

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of January 24, 2013

The following activity, as more fully described in the attached litigation report, has occurred since the report dated January 2, 2013 was circulated. New matters/proceedings since the last report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints

1	NESCOE FCM Renewables Exemption Complaint (EL13-34)	Jan 4-17 Jan 14 Jan 17	NEPOOL, Capital Power, Con Ed, CT PURA, EPSA, GDF Suez, LIPA, MA AG, NextEra, NICC, PSEG intervene ISO moves to dismiss Complaint, or in the alternative, opposes consolidation and opposes Complaint NEPGA, Dominion, Exelon, TransCanada move to dismiss Complaint and oppose consolidation; NU supports Complaint
2	Base ROE Complaint (2012) (EL13-33)	Jan 8-16 Jan 16	NEPOOL, AIM, CT AG, CT OCC, CT PURA, EMCOS, MA AG, MOPA, MPUC, TEC, VT DPS intervene TOs respond to complaint; MMWEC/NHEC submits comments
2	HQ US FCA7 Complaint (EL13-25)	Jan 18	FERC grants HQ US waiver of FCA7 QDN deadline in ER13-335 and dismisses this Complaint as moot
3	Brookfield FCA7 Complaint (EL13-23)	Jan 18	FERC grants Brookfield waiver of FCA7 QDN deadline in ER13-335 and dismisses this Complaint as moot

II. Rate, ICR, FCA, Cost Recovery Filings

4	ICR-Related Values and HQICCs - 2013/2014 ARA3 and 2014/2015 ARA2 (ER13-495)	Jan 17	FERC accepts values
4	FCA7 Qualification Informational Filing (ER13-335)	Jan 18	FERC accepts informational filing, effective Jan 18
4	2013 Administrative Costs Budget (ER13-185)	Jan 4 Jan 24 Jan 25	Chief Judge Wagner designates Michael J. Cianci, Jr. as the Settlement Judge 1 st settlement conf held Judge Cianci issues settlement status report; 2 nd conf. date Mar 4
5	FCA5 Results Filing (ER11-3891)	Jan 16	Chief Judge Wagner issues order terminating Settlement Judge procedures and the proceeding, subject to final FERC review
6	ISO Issuance of Securities: \$40 Million for New Back Up Control Center (ES12-47)	Jan 11	ISO files "Report of Securities"

III. Market Rule Changes, Interpretations and Waiver Requests

* 6	IMM Information Sharing Revisions (ER13-750)	Jan 11	ISO and NEPOOL jointly file changes to permit the sharing of confidential information with other ISO/RTOs and their market monitors; comment date Feb 1
* 6	CSO Termination: Concord Steam (ER13-735)	Jan 9 Jan 11	ISO files to terminate Concord Steam's CSO for resource 14666; comment date Jan 30 NEPOOL intervenes
* 6	CSO Termination: MATEP (ER13-729)	Jan 8 Jan 11	ISO files to terminate MATEP's CSO for resource 37090; comment date Jan 29 NEPOOL intervenes
6	FCM Static De-List Bid Changes (ER13-612)	Jan 10-11 Jan 22	Exelon, NRG, NU intervene doc-lessly FERC accepts changes, effective Feb 19

6	CSO Bilateral Transaction and Reconfiguration Auction Enhancements (ER13-585)	Jan 7-9	Exelon, NRG, NU intervene doc-lessly
7	Corrections to ISO-NE eTariff Section III.A.15.2 (ER13-510)	Jan 9	FERC accepts corrections
7	Footprint Power Request for Limited Waiver of New Capacity Qual. Deadlines (ER13-468)	Jan 18	FERC grants requested waiver of FCA7 QDN deadline
8	Information Policy Pipeline Information-Sharing Changes (ER13-356)	Jan 14	FERC issues tolling order affording it additional time to consider the ISO's request for expedited rehearing of Dec 7 Order
		Jan 23	FERC conditionally accepts changes on an interim basis (Jan 24-Apr 30, 2013) and denies rehearing of Dec 7 Order
9	Generator Audit Revisions (ER13-323)	Jan 9	FERC conditionally accepts revisions, effective Jun 1, 2013 (with 2 weeks' notice of actual effective date)
9	FCM Conforming Changes Reflecting PRD Full Integration (ER12-1627)	Jan 14	FERC accepts in part, and rejects in part, proposed changes, effective Jun 1, 2017, and subject to a 60-day compliance filing (Mar 14, 2013)
11	FCM Redesign Compliance Filing: FCA8 Revisions (ER12-953 et al.)	Jan 14	NEPOOL, ISO, HQ US, NEPGA file answers
		Jan 17	Danvers intervenes out-of-time

IV. OATT Amendments / TOAs / Coordination Agreements

12	Order 1000 Compliance Filing (ER13-193; ER13-196, not consolidated)	Jan 7	VT PSB intervenes out-of-time
		Jan 8	NESCOE and Five NE States respond to comments and protests
		Jan 10	RENEW withdraws its intervention
		Jan 17, 18	PTO AC and ISO file answers to comments and protests
13	NPC-Supported Revisions to Attachment K and MR1 (ER12-1914)	Jan 18	FERC accepts second compliance filing, effective Aug 1, 2012

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

14	Schedule 21-BHE: Cancellation of Evergreen Wind LSA (ER13-480)	Jan 9	FERC accepts cancellation
14	Schedule 21-FG&E: Corrections, Conforming and Clean Up Changes (ER13-474)	Jan 4	FERC accepts changes, subject to a compliance filing identifying the effective date of the changes
14	Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)	Jan 9	Settlement Judge Johnson issues status report and recommends settlement judge procedures be continued
		Jan 14	Judge Johnson schedules 2 nd settlement conf. for Jan 24
		Jan 24	2 nd settlement conf. held

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 15	LFTR Implementation: 17 th Quarterly Status Report (ER07-476)	Jan 15	ISO files its 17th quarterly report
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IX. Membership Filings

16	December 2012 Membership Filing (ER13-493)	Jan 8	FERC accepts (i) the membership of Iron Energy (Supplier Sector, Dec 1, 2012); and (ii) the termination of SESCO Enterprises (Nov 1, 2012) and Moose River Lumber and MRL Energy (Dec 1, 2012)
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X. Misc. - ERO Rules, Filings; Reliability Standards

17	Revised Reliability Standard: EOP-004-2 (RD13-3)	Jan 4	FERC submits errata to request for approval of Standard merging EOP-004-1 and CIP-001-2a; comment date Feb 4
17	Revised Reliability Standard: VAR-002-2b (RD13-2)	Jan 8 Jan 23	AMP intervenes; PPL submits comments FERC responds to PPL comments
18	NOPR: Geomagnetic Disturbance Reliability Standards (RM12-22)	Jan 10-14	NERC and Foundation for Resilient Societies file reply comments Additional comments and materials posted on eLibrary
21	FERC Performance Audit of NERC (FA11-21)	Jan 16	FERC approves Settlement Agreement comprehensively resolving all outstanding issues related to OE's 2012 performance audit of NERC

XI. Misc. - of Regional Interest

* 22	203 Application: FPL Energy Maine Hydro/Brookfield (EC13-62)	Jan 14	Applicants request authorization for indirect disposition of the equity interests in Maine Hydro to Brookfield; comment date Feb 4
23	203 Application: NEET / NEP (EC13-50)	Jan 15	FERC authorizes the transfer of the Monroe HVDC Phase I Converter facility from NEET to NEP
23	203 Application: CMP, MEPCO / BHE (EC13-49)	Jan 4 Jan 22	CMP submits clarifying information regarding recovery of transaction costs FERC authorizes transfer of Orrington Assets
23	Foley v. UI: Rate Base Complaint (EL12-106)	Jan 7-11	Foley files additional exhibits
25	LGIA – Oakfield (BHE/Evergreen /ISO) (ER13-741; ER13-678)	Jan 10 Jan 10	BHE/ISO withdraw, for technical reasons, LGIA filed in ER13-678 BHE/ISO re-file conforming LGIA; comment date Jan 31
25	IA – Fitchburg/Pinetree (ER13-446)	Jan 8	FERC accepts IA, effective Nov 22, 2012
25	MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844)	Jan 17	MISO and ITC file Brief on Exceptions to Judge Sterner's Initial Decision
29	Waiver of Transmission Standards of Conduct: Green Mountain Power Request (TS04-277)	Jan 17	FERC issues notice of requested waiver; comments date Feb 7

XII. Misc. - Administrative & Rulemaking Proceedings

* 30	Policy Statement: Allocation of Capacity on New Transmission Projects (AD12-9; AD11-11)	Jan 17	FERC issues final policy Statement, effective Jan 17
* 30	NOPR: Revisions to Pro Forma SGIA and SGIP (RM13-2)	Jan 17	FERC issues NOPR; comment date 120 days after its publication in the <i>Federal Register</i>
19	Order 773: Revised "Bulk Electric System" Definition and Procedures (RM12-7; RM12-6)	Jan 22	APPA, AWEA, Dow Chemical, Holland MI Bd. of Public Works, NARUC, NERC, NRECA, NY PSC, Snohomish County, TAPS, and Utility Services request rehearing and/or clarification
31	Order 771: Availability of E-Tag Information to FERC Staff (RM11-12)	Jan 22	EEL/NRECA, Open Access Tech. Int'l, NRECA (separately), and Southern Companies request clarification and/or rehearing of <i>Order 771</i>

32	Order 764-A: Variable Energy Resources (RM10-11)	Jan 22	Iberdrola and Powerex request clarification and/or rehearing of <i>Order 764-A</i>
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XIII. Natural Gas Proceedings			
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33	Natural Gas and Electric Market Coordination (AD12-12)	Jan 7	Nearly 30 parties file comments, including all RTO/ISOs but MISO, as well as the following New England Parties: MMWEC, National Grid, NEPGA (with EPSA), New England LDCs.
		Jan 23	Gas-electric focus group meeting; next meeting scheduled for Feb 26
34	NOI: Enhanced Natural Gas Market Transparency (RM13-1)	Jan 18	FERC extends date for filing comments to and including Feb 12; comments submitted by Coalition for Renewable Natural Gas
34	Enforcement Notice of Alleged Violations	Jan 18	Notice of alleged violations by Michigan Consolidated Gas Co. and Washington 10 Storage Corp.

