission organization ("RTO") would provide the proper framework for ensuring non-discriminatory open access to transmission facilities. Notice of Proposed Rulemaking, Regional Transmission

Organizations, 64 Fed. Reg. 31,389, FERC Stats. & Regs. ¶ 32,541 (1999) (the "RTO NOPR"). With respect to the posting of ATC, the Commission in the RTO NOPR said that:

> Accurate ATC numbers would require reliable and timely information about load, generation, facility outages and transactions on neighboring systems. Individual transmission operators will generally not have this information. They also may apply differing assumptions and criteria to ATC calculations, which may produce wide variations in posted ATC values for the same transmission path. All these considerations make it virtually impossible for an individual transmission provider that operates one part of a large interconnected grid to calculate ATC accurately.

FERC Stats. & Regs. ¶ 32,541 at p. 33,700. The Commission also discussed the potential for discriminatory conduct that arises from the economic self-interest of transmission-owning utilities to favor their own power marketing interests and frustrate their competitors. FERC Stats. & Regs. ¶ 32,541 at pp. 33,704-715. The Commission concluded that an RTO is best suited to address a variety engineering and economic inefficiencies and thereby improve the performance of electricity markets. Id. at p. 33,719-720.

For the same reasons, it would be desirable for a single entity to be responsible for administering open access obligations on the HVDC Line. The HVDC Line is owned and operated by a number of utilities, each of which treats its interest in the transfer capability of the facility as part of its own separate transmission system. Although it is unclear when, if ever, an RTO will be adopted that includes the HVDC Line, the benefits of a single administrator for a multi-utility facility can be obtained quickly and easily with respect to the HVDC Line.

2. ISO New England should be given the authority to post ATC on a single OASIS site and act as the administrator for open access services on the HVDC Line.

HQ Energy Services believes that ISO New England recognizes that it would be beneficial for all market participants to maximize the use of the HVDC Line and facilitate access to available transfer capability over this interconnection. One way HQ Energy Services proposes to reduce the administrative barrier to access that capacity would be the ATC on the HVDC Line to be posted on a single OASIS site and for access requests be administered by a single entity with proper authority to assume these responsibilities. Therefore, HQ Energy Services believes that ISO New England should be designated to perform these functions. This simple administrative change would improve the efficient and productive use of this critical cross-border transmission corridor by third parties and thereby would further the Department's and the Commission's goal of sustaining a competitive marketplace.[10] It would not be necessary for ownership of the various interests in the HVDC Line to be combined in order to implement ISO New England's administration of open access. The costs and benefits of the power transactions on the various transmission systems within NEPOOL are allocated among the individual transmission owners by a settlement process; a similar procedure could be applied to allocate the costs and benefits from the use of the transfer capability of the HVDC Line among the HQ Participants.

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[10] Efficient use of the HVDC Line also is important to fulfill the Commission policy of encouraging cross-border transactions for the benefit of customers in the United States. The Commission repeatedly has explained the basis for its requirement that Canadian utilities with U.S. power marketing affiliates provide comparable open access transmission service. The Commission has said that:

> The Commission's concern is not transmission service to serve Canadian loads -- it is transmission service to serve United States loads. Entities may wish to located in Canada, but sell power in the United States, and they may require Hydro-Québec's transmission service to do so. Energy Alliance Partnership, 73 FERC ¶ 61,019 (1995).

The desirability of a single OASIS site is indisputable. Each of the public utility HQ Participants which has amended its open access transmission tariff maintains a separate OASIS site for its individual interest in the transfer capability of the HVDC Line. A review of these OASIS sites indicates that, with a few exceptions, no transfer capability generally is available for use by third parties. Although the utilities currently use their entitlements in the transfer capability of the HVDC Line principally to receive delivery of energy purchased from Hydro-Québec under the Firm Energy Contract, transfer capability should still be available in the south-to-north direction, and in the north-to-south direction during those hours when purchases are not being made. Moreover, after the Firm Energy Contract expires in 2001, the entire capacity of the HVDC Line should be available in both directions for use in other transactions.

Despite the fact that the HVDC Line is covered by a single Presidential permit and is operated as a single facility, a transmission customer must search several OASIS sites for information regarding firm and non-firm ATC, and, assuming that any capacity is made available, may need to enter into agreements with several different transmission providers in order to compile sufficient capacity for transactions of any reasonable size.

The multiplicity of OASIS sites frustrates the Department's and the Commission's goals for an efficient competitive wholesale market. Consider a power seller that wishes to engage in a firm 150 MW transaction for a term of one year. If transmission capability for the full amount and full term were unavailable from any single HQ Participant, the seller would need to piece together a coherent contract path from the amounts and time periods shown to be available on several OASIS sites. It is possible that capacity from several providers would be needed in the same month, while completely different providers may have to be used in other months.

Moreover, a minimum of 200 MW must be scheduled on the HVDC Line in order for it to operate at all. A potential customer may need to continuously monitor reservations on several OASIS sites simply to estimate whether any service is likely to be available.

In addition, a single OASIS site would relieve the smaller public utility HQ Participants from expending resources unnecessarily. A single site would facilitate the use of any transmission capacity available from the municipal utilities, which are not obliged to maintain an OASIS site, but may wish to sell ATC to third parties on a voluntary basis.

As the Commission explained in the RTO NOPR, an individual utility simply may not have enough information about regional transmission conditions to post accurate ATC for its own system. This problem is particularly acute with respect to the HVDC Line. Each HQ Participant's entitlement to use the HVDC Line is expressed in terms of its percentage share of the total transfer capability at any specific time, which may vary with system conditions in NEPOOL and neighboring pools. Also, the facility is a direct current line between the two alternating current systems in Québec and New England, which are in separate control areas. These facts can be expected to affect the ability of individual HQ Participants to accurately determine and timely post ATC.

ISO New England, in contrast, would have all the information necessary to determine ATC in accordance with the Commission's regulations. It is responsible for the operational coordination of transactions on the HVDC Line between Hydro-Québec and the NEPOOL system, and has all of the information related to the power flows on the HVDC Line and within NEPOOL. Although an HQ Participant may elect under the Interconnection Use Agreement to independently schedule use of the HVDC Line for purposes other than engaging in

energy transactions under the HQ Agreements, the coordination and scheduling procedures implemented by ISO New England would be involved in the transaction. ISO New England also maintains close contact with the independent system operators in New York and PJM to exchange information regarding system conditions. The three independent system operators entered into a Memorandum of Understanding, dated August 9, 1999, to pursue additional regional transmission planning and coordination activities.

IV. Conclusion.

HQ Energy Services believes that the procedures for ensuring meaningful open access to third parties on the HVDC Line should be adopted as soon as possible. Although complex arrangements regarding this facility have developed for historical reasons, a solution to the difficulties encountered by market participants seeking to use the HVDC Line for market transactions is readily available. HQ Energy Services respectfully urges the Department to require that a single entity post available transmission capacity on a single OASIS site and administer third party transmission requests for the HVDC Line, and to authorize ISO New England to perform these responsibilities.

Respectfully submitted,

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