XIV. State Proceedings & Federal Legislative Proceedings			
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No Developments to Report

XV. Federal Courts (Appeals of FERC Decisions)			
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36	Orders 1000 and 1000-A (12-1232 consolidated)	Jan 16	Intervenors and petitioners file joint unopposed motion to govern further proceedings
36	FCM Re-Design (12-1060 consolidated)	Jan 7 Jan 22	FERC files Respondent Brief NEPGA and CT PURA, HQ US, NICC, NSTAR, and NECPUC file Intervenor for Respondent Briefs
37	Orders 745 and 745-A (11-1486 consolidated)	Jan 15, 17	Parties file letters advising of additional authorities
38	Vermont Yankee Complaint (2nd Circuit, 12-707)	Jan 14	Oral argument held

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: January 25, 2013

RE: Status Report on Current Regional Wholesale Power and Transmission Arrangements Pending Before the Regulators, Legislatures, and Courts

We have summarized below the status through January 24, 2013 of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures. If you have questions, please contact us.¹

I. Complaints

- **NESCOE FCM Renewables Exemption Complaint (EL13-34)**

On December 28, 2012, NESCOE instituted a complaint in response to the ISO’s December 3 FCM compliance filing (*see* ER12-953 in Section III below) that proposes to implement buyer-side mitigation without an exemption for state-sponsored public policy resources. NESCOE asserts that the ISO’s proposed offer floor mitigation construct will likely exclude from the FCM new renewable resources developed pursuant to state statutes and regulations, and thereby result in customers being forced to purchase more capacity than is necessary for resource adequacy. In response, NESCOE proposes an alternative renewables exemption (the “Renewables Exemption Proposal”), which it claims will “establish a path for certain renewable resources to count towards the region’s resource adequacy goals while limiting the impact on the FCM clearing price.” NESCOE requests that the FERC (1) initiate a “paper hearing” proceeding pursuant to Section 206 of the FPA, (2) find the ISO’s proposed December 3 FCM Tariff revisions regarding buyer-side mitigation unjust and unreasonable; (3) find NESCOE’s Renewables Exemption Proposal just and reasonable; (4) amend the ISO’s proposed Tariff revisions to incorporate NESCOE’s Renewables Exemption Proposal; and (5) grant NESCOE’s motion for consolidation of ER12-953 with EL13-34.

Interventions were filed by NEPOOL, Capital Power, Con Ed, CT PURA, EPSA, Exelon, GDF Suez, LIPA, MA AG, NextEra, NICC, and PSEG. NU submitted comments supporting NESCOE’s request that the FERC initiate a paper hearing process to consider “the negative consequences that the ISO’s over-broad buyer-side mitigation proposal will have on state public policy initiatives and the unnecessary FCM costs that will be imposed on those customers the state programs are intended to benefit.” The ISO moved to dismiss the Complaint, opposed consolidation of this proceeding with ER12-953, and, if not dismissed, provided its answer opposing the Complaint. NEPGA, Dominion, and Exelon also asked the FERC to dismiss NESCOE’s Complaint and deny the motion to consolidate the proceedings. TransCanada also protested NESCOE’s Complaint, urging dismissal, and requesting the FERC, if inclined to consider a proposal exempting renewable resources from mitigation under a MOPR, to direct consideration of such proposals in the stakeholder process. A more detailed summary of the pleadings submitted in this proceeding and the FCM Redesign Compliance Filing proceeding is included with this Report. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dtroot@daypitney.com).

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, or the ISO New England Inc. Transmission, Markets and Services Tariff (the “ISO Tariff”).

- **Base ROE Complaint (2012) (EL13-33)**

As previously reported, Environment Northeast (“ENE”), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition (the “Complainants”) filed an additional complaint regarding the return on equity (“Base ROE”) used in calculating formula rates for transmission service in the ISO’s Open Access Transmission Tariff (“OATT”), seeking by this complaint to reduce the Base ROE from the still effective 11.14% to 8.7%. Complainants acknowledge that the Base ROE is already the subject of ongoing hearing procedures in EL11-66 (see below) but offer the following six reasons for the docketing of a further complaint addressing the Base ROE: (1) the FERC has held that the pendency of a Section 206 investigation into a public utility’s ROE does not immunize that ROE from investigation through a second Section 206 complaint proceeding; (2) promoting the Congressionally-directed symmetry of remedies as between FPA §§ 205 and 206 (i.e. a fair symmetry requires that Complainants be free to file a complaint requesting further rate decreases based on later common equity cost data without regard to the status of prior complaints since TOs could file at any time for an increase); (3) this complaint would ensure the FERC could set an ROE below the 9.2% requested in EL11-66 if the evidence leads there; (4) to reset the New England Transmission Owners (“TOs”)² zone of reasonableness through updated proxy group analysis; (5) greater assurance that their consent would be required to complete an ROE settlement; and (6) to establish a further 15-month refund period. To the extent the FERC does not summarily grant the reduction to 8.7%, Complainants ask that this matter be set for evidentiary hearing, and that it be consolidated for purposes of hearing and decision with EL11-66.

Interventions were filed by NEPOOL, AIM, CT AG, CT OCC, CT PURA, EMCOS,³ MA AG, MOPA, MPUC, TEC, and the VT DPS. On January 16, the TOs filed their answer, assert that the FERC should dismiss the Complaint as contrary to Section 206’s 15-month refund limitation and that the Complaint fails to show that the TOs’ Base ROE is unjust and unreasonable. Alternatively, the TOs argue that the 2011 Complaint (EL11-66) must now be decided solely on the basis of the New England TOs’ cost of capital during the locked in period of October 1, 2011 through December 31, 2012, since that is the only refund period to which the 2011 Complaint will apply. TOs argue that evidence relevant to their cost of capital for 2013 and beyond will only be relevant to this Complaint. MMWEC and NHEC filed joint comments supporting the complaint and urging the FERC to grant the relief requested therein and establish the earliest possible refund effective date. Substantively, MMWEC/NHEC provided additional evidence to counter TO arguments that they face substantial payment “risks” in connection either with the provision of transmission service or the construction of new facilities. The request to consolidate this proceeding with EL11-66, as well as the complaint, answer, and comments are pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202- 218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **HQ US FCA7 Complaint (EL13-25)**

On January 18, the FERC dismissed the H.Q. Energy Services (U.S.) Inc. (“HQUS”) FCA7 Complaint as moot.⁴ As previously reported, HQUS filed a Complaint asking the FERC to direct the ISO to revise the Tariff in time to permit HQUS’ import capacity wheeled through NYISO to participate in FCA7 should the FERC (i) determine that the ISO appropriately administered the Tariff and (ii) fail to grant a waiver of the Tariff requirements in these circumstances. In its concurrently issued *FCA7 Qualification Order*,⁵ the FERC granted HQUS a waiver of the FCA7 Qualification Determination Notice (“QDN”) deadline that allowed HQUS the opportunity to qualify for FCA7. HQ US stated that such a waiver would resolve its Complaint and, accordingly, the FERC dismissed HQ US’ Complaint.⁶ The FERC also noted that it would not prejudge, and HQUS could raise any concerns with, potential tariff revisions that might be raised through the stakeholder process pursuant to ISO’s stated intention to pursue

² TOs are Bangor Hydro, CMP, National Grid, New Hampshire Transmission (“NHT”), NSTAR, NUSCO on behalf of its operating company affiliates CL&P, WMECO, and PSNH, UI, Unitil and Fitchburg, and Vermont Transco.

³ EMCOS or the “Eastern Massachusetts Consumer-Owned Systems” are Braintree, Hingham, Reading, and Taunton.

⁴ *H.Q. Energy Services (U.S.), Inc. v. ISO New England Inc.*, 142 FERC ¶ 61,053 (2013) (“*HQUS FCA7 Order*”).

⁵ *ISO New England Inc. and Footprint Power LLC*, 142 FERC ¶ 61,051 (2013) (“*FCA7 Qualification Order*”).

⁶ *HQUS FCA7 Order* at P 13.

revisions and clarification of the FCA qualification process.⁷ If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Brookfield FCA7 Complaint (EL13-23)**

For similar reasons, the FERC also dismissed the Brookfield Energy Marketing LP (“Brookfield”) FCA7 Complaint as moot on January 18.⁸ As previously reported, Brookfield alleged that the ISO unjustly and unreasonably disqualified certain Brookfield capacity from participating in FCA7. Specifically, Brookfield alleged that the ISO disqualified Brookfield’s capacity based on the application of a deliverability standard for import resources that does not exist in the ISO Tariff. In a December 6, 2012 answer, the ISO indicated that, based on additional information received, it did not oppose the Brookfield waiver request so long as Brookfield provided its financial assurance deposit within five business days of an order granting the waiver. In a footnote to the order dismissing this Complaint, the FERC noted that Brookfield could raise any concerns with the applicable Tariff language during the stakeholder process that the ISO indicated in its answer that it intended to pursue to revise and clarify the FCA qualification process.⁹ If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Base ROE Complaint (2011) (EL11-66)**

The FERC issued on May 3, 2012 an order on the Base ROE Complaint, establishing hearing and settlement judge procedures due to identified issues of material fact that could not be resolved based upon the record before it and a finding that the issues would be more appropriately addressed in the hearing and settlement judge procedures ordered.¹⁰ The FERC set the refund effective date at October 1, 2011, as requested. As previously reported, a number of State, consumer, and consumer advocate parties (the “Complainants”)¹¹ filed on September 30, 2011 a complaint against the TOs seeking a FERC order reducing the 11.14 percent Base ROE used in calculating formula rates for transmission service in the ISO’s OATT to 9.2 percent. Complainants stated that “due to changes in the capital markets since the *Bangor Hydro* proceeding,¹² the [Base ROE] is no longer just and reasonable.” Settlement judge procedures before Judge Judith A. Dowd were ultimately unsuccessful. Chief Judge Wagner issued an order on August 2, 2012 terminating those procedures and designating ALJ Michael J. Cianci as the proceeding’s Trial Judge. The current procedural schedule in this case calls for the issuance of an initial decision by September 10, 2013. If you have any questions concerning this matter, please contact Joe Fagan (202- 218-3901; jfagan@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁷ *Id.* at n. 13.

⁸ *Brookfield Energy Marketing LP v. ISO New England Inc.*, 142 FERC ¶ 61,052 (2013).

⁹ *Id.* at n. 10.

¹⁰ *Martha Coakley, Mass. Att’y Gen et al.*, 139 FERC ¶ 61,090 (2012) (“*Base ROE Complaint Order*”). The *Base ROE Complaint Order* was not challenged and is final.

¹¹ Complainants are Martha Coakley, Mass. Att’y Gen. (“MA AG”), the Conn. Public Utilities Regulatory Authority (“CT PURA”), Mass. Dep’t of Pub. Utils. (“MA DPU”), New Hampshire Pub. Utils. Comm. (“NH PUC”), George Jepsen, Conn. Att’y Gen. (“CT AG”), CT OCC, Maine Off. of the Pub. Advocate (“ME OPA”), New Hampshire Off. of the Consumer Advocate, (“NH OCA”), Rhode Island Div. of Pub. Utils. and Carriers (“RI PUC”), Vermont Dep’t of Pub. Srvc (“VT DPS”), MMWEC, AIM, TEC, Power Options, and the IECG.

¹² See *Bangor Hydro-Elec. Co. et al.*, 117 FERC ¶ 61,129 (2006) (“*Opinion 489*”) at PP 79-81, *order on reh’g, Bangor Hydro-Elec. Co. et al.*, 122 FERC ¶ 61,265 (2008) at PP 30-34.

II. Rate, ICR, FCA, Cost Recovery Filings

- **ICR-Related Values and HQICCs - 2013/2014 ARA3, 2014/2015 ARA2, and 2015/2016 ARA1 (ER13-495)**

On January 17, the FERC accepted the jointly filed materials that identify the Installed Capacity Requirement (“ICR”), Local Sourcing Requirements (“LSR”), Maximum Capacity Limits (“MCL”) (collectively, the “ICR-Related Values”) and Hydro Quebec Interconnection Capability Credits (“HQICCs”) for the third annual reconfiguration auction (“ARA”) for the 2013/2014 Capability Year to be held March 1, 2013, the second ARA for the 2014/2015 Capability Year to be held in August 2013, and the first ARA for the 2015/2016 Capability Year to be held in June 2013. The ICR-Related Values and HQICCs were accepted effective January 30, 2013, as requested. Unless the January 17 order is challenged, this proceeding will be concluded. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA7 Qualification Informational Filing (ER13-335)**

On January 18, 2013, the FERC accepted the ISO’s informational filing (the “FCA7 Informational Filing”) regarding resource qualification for FCA7, effective January 18, 2013.¹³ The *FCA7 Qualification Order* resolved the protests filed by HQ US and Brookfield by granting waiver of the QDN deadline to allow the ISO to qualify Brookfield, HQUS, and all similarly-situated denied new import resources west of the Central-East Interface to participate in FCA7.¹⁴ Accordingly, as noted earlier in this report, the separate complaints filed by HQ US and Brookfield were dismissed as moot (*see* Section I above). The *FCA7 Qualification Order* also resolved the protest and request for waiver submitted by Footprint Power in this proceeding and as a stand-alone request (so that its new project could participate in FCA7 at a full capacity of 674 MW, rather than the 570 MWs qualified by the ISO (*see also* Docket No. ER13-468 in Section III below). In granting Footprint’s waiver request, the FERC found that the request met its waiver criteria,¹⁵ and disagreed with National Grid that the waiver could harm third parties.¹⁶ Unless the *FCA7 Qualification Order* is challenged, with any challenges due on or before February 19, 2013, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **2013 Administrative Costs Budget (ER13-185)**

As previously reported, the FERC accepted on December 31, 2012 the proposed Tariff revisions for the recovery of the ISO’s 2013 administrative costs (the “2013 Revenue Requirement”), but suspended them for a nominal period to become effective January 1, 2013, subject to refund, and established hearing and settlement judge procedures.¹⁷ In setting the 2013 Revenue Requirement for hearing, the FERC encouraged the parties to make every effort to settle their disputes before the hearing procedures are commenced, and indicated that the hearing will be held in abeyance pending the outcome of settlement judge procedures. The FERC rejected as beyond the scope of the proceeding the Joint New England Agencies’ proposed reforms to the budget process. However, the FERC stated its expectation that the ISO would fulfill its commitments to schedule a meeting with all interested state agencies on the budgets at least 60 days in advance of its annual budget filings and to include state feedback as part of its future budget filings.¹⁸ The FERC also noted that the ISO may submit its capital and administrative budgets together if it so chooses.

¹³ *FCA7 Qualification Order*. HQ and Brookfield were directed to promptly submit their financial assurance deposits on or before January 28, 2013 within five business days of the date of this order, as requested by the ISO (P 21).

¹⁴ *Id.* at P 19.

¹⁵ The FERC will grant waivers of Tariff requirements where (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) granting waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties. *Id.* at P 20.

¹⁶ *Id.* at PP 35-38.

¹⁷ *ISO New England Inc.*, 141 FERC ¶ 61,272 (2012) (“2013 ISO Budget Order”).

¹⁸ *Id.* at P 33.

On January 4, 2012, Chief Judge Wagner designated ALJ Michael J. Cianci, Jr. as the Settlement Judge for this proceeding. A first settlement conference was held on January 24, 2013. On January 25, Judge Cianci issued a settlement status report in which he reported that the parties agreed to use best efforts to exchange information and agreed upon certain target dates, including a telephonic technical conference to be held on February 13, 2013 and to meet for a second formal settlement conference on March 4, 2013. He added that the New England Agencies would use best efforts to submit a counter-offer to the ISO by February 15, 2013 and the ISO its best efforts to respond by February 25, 2013. Accordingly, Judge Cianci recommended that settlement procedures be continued. If there are any questions on this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **FCA5 Results Filing (ER11-3891)**

Subject to final FERC review, this proceeding has now been terminated.¹⁹ As previously reported, the FERC accepted the results of the fifth FCA (“FCA5”), with the exception of Entergy’s dynamic de-list bid for Vermont Yankee (“VY”) that had been rejected for reliability reasons, which was set for hearing and settlement judge procedures.²⁰ On September 14, 2012, Entergy Nuclear Power Marketing, Entergy Nuclear Vermont Yankee, the ISO, the MA AG, and the VT DPS (collectively, the “Settling Parties”) submitted a Settlement Agreement to resolve the open issues set for hearing. The Settlement Agreement addressed how VY would be treated in FCA5 (and FCA3) under specifically identified scenarios, including two where VY would be relieved of its Capacity Supply Obligation (“CSO”) for the 2014-15 Capacity Commitment Period (“CCP”) and not subject to capacity replacement costs if it ceases operations in identified instances where it must comply with requirements of state or federal law. NEPOOL and NRG opposed certain aspects of the Settlement Agreement. However, on November 15, 2012, the ISO notified Entergy that the VY FCA5 Dynamic De-list Bid request had, following additional study and analysis, been accepted and VY de-listed. In light of that determination, the VT DPS, on December 31, 2012, requested that the FERC dismiss the Settlement Agreement and terminate the hearing and Settlement Judge procedures, a request NEPOOL supported. As noted above, subject to final FERC review, this proceeding has been concluded.

- **FCA1 Results Remand Proceeding (ER08-633)**

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order²¹ that PSEG’s May 2010 petition for review be granted, remanding the FERC’s orders in this proceeding²² for further consideration. In particular, the FERC must (i) determine whether PSEG’s position (that it should receive the full (unprorated) floor price for all its resources that it could not prorate) would be an appropriate way to interpret the then-existing Market Rules and, if not, (ii) respond to PSEG’s objections that any contrary result would result in “undue discrimination” and would be “inconsistent with the fundamental policy goals” of FCM. On October 15, 2012, PSEG filed a motion requesting that the FERC issue an order on remand directing the ISO to pay PSEG the full FCA floor price without further delay (for PSEG, the difference totaling \$2.8 million plus interest). Since the last report, the ISO filed on October 31 an answer to PSEG’s October 15 motion. On November 1, 2012, Connecticut Generators²³ submitted comments supporting PSEG’s request and a few of the Connecticut Generators moved to intervene out-of-time. This matter remains pending before the FERC.

¹⁹ *Order of Chief Judge Dismissing Offer of Settlement, Terminating Settlement Judge Procedures, and Terminating Proceeding Subject to Final Commission Review*, Docket No. ER11-3891 (Jan. 16, 2013).

²⁰ *ISO New England Inc.*, 137 FERC ¶ 61,056 (2011).

²¹ *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

²² *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008); *reh’g denied*, 130 FERC ¶ 61,235 (2010), *remanded*, *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

²³ “Connecticut Generators” are CP Energy Marketing (US) Inc. and Bridgeport Energy LLC (collectively, “Capital Power”); Dominion Resources Services (“Dominion”); Milford Power Co. and EquiPower Resources Management (collectively, “EquiPower”); NRG Power Marketing, Conn. Jet Power, Devon Power, Middletown Power, Montville Power, Norwalk Power, and Somerset Power (collectively, “NRG”); and PPL EnergyPlus.

- **ISO Issuance of Securities: \$40 Million for Establishment of New Back Up Control Center (ES12-47)**

On January 11, the ISO filed a “Report of Securities” as required under the FERC’s regulations and in connection with the FERC’s September 6, 2012 order authorizing the ISO issue up to \$40 million in notes in connection with loans from the Connecticut Development Authority and the Connecticut Department of Economic and Community Development to fund the establishment of the new Back-Up Control Center to be located in Windsor, Connecticut. The report indicates that the face value of the principal amount was \$36 million. This report will not be noticed for public comment. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

III. Market Rule Changes, Interpretations and Waiver Requests

- **IMM Information Sharing Revisions (ER13-750)**

On January 11, the ISO and NEPOOL jointly filed changes to the Information Policy and Appendix A to Market Rule 1 to permit the sharing of confidential information with other ISO/RTOs and their market monitors when the exchange of information is necessary for an investigation. A March 13, 2013 effective date was requested. The changes were supported by the Participants Committee by way of the October 3, 2012 Consent Agenda. Comments on this filing, if any, are due on or before February 1, 2013. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **CSO Termination: Concord Steam (ER13-735)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on January 9 to terminate a CSO held by Project Sponsor Concord Steam Corporation (“Concord Steam”) for Resource 14666. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Concord Steam with respect to the CSO. NEPOOL submitted a motion to intervene on January 11, 2013. Comments on this filing are due on or before January 30. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Termination: MATEP (ER13-729)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on January 8 to terminate a CSO held by Project Sponsor MATPE LLC for Resource 37090. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by MATEP with respect to the CSO. NEPOOL submitted a motion to intervene on January 11, 2013. Comments on this filing are due on or before January 29. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Static De-List Bid Changes (ER13-612)**

On January 22, 2013, the FERC accepted changes jointly filed by the ISO and NEPOOL to the FCM Static De-List Bid provisions on December 21, 2012. Specifically, the changes provide Lead Market Participants with additional flexibility to adjust Static De-List Bids after submission, while preserving the ability of a Lead Market Participant to elect, in the case of Permanent De-List Bids and Export Bids, to have the ISO-determined bid entered into the FCA no later than 15 days after the submission of the informational filing. The changes were accepted February 19, 2013, as requested. Unless the January 22 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0533; pmgerity@daypitney.com).

- **CSO Bilateral Transaction and Reconfiguration Auction Enhancements (ER13-585)**

As previously reported, the ISO and NEPOOL jointly filed, on December 19, 2012, changes to the FCM rules related to CSO Bilaterals and reconfiguration auctions. Specifically, the rule changes will (i) allow Market Participants to submit CSO Bilaterals before the current submission windows open; (ii) move the second annual reconfiguration auction to August (rather than May) each year; and (iii) permit Real-Time Emergency Generation

(“RTEG”) Resources to shed their CSOs in reconfiguration auctions, with effective dates of September 1, 2013 (upon two weeks’ prior notice), April 1, 2013, and April 19, 2013, requested, respectively. The changes were supported by the Participants Committee by way of the November 2, 2012 Consent Agenda. Doc-less interventions were filed by Exelon, NRG, and NU, but no substantive comments on this filing were filed on or before the January 9, 2013 comment date. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Corrections to ISO-NE eTariff Section III.A.15.2 (ER13-510)**

On January 9, the FERC accepted a correction to restore to Section 15.2 of Market Rule 1 Appendix A the last clause that was inadvertently dropped when that Section was moved from Section 10.2 and clause (iii) added in a September 15, 2011 filing in Docket No. ER11-4540. As previously reported, the ISO re-submitted on December 4, 2012, a number of corrected eTariff Records to correct each version of Appendix A filed since that time. Unless the January 9 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Footprint Power Request for Limited Waiver of New Capacity Qualification Deadlines (ER13-468)**

In a January 18, 2013 order, the FERC granted the limited waiver of the New Capacity Qualification Deadlines for FCA7 requested by Footprint Power (“Footprint”).²⁴ As previously reported, Footprint requested the waiver so that its new quick-start, gas-fired combined cycle facility in the NEMA/Boston load zone can participate in FCA7 at a FCA Qualified Capacity of 674 MW, rather than the 570 MW identified in its QDN. Subsequent technical analysis had confirmed that needed transmission upgrades could be in service by June 2016 (information unavailable at the time of qualification) and the ISO indicated that it did not have an objection to this waiver request. National Grid submitted comments urging the FERC to consider the implications of Footprint seeking an order from the MA DPU for an out-of-market long-term contract for capacity, while at the same time pursuing its waiver request in this proceeding. In particular, National Grid noted its concerns (i) that, based on comments submitted in a MA DPU proceeding, the possibility that Footprint might simply walk away from an FCM obligation if an out-of-market contract for capacity is not ordered by the MDPU; (ii) that Footprint’s approach could end up either double-selling capacity at an unjust and unreasonable rate, or undercutting FCM price signals through an out-of-market subsidy; and (iii) the seriousness of Footprint’s allegations regarding the failure of FCM. In granting the waiver, the FERC found that Footprint’s requested waiver was of limited scope and would remedy a concrete problem, and the underlying error was made in good faith.²⁵ In addition, the FERC disagreed with National Grid that the waiver could harm third parties.²⁶ Unless the *FCA7 Qualification Order* is challenged, with any challenges due on or before February 19, 2013, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **TMNSR Procurement Revision (ER13-465)**

As previously reported, the ISO and NEPOOL jointly filed changes to the procurement of Ten-Minute Non-Spinning Reserve (“TMNSR”) in the Forward Reserve Market (the “TMNSR Procurement Revision”) on November 27, 2012. The Revision permits the procurement of additional TMNSR if system conditions forecasted for the Forward Reserve Procurement Period indicate an amount of TMNSR equal to 50% of the forecasted largest first contingency would be insufficient, on its own, to meet Real-Time Operating Reserve requirements. A March 1, 2013 effective date was requested. The Revision was supported by the Participants Committee by way of the November 2 Consent Agenda. Doc-less interventions were filed by Dominion, Exelon, and NU. No comments on the Revision were filed, which is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

²⁴ *FCA7 Qualification Order*.

²⁵ *Id.* at P 34.

²⁶ *Id.* at PP 35-38.

- **Information Policy Pipeline Information-Sharing Changes (ER13-356)**

On January 23, 2013, the FERC conditionally accepted the changes proposed by the ISO in this proceeding, subject to a 30-day compliance filing in which the ISO is required to reflect additional limitations on the information sharing process, and effective only for the January 24, 2013 through April 30, 2013 period.²⁷

Initial Filing. On December 7, 2012, the FERC accepted, but suspended for 5 months (to become effective June 14, 2013) the revisions to the Information Policy proposed by the ISO and filed on November 13, 2012, to allow the ISO to disclose, pursuant to a nondisclosure agreement (“NDA”) between the ISO and a pipeline company, confidential forecast and Real-Time output information concerning natural gas-fueled generation from resources located within the New England Control Area to operating personnel of the interstate natural gas pipeline companies that serve those resources (the “ISO Changes”).²⁸ As previously reported, although the ISO Changes were supported by the Participants Committee at its November 9 special meeting with an 81.72% vote in favor, an Alternative NDA was also supported by the Participants Committee at the November 9 meeting, by a vote of 95.73% in favor, and was filed by NEPOOL on November 23, 2012. NEPOOL supported the ISO’s stated goal to allow the ISO to provide interstate pipeline operators with additional information concerning specific resources for the purpose of maintaining reliability, but asked the FERC to consider the additional protections for affected generators that the Alternative NDA provides, but only so long as the FERC confirms that the ISO and the pipelines are bound to the Alternative NDA. In accepting the changes, the FERC stated that the ISO Changes had “not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” and set the ISO Changes for accelerated settlement judge procedures.²⁹ The ISO’s request for interim action was dismissed as moot.

Settlement Proceedings. As previously reported, settlement proceedings established by the *December 7 Order* were terminated on December 14, 2012.

Requests for Rehearing and Post-Settlement Developments. As previously reported, the ISO requested expedited rehearing and clarification of the *December 7 Order* on December 19, 2012, asking the FERC (i) to find the ISO Changes just and reasonable or, in the alternative, to reduce the suspension of those tariff changes to one day and replace the references to “refund” with a reference to “further orders in this proceeding”; and (ii) to clarify that the pipelines may engage in information-sharing without violating the Natural Gas Act and other applicable laws and regulations. In a response to the ISO’s request, NEPGA recommended that the FERC allow sharing of confidential information per the NDA, subject to the following conditions: (1) allowing the NDA to go into effect for the winter period, without prejudice to parties’ future litigation positions; (2) requiring the ISO to notify Market Participants when their confidential information is shared and a brief summary of the information disclosed; and (3) adopting limits on the sharing of information with pipelines to periods when such sharing is operationally necessary. On January 2, 2013 the New England Pipelines submitted a pleading agreeing with the ISO’s request for expedited rehearing and clarification of the *December 7 Order* and, in alternatively, if the FERC does not grant the rehearing and clarification proposed by the ISO, supporting the interim solution proposed by NEPGA on December 26. On January 14, 2013, the FERC issued a tolling order affording it additional time to consider the ISO’s request for rehearing and clarification.

Order on Rehearing. Largely consistent with NEPGA’s proposed interim solution, the FERC, on January 23, 2013, conditionally accepted for the January 24, 2013 through April 30, 2013 period the changes proposed by the ISO, subject to a 30-day compliance filing in which the ISO is required to reflect additional limitations on the information sharing process. In accepting the changes, the FERC stated that “in light of the unique facts and circumstances before us, including ISO-NE’s statements concerning current LNG supplies to New England, we will accept the [ISO Changes] on an interim basis Our action [] is intended to address immediate reliability-related concerns for this winter, while providing further opportunity for review of the Information Policy and the NDA

²⁷ *ISO New England Inc.*, 142 FERC ¶ 61,058 (2013) (“*Pipeline Information Sharing Changes Rehearing Order*”).

²⁸ *ISO New England Inc.*, 141 FERC ¶ 61,196 (2012) (“*December 7 Order*”), *order on Tariff Revisions and denying reh’g*, 142 FERC ¶ 61,058 (2013).

²⁹ *Id.* at P 31.

accepted on a temporary basis here.”³⁰ Consistent with the ISO’s statements in its request for rehearing, the FERC required the ISO to submit “revisions reflecting additional limitations on the information sharing process. Specifically, ISO-NE should specify in the Information Policy that it will share information regarding specific generators only with the pipeline serving that generator directly, or serving the Local Distribution Company that serves that generator, and only when it is operationally necessary, as determined at ISO-NE staff’s discretion, to ensure reliability. The Information Policy must also specify that ISO-NE will provide a summary of any disclosed confidential information to the affected market participant within 48 hours following disclosure.”³¹ The revisions must be submitted on or before February 22, 2013. The FERC reiterated its “desire for the parties to continue to make good faith efforts to resolve their differences with respect to the NDA and make a future filing that provides a more permanent means to promote information sharing,” highlighting also that its February 13, 2013 technical conference “will address, among other things, information sharing and confidentiality issues” on Natural Gas and Electric Market Coordination (see Section XIII below). Challenges, if any, to the *Pipeline Information Sharing Changes Rehearing Order* will be due on or before February 22, 2013. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Joe Fagan (202-218-3901; jfagan@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Generator Audit Revisions (ER13-323)**

On January 9, the FERC conditionally accepted changes jointly filed by the ISO and NEPOOL that revise the auditing requirements and procedures for generators participating in the New England Markets (“Audit Revisions”).³² In accepting the revisions, the FERC found “that the Generator Audit Revisions will provide a clearer understanding of the physical capability of generation resources and thereby facilitate resource commitment and real-time operational decisions. The Generator Audit Revisions will also help verify that generators actually have the capability to meet, and are meeting, capacity commitments for which they receive compensation.” The revisions will become effective June 1, 2013, as requested, with two weeks’ notice of the actual effective date to be provided by the ISO to the FERC, and subject to submission of a compliance filing described below. The FERC rejected a limited protest filed by NRG, finding that the ISO’s proposal to allocate costs of both participant-initiated audits and ISO-initiated audits be allocated to Network Load was reasonable (and therefore not necessary to consider NRG’s proposal).³³ With respect to NRG’s request that the FERC confirm that a Qualifying Audit conducted in 2010/2011 would satisfy the “once in the previous three years” requirement, the FERC indicated that “a generator could use its 2010/2011 winter Seasonal Claimed Capability Audit to satisfy the requirements of a winter Seasonal Claimed Capability Audit for the 2013/2014 Capability Demonstration Year ... However, that generator would still need to perform a winter audit during the 2013/2014 Capability Demonstration Year in order to comply with the requirement for the 2014/2015 Capability Demonstration Year.”³⁴ “In the interest of clarity”, the FERC directed a 30-day compliance filing (which would be due on or before February 8, “to define and consistently refer to “Capability Demonstration Year,” not “Capacity Demonstration Year,” in its Tariff provisions.”³⁵ Unless the *Gen Audit Revisions Order* is challenged, with any challenges due on or before February 8, 2013, this matter will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Conforming Changes Reflecting PRD Full Integration (ER12-1627)**

On January 14, 2013, the FERC accepted in part, and rejected in part, the ISO’s proposed changes, filed April 26, 2012, to make the FCM Market Rules consistent with the price-responsive demand (“PRD”) full integration rules

³⁰ *Pipeline Information Sharing Changes Rehearing Order* at P 19.

³¹ *Id.* at P 20.

³² *ISO New England Inc. and New England Power Pool*, 142 FERC ¶ 61,024 (2012) (“*Gen Audit Revisions Order*”).

³³ *Id.* at P 36.

³⁴ *Id.* at P 34.

³⁵ *Id.* at P 37. The one word change to “Capability” required by the *Gen Audit Revisions Order* is to the consolidated definitions section in Section I.2.2 of the Tariff. Because “Capability”, rather than “Capacity” was presented throughout the stakeholder process, the required change is non-substantive and was approved as such by the Chairs and Vice-Chairs of the Markets and Reliability Committees.

(currently scheduled to become effective on June 1, 2017).³⁶ The FERC also accepted the proposed revisions to Appendix E of Market Rule 1 to become effective June 1, 2017, as requested, and granted the ISO's request to delay implementation of the Fully Integrated rules to June 1, 2017. As previously reported, the conforming changes were considered, but not supported, by the Participants Committee at its February 10, 2012 meeting. In response to the ISO's April 26, 2012 filing, protests were filed by DR Supporters,³⁷ IECG, and Verso. DR Supporters protested the must offer requirement, including the "absence of any written criteria or rules regarding what constitutes an appropriate offer," and requested that if the rules are accepted, the ISO be required to articulate the mechanisms by which resources "can avoid dispatch with sufficient certainty to maintain the baseline integrity" required under the Market Rules. IECG's limited protests addressed issues related to the reclassification of DR Resources as generation, while Verso challenged the ISO's proposal to prevent demand side resources from receiving capacity payments above their level of purchases. In addition, NECPUC requested that approval of the conforming changes be conditioned upon a requirement that the ISO explore in the stakeholder process "the development of standards or additional rules that provide sufficient definition to demand resources on what qualifies as competitive offering behavior."

As noted above, the FERC accepted in part, and rejected in part, the proposed revisions. The FERC found just and reasonable the "must-offer requirement for demand response resources with a capacity supply obligation in ISO-NE's FCM,"³⁸ agreed that "the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties,"³⁹ and found the "proposal will be beneficial to both demand response providers and wholesale electricity customers".⁴⁰ However, the FERC rejected the ISO's proposal regarding net supply (contained in sections III.E.7.3 and III.13.7.1.5.2), without prejudice to a future filing revising Tariff language to clarify its rules regarding demand response resources that provide capacity through both demand reductions and behind-the-meter generation.⁴¹ Noting its concerns with other aspects of the filing, the FERC conditioned its acceptance of certain changes subject to an explanation as to:

- ▶ how the Internal Market Monitor will monitor and evaluate offers by demand response capacity resources;⁴²
- ▶ whether the "3 of last 10 days" baseline refreshment is still a viable element of its methodology to ensure accurate baselines in light of the requirement that demand resources with a Capacity Supply Obligation offer into the energy market in all hours and thus could be dispatched more frequently than under the current FCM market rules⁴³ (noting its concern about the interaction between the must-offer requirement and the need for demand response resources to refresh their baselines);⁴⁴
- ▶ why the removal of using transmission losses in its calculation of demand resource capacity values is justified;⁴⁵
- ▶ whether, and if so how, the ISO it will otherwise adjust the total capacity requirement to reflect avoided transmission losses when procuring capacity;⁴⁶ and

³⁶ *ISO New England Inc.*, 142 FERC ¶61,027 (2012) ("January 14 Order").

³⁷ "DR Supporters" are EnerNOC, Comverge, Viridity Energy, NEPOOL Industrial Customer Coalition ("NICC") and Wal-Mart Stores.

³⁸ *Id.* at P 27.

³⁹ *Id.* at P 28.

⁴⁰ *Id.* at P 29.

⁴¹ *Id.* at PP 44-46 .

⁴² *Id.* at P 36.

⁴³ *Id.*

⁴⁴ *Id.* at P 35.

⁴⁵ *Id.* at P 57.

⁴⁶ *Id.*

- ▶ how considering the duration of a shortage event when evaluating the performance of demand response resources but not generation resources provides for comparable treatment.⁴⁷

The ISO was directed to submit a compliance filing providing these explanations and addressing the changes rejected within 60 days of the date of the order, or on or before March 14, 2013. Any challenges to the *January 14 Order* are due on or before February 13, 2013. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Redesign Compliance Filing: FCA8 Revisions (ER12-953 et al.)**

On December 3, 2012, the ISO and the PTO AC filed revisions to the FCM and FCM-related rules in the Tariff (“FCA8 Revisions”) in response to a number of FERC orders,⁴⁸ including: (i) implementation of a buyer-side offer-floor mitigation mechanism, (ii) reduction of the Dynamic De-List Bid Threshold to \$1.00/kW-month, (iii) elimination of the remaining uses of the Cost of New Entry (“CONE”), and (iv) the complete removal of the FCA administrative price floor. In addition, the ISO asked the FERC to retain, for FCA8 and beyond, the four capacity zones to be used in FCA7, pending further analysis of zonal issues by the ISO and stakeholders in a process that the ISO indicated would begin in the second quarter of 2013. All of the changes were requested to become effective for FCA8, with the Financial Assurance Policy-related changes to become effective February 26, 2013 and the remainder of the changes to become effective February 12, 2013. The package of FCA8 Revisions filed was considered but not supported by the Participants Committee at its November 3, 2012 meeting.

Interventions were filed by: AWEA, CT OCC, Danvers (out-of-time), EMI, EPSA, GDF Suez, HQUS, MPUC, National Grid, NICC, PPL, and RENEW. Comments and protests were filed by: NEPOOL, APPA/NPPA/NRECA, Capital Power, CLF, CT AG, CT OCC, CT PURA, EMCOS, EnerNOC, EPSA, Exelon, Massachusetts,⁴⁹ MA AG, MMWEC and NHEC, NEPGA, NESCOE, NRG, NU, PSEG, and TransCanada. A detailed summary of the comments and protests was included with the January 2, 2013 report and is posted with the materials for the January 4, 2013 meeting. On January 14, answers to the protests and comments were submitted by NEPOOL, the ISO, HQ US, and NEPGA. A more detailed summary of the pleadings submitted in this proceeding and the related NESCOE FCM Complaint proceeding is included with this Report. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

- **Tie Benefits Calculation and Allocation (ER08-41)**

The ISO’s January 14, 2010 update in this proceeding remains pending. As previously reported, the ISO filed, on January 14, 2010, an update to the joint ISO/NEPOOL November 26, 2008 report⁵⁰ regarding the plan to study and develop proposals to resolve issues related to the modeling of internal transmission constraints and tie benefits associated with individual lines. In the January 14, 2010 Update, the ISO proposed to comprehensively review and attempt to resolve during 2010 all outstanding and identified tie benefits issues (including the so-called “Reserved Issues”, issues raised during 2009 stakeholder meetings, and tie benefits-related issues raised in Docket No. ER10-438) through a NEPOOL stakeholder process and to make a filing with the FERC on or before a date that will allow any related Market Rule or Tariff changes to be effective in time for FCA5 (covering the 2014/2015 Capacity Commitment Period). At its February 5, 2010 meeting, the Participants Committee considered and voted on the ISO’s January 14 proposal. The ISO’s Proposal received 43.25% support from the Participants Committee. On

⁴⁷ *Id.* at P 58.

⁴⁸ See *ISO New England Inc. and New England Power Pool Participants Comm.*, 135 FERC ¶ 61,029 (2011) (“April 13, 2011 Order”); *ISO New England Inc. and New England Power Pool Participants Comm.*, 138 FERC ¶ 61,027 (2012) (“January 19, 2012 Order”).

⁴⁹ “Massachusetts” is the MA DPU and MA DOER.

⁵⁰ The 2008 Tie Benefits Report indicated that the stakeholder process would begin early during the second quarter of 2009 and would be completed in time for any proposed Market Rule 1 or other Tariff changes to be filed with the FERC before February 1, 2010. See *ISO New England Inc. and New England Power Pool*, 126 FERC ¶ 61,180 (2009).

February 8, 2010, NEPOOL filed comments reflecting the results of that consideration and vote. NESCOE submitted a motion to intervene out-of-time and comments on February 12, 2010. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Order 1000 Compliance Filing (ER13-193; ER13-196)**

As previously reported, the ISO and PTO AC (“Filing Parties”) submitted an Order 1000 compliance filing for the region on October 26, 2012. The filing consisted of a “Primary Filing” package (ER13-193) and a “Contingent Filing” package (ER13-196) for reliability and market efficiency upgrades. The Primary Filing consists of changes to Attachment K that add a public policy transmission planning process to the existing planning process. Under the Primary Filing, the ISO and the PTOs also seek to retain the PTO exclusive right to build and own reliability and market efficiency transmission upgrades contained in the Regional System Plan (“RSP”).

The Contingent Filing, which would only go into effect if the FERC first finds pursuant to a *Mobile-Sierra* analysis that the PTO exclusive right to build and own transmission is contrary to the public interest, consists of revisions that would implement competitive processes for developing, building and owning reliability and market efficiency transmission in the RSP. The Contingent Filing provides for an exception to the competitive, project-based reliability process for identified reliability needs where the year of need is more than five years from the completion of the relevant needs assessment study. Under the exception, the PTO's would retain their exclusive right. Aside from the exclusive PTO right to develop, build and own transmission, the Primary and Contingent Filings contain the same features, including the process for public policy transmission upgrades.

The Filing Parties requested an effective date that is 60 days after a FERC order accepting the filing. The ISO/PTO AC Compliance Filing was supported by only 17.1% of the Participants Committee at its October 3 meeting. An amended package of compliance changes was, however, supported by the Participants Committee and was submitted on an informational basis by NEPOOL on November 16, 2012 (the “NEPOOL Proposal”). Although similar in many respects, the key difference between the NEPOOL Proposal and Filing Parties’ Proposal concerns the competitive process for the development, building and owning of reliability and market efficiency transmission upgrades identified as needed in the RSP. The NEPOOL Proposal provides for competitive processes for transmission development, with a narrow exception for reliability upgrades required to be implemented to address an urgent need that must be addressed within three years (subject to certain other conditions). The Filing Parties’ Proposal seeks to retain the exclusive right on the part of the incumbent PTOs to build and own reliability and market efficiency transmission upgrades and Proposal provides for competitive processes for transmission development reliability and market efficiency upgrades *only* if the FERC first determines that the PTOs’ exclusive right is contrary to the public interest. NEPOOL urged the FERC to take into the results of the stakeholder process as it considers whether the Filing Parties’ or the NEPOOL Proposal is more compliant with Order 1000 and consistent with the public interest. NEPOOL asked that FERC, if it agrees that the NEPOOL Proposal is more compliant with Order 1000 and more consistent with the public interest, to direct the ISO and PTOs to revise their Order 1000 compliance filing to reflect the NEPOOL Proposal.

In addition, interventions were filed by CT OCC, Exelon, Iberdrola Renewables, NH OCA, NH PUC, NRECA, NRG, PowerOptions, Transource Energy, and VT PSB. Other comments and protests were filed by AWEA and RENEW, Belmont, CLF, CT DEEP, EMCOS, LS Power Transmission, MMWEC and NHEC, MA AG, MPUC, NESCOE, NHT, Organizations,⁵¹ PSEG, Southern New England States.⁵² On January 8, NESCOE and “Five NE States”⁵³ responded to various comments and protests submitted in this proceeding. On January 10, RENEW

⁵¹ “Organizations” are Environment Northeast, the National Consumer Law Center (“NCLC”), the Natural Resources Defense Council (“NRDC”), and the Sustainable FERC Project.

⁵² “Southern New England States” are the MA DPU, RI PUC, and CT PURA.

⁵³ “Five NE States” are the Southern New England States (*cf* note 27 *supra*) and CT DEEP, NHPUC, VT PSB, and the Vermont Public Service Department (“VPSD”).

withdrew its intervention in this proceeding. On January 17 and 18, the PTA ac and the ISO, respectively, filed answers to the NEPOOL and other comments/protests in this proceeding. A NEPOOL counsel memo summarizing those answers in detail was circulated to the Transmission Committee on January 24, 2013. Anyone who did not receive a copy and would like one can request that one be sent by contacting Pat Gerity (860-275-0533; pmgerity@daypitney.com). Otherwise, this matter, including the Filing Parties motion to consolidate the proceedings and the TOs⁵⁴ request that the FERC set that date for answers and reply comments 45 days from the date comments are filed, remain pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NPC-Supported Revisions to Attachment K and MR1 – Reliability Review of Rejected De-List Bids (ER12-1914)**

On January 18, 2013, the FERC accepted the ISO's November 26, 2012 compliance filing in this proceeding. As previously reported, the FERC rejected the ISO's first (August 30) compliance filing in this proceeding, and directed a new compliance filing be submitted on or before November 26, 2012⁵⁵ to satisfy its condition to the acceptance of the revised package of changes to the regional planning process set forth in Attachment K to the ISO OATT and to Section 13.2.5.2.5(g) of Market Rule 1⁵⁶ that the ISO Tariff sheets that expressly reflect FERC's understanding that the reference in Section 4.1(c)(iv) of the Attachment K Revisions to "prior to the start of each new capacity qualification period" means the "show of interest (start)" date included in the FCM Manual's "Master Forward Capacity Market Schedule."⁵⁷ Unless the January 18 order is challenged, this proceeding will be concluded.⁵⁸ If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Capability Resource Ratings (ER11-2216)**

Action on MMWEC's request for rehearing of the FERC's January 28, 2011 *Capability Clarifications Order*⁵⁹ continues to be deferred. As previously reported, the revisions to Tariff accepted by the FERC were described as clarifying the controlling order/hierarchy of documents relied upon by the ISO to establish the energy and capacity output levels for certain Existing Generating Capacity Resources ("Capability Clarifications"). The filing parties (the ISO and the PTO AC) asserted that the Capability Clarifications addressed what the FERC found ambiguous in a July 2010 order in EL10-58,⁶⁰ namely, the controlling order of approval documents and data used by the ISO to establish the CNR Capability of an existing generating resource. The Capability Clarifications were considered by the Participants Committee at its October 18, 2010 meeting, but ultimately not supported. In accepting the Capability Clarifications, the FERC addressed protests filed by Dominion, MMWEC, and PSEG. The FERC found that the changes were consistent with, and not a collateral attack on, the FERC's July 2010 order, and provide equal treatment to resources seeking to change capacity limits. In addition, the FERC was also persuaded that interconnection agreements are a more reliable means of determining the CNR Capability ratings, and declined to direct the use of the MW ratings in the CELT Report. MMWEC requested rehearing of the *Capability Clarifications Order* on February 24, 2011, but requested the FERC defer action on the merits of the rehearing request until completion of the process under which the CNR rating for Stony Brook is currently under review. MMWEC stated that if it was able to secure adequate relief, it would so inform the FERC and withdraw the rehearing request; if not, it would ask the FERC to address the merits of its rehearing request. The FERC issued on March 24, 2011 a tolling order affording it additional time to consider the MMWEC rehearing request, which remains pending before the

⁵⁴ Bangor-Hydro, CMP, National Grid, NU, UI, and VELCO.

⁵⁵ *ISO New England Inc.*, 141 FERC ¶ 61,072 (2012) ("Compliance Order").

⁵⁶ *ISO New England Inc.*, 140 FERC ¶ 61,088 (2012) ("July 31 Order").

⁵⁷ *Id.* at P 32.

⁵⁸ Neither the *July 31 Order* nor the *Compliance Order* were challenged; both are final and unappealable.

⁵⁹ *ISO New England Inc. and the Participating Trans. Owners Admin. Comm.*, 134 FERC ¶ 61,057 (2011) ("*Capability Clarifications Order*"), *reh'g requested*.

⁶⁰ *See PSEG Power Conn. LLC v. ISO New England Inc.*, 132 FERC ¶ 61,022 at P 6 (2010).

FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-NGrid G-33 Line Emergency Switching Instructions Agreement (ER13-623)**

On December 26, 2012, National Grid filed an agreement regarding the Emergency Switching Instructions for the G-33 Line between Brattleboro, VT and Hinsdale, NH between itself and Green Mountain Power. The Letter Agreement is designated as Service Agreement No. TSA-NEP-85 under Schedule 21-NEP of the Tariff. National Grid asked that the FERC waive its requirements, to the extent necessary, to allow the agreement become effective as of April 9, 2012. No comments on this filing were filed on or before the January 16, 2013 comment date and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-BHE: Cancellation of Evergreen Wind LSA (ER13-480)**

On January 9, the FERC accepted a notice filed by BHE and the ISO canceling the Local Service Agreement (“LSA”) between BHE, Evergreen Wind Power V, LLC and the ISO for long-term conditional Firm Local Point-to-Point Service (previously designated as Original Service Agreement No. 66 under Schedule 21- BHE of the ISO Tariff) as a result of the Point of Receipt becoming PTF. Unless the January 9 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-FG&E: Corrections, Conforming and Clean Up Changes (ER13-474)**

On January 4, 2013, the FERC accepted conforming and non-substantive changes to Schedule 21-FG&E filed by Fitchburg Gas & Electric Company (“FG&E”) on November 30, 2012, subject to a compliance filing identifying the effective date of the changes. Specifically, the changes corrected the FERC’s eTariff viewer to reflect revisions approved in Docket Nos. ER11-3916 and ER12-145, and otherwise made conforming and non-substantive changes to Schedule 21-FG&E to correct typographical errors, update references and terms, add clarification, and improve usability of Schedule 21-FG&E. Subject to the directed compliance filing, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)**

As previously reported, the FERC accepted on September 24, 2012, the revised schedules and notices of cancellation filed by Green Mountain Power (“GMP”) in this proceeding, but suspended the provisions, subject to refund, and established hearing and settlement judge procedures.⁶¹ In its September 24 order, the FERC stated that its “preliminary analysis indicates that Applicants’ proposed Schedules 21-GMP and 20A-GMP and notices of cancellation have not been shown to be just and reasonable, and ... raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures we order.”⁶² Judge Karen V. Johnson was designated as the settlement judge, and convened a first settlement conference on October 17, 2012. A second settlement conference was held January 24, 2013. Also since the last report, Judge Johnson issued on January 9, 2013, another status report (i) indicating that the participants

⁶¹ *ISO New England, Inc., Central Vt. Pub. Svc. Corp. and Green Mountain Power Corp.*, 140 FERC ¶ 61,239 (2012) (“GMP Merger Order”), *reh’g requested*.

⁶² *Id.* at PP 21-22.

continue to negotiate and exchange documents and were optimistic that they will be able to reach a settlement in the near future; and (ii) recommending that settlement judge procedures be continued.

Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and WEC (“Cooperatives”) remains pending. In their requests, Cooperatives asserted that the FERC failed to appropriately address the *Mobile Sierra* claim contained in VEC’s Protest and further explained in WEC’s Answer. WEC separately filed a motion for clarification and/or rehearing requesting that the FERC correct three statements in the *GMP Merger Order* concerning positions taken by WEC. On November 19, 2012, the FERC issued a tolling order affording it additional time to consider the Cooperatives’ requests, which remain pending before the FERC.

Cooperatives submitted on November 21 and November 28 pleadings protesting the Notice of Effective Date filed by GMP on October 31, 2012 as to its Schedule 21-GMP, and moving to strike from the record GMP’s motion to lodge in this proceeding a 2000 letter order that, according to GMP, has a bearing on the treatment of certain costs in its pending rate case before the FERC. GMP answered the pleading on December 6 and 13, 2012, respectively. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54)**

The ISO filed its seventeenth report on December 19, 2012. As previously reported, the ISO committed in the August 5, 2008 Regulation Filing to provide the FERC with quarterly reports on its progress in implementing and carrying out market rule revisions to allow non-generating resources to provide Regulation, including the Alternative Technologies Pilot Program.⁶³ In the 17th report, the ISO indicated that it had “continued internal design work and technical evaluation of regulation market changes in light of the issues raised by the February 17, 2011 Notice of Proposed Rulemaking.” The ISO stated also that, in accordance with the existing provisions of Market Rule 1, Appendix J, as soon as the Order 755 compliance tariff changes have been implemented, the Pilot Program will terminate and non-generation alternative resources will provide regulation service pursuant to the new tariff provisions. However, the FERC rejected the proposed Order 755 compliance changes and directed that new compliance changes be filed within 90 days. The ISO expects to provide further information on the expected effective date for the Order No. 755 compliance changes (and the changes to end the Pilot Program) when the new compliance filing is submitted in February 2013. These reports are not noticed for public comment.

- **LFTR Implementation: 17th Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the seventeenth of its Quarterly Status Reports regarding LFTR implementation on January 15. The ISO reported that, pursuant to tariff changes submitted on June 28, 2012 in Docket No. ER12-2122 and accepted on August 23, 2012, multiple annual auction round rules became effective on October 1, 2012 and monthly reconfiguration auctions will become effective sometime after January 1, 2013 (subject to the ISO providing two weeks’ notice of the actual effective date). Conforming changes that incorporate the FTR enhancements submitted in Docket Nos. ER11-3568 and ER12-2122 into the LFTR rules will be filed at a later time, as will changes to the Financial Assurance Policy to reflect any such LFTR enhancements. The ISO reported that the estimated 18-month LFTR implementation process, described in previous reports, would then be initiated once the LFTR and FAP

⁶³ See Market Rule 1 revisions regarding the provision of Regulation by non-generating resources, *ISO New England Inc. and New England Power Pool*, Docket Nos. ER08-54-000 and -001 (filed Aug. 5, 2008) (the “Regulation Filing”).

conforming changes are accepted by the FERC. These status reports are not noticed for public comment and no comments were filed.

IX. Membership Filings

- **January 2013 Membership Filing (ER13-688)**

On December 31, 2012, NEPOOL requested that the FERC accept (i) the memberships of Ethical Energy Benefit Co. (Supplier Sector); Freedom Ring Communications, LLC d/b/a BayRing Communications (Market Participant End User); and HIKO Energy (Supplier Sector), effective January 1, 2013; and (ii) the termination of the Participant status of RLtec and Select Energy (each also January 1, 2013). This matter is pending before the FERC.

- **Negawatt Additional Requirements for Market Participation (ER13-554)**

On December 13, 2012, the ISO submitted, pursuant to Section II.A.1(b) of the Financial Assurance Policy, an informational filing reporting on additional conditions to participation in the New England Markets that will be imposed on Negawatt Business Solutions (“Negawatt”). Those additional conditions, which also apply to Negawatt’s membership in NEPOOL, were supported by the Participants Committee at its December 7 annual meeting. A description of the conditions is set forth in the final minutes of the December 7 meeting, and will be included in the NEPOOL membership filing containing Negawatt’s materials. The ISO’s informational filing was not noticed for public comment.

- **December 2012 Membership Filing (ER13-493)**

On January 8, 2013, the FERC accepted (i) the membership of Iron Energy (Supplier Sector), effective December 1, 2012; and (ii) the termination of the Participant status of SESCO Enterprises (November 1, 2012) and Moose River Lumber and MRL Energy (December 1, 2012).

X. Misc. - ERO Rules, Filings; Reliability Standards

Questions concerning any of the ERO Reliability Standards or related rule-making proceedings or filings can be directed to Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FFT Report: December 2012 (RC13-3)**

NERC submitted on December 31, 2012, its Find, Fix, Track and Report (“FFT”) informational filing for the month of December 2012. The December FFT resolves 44 possible violations of 13 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁶⁴ The 25 Registered Entities involved each submitted a mitigation activities statement of completion. These filings are for information only and will not be noticed for public comment by the FERC.

- **NERC Compliance Enforcement Initiative (RC11-6)**

As previously reported, FERC conditionally accepted NERC’s compliance enforcement initiative and mechanisms described in its filing and summarized in previous reports. In accepting the initiative, the FERC required NERC to make a 60-day compliance filing, and directed NERC to submit 2 informational filings.⁶⁵ In the 60-day compliance filing, NERC was directed to explain the principles it will employ in evaluating an entity’s compliance history in connection with the FFT process. In addition, NERC was directed to file the 6 and 12-month reports it committed to, with the 6-month report due concurrently with the 60-day compliance filing; the 12-month report,

⁶⁴ Only possible violations that pose a minimal risk to Bulk-Power System reliability to be eligible for FFT treatment. See *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (2012) at PP 46-56.

⁶⁵ *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (2012), *clarification granted in part and reh’g denied*, 139 FERC ¶ 61,168 (2012).

March 15, 2013. The FERC indicated that it plans to use 12-month report as an opportunity to consider any changes to the FFT process and to any of the limited conditions adopted in the order. In a May 31 order, the FERC clarified that, to be eligible for FFT treatment, an affidavit certifying mitigation of possible violations of Reliability Standards must be verified by a corporate officer or, if no corporate officers exist, an executive or person in an equivalent leadership position, in any case with personal knowledge of the mitigation.⁶⁶

On September 20, 2012, the FERC accepted NERC's 60-day compliance filing.⁶⁷ In accepting the filing, the FERC stated its expectation that the Regional Entities will consistently apply the conditions outlined in the FFT Order relating to qualification for FFT treatment, documentation of possible violations as FFTs, accountability and deterrence. Though it refused to mandate the use of standardized processes and forms at that time, the FERC encouraged NERC and the Regional Entities to consider implementation of such processes and/or forms.⁶⁸ The September 20 order required NERC to file, and NERC filed on October 12, 2012, its training materials developed to facilitate the implementation of FFT determinations. No comments on the October 12 filing were submitted on or before the November 13, 2012 comment date and this filing is pending before the FERC.

Yearly Survey of FFTs. On November 26, the FERC sent letters to each of the Regional Entities requesting, for a random sample of FFTs, "all data, correspondence, and other supporting information used by your staff to evaluate and conclude that these possible violations qualified for FFT treatment. In addition, provide evidence that the issue was successfully remediated, ... and a brief narrative explaining the submitted materials." The yearly survey was contemplated by P 73 of the March 15, 2012 order accepting the FFT process.⁶⁹ Responses to the survey were due and filed by the Regional Entities on or before December 11, 2012. The survey submissions were not noticed for public comment, but are available on the FERC's eLibrary.

- **Revised Reliability Standard: EOP-004-2(RD13-3)**

On December 31, 2012, as revised on January 4, 2013, NERC filed for approval a Standard that merges EOP-004-1 and CIP-001-2a in order to provide a comprehensive approach to reporting disturbances and events that have the potential to impact the reliability of the BES. The proposed Reliability Standard requires Responsible Entities to have an Operating Plan for reporting applicable events to NERC and others (e.g., Regional Entities, applicable Reliability Coordinators and law enforcement) within 24 hours of the event according to the procedure specified in their Operating Plan. The proposed Reliability Standard provides for timely event analysis and ensures that NERC can develop trends and prepare for a possible next event. The revised Standard is proposed to become effective the first day of the first calendar quarter that is six months following the effective date of a Final Rule in this docket. Comments on this filing are due on or before January 30, 2013; comments on the January 4 errata filing; February 4, 2013.

- **Revised Reliability Standard: VAR-002-2b (RD13-2)**

On November 21, 2012 NERC filed for approval a Standard that clarifies in Requirement R1 that a communication between a Generator Operator and a Transmission Operator is not necessary during start-up or shutdown of a generator. The revised Standard is proposed to become effective the first day of the first calendar quarter following the effective date of a Final Rule in this docket. An intervention was filed by American Municipal Power and comments were submitted by PPL (requesting the FERC to direct that the lower VSL text be revised to permit a registered entity a reasonable period of time of up to 30 minutes to correct an excursion and to confirm that a voltage excursion addressed promptly, such as within the 30 minute window it requested be implemented, should not be considered as triggering a VSL). On January 23, the FEC responded to the PPL comments. This matter is pending before the FERC.

⁶⁶ *N. Am. Elec. Reliability Corp.*, 139 FERC ¶ 61,168 (2012) at PP 7-8.

⁶⁷ *N. Am. Elec. Reliability Corp.*, 140 FERC ¶ 61,215 (2012).

⁶⁸ *Id.* at P 12.

⁶⁹ *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (2012).

- **Interpretation: CIP-002-4 R3 (RD12-5)**

NERC's August 1, request for approval of a proposed interpretation of Requirement R3 to Reliability Standard CIP-002-4 (Critical Cyber Asset Identification) remains pending. As previously reported, the interpretation clarifies (i) that the list of examples provided in Requirement R3 of CIP-002-4 are illustrative, and not an exhaustive list, of the types of Cyber Assets that may be Critical Cyber Assets; and (ii) the meaning of the language "essential to the operation of the Critical Asset". On August 20, NERC submitted an errata filing. No comments on the initial or errata filings were submitted and this matter is pending before the FERC.

- **Interpretation: CIP-006-4 R1.1 (RD12-3)**

On May 23, NERC filed for approval a proposed interpretation of Requirement R1.1 to all versions of Reliability Standard CIP-006 (Cyber Security — Physical Security of Critical Cyber Assets). At highest level, the interpretation clarifies that Requirement R1.1 of CIP-006-4 does not apply to wiring. No comments were filed by the June 13 comment date and this filing is pending before the FERC.

- **NOPR: Geomagnetic Disturbance Reliability Standards (RM12-22)**

As previously reported, the FERC issued on October 18 a NOPR proposing to direct NERC to submit for approval Reliability Standards that address the impact of geomagnetic disturbances ("GMD") on BPS reliability.⁷⁰ The FERC proposes a two-staged implementation. In the first stage, the FERC would direct NERC to file, within 90 days of the effective date of a final rule in this proceeding, one or more Reliability Standards that require BPS owners and operators to develop and implement operational procedures to mitigate the effects of GMDs consistent with the reliable operation of the BPS. In the second stage, the FERC would direct NERC to file, within six months of the effective date of a final rule in this proceeding, one or more Reliability Standards that require owners and operators of the BPS to conduct initial and on-going assessments of the potential impact of GMDs, focusing first on the most critical BPS assets. Comments on the NOPR were due December 24, 2012.⁷¹

58 sets of comments were submitted. Almost uniformly, commenters concurred that the risk to the BPS from GMD was a significant concern that should be addressed, although there was a strong undercurrent at the outset that the FERC's proposal may be at best premature or, at worst, without sufficient technical and/or legal basis to establish the need for one or more new or modified Reliability Standards to address GMD. In general, commenters acknowledged that the current body of science on GMDs does not permit the nature of GMD events to be defined with as much clarity as is desired. In the absence of strong consensus on the technical specifications of a GMD event, some concluded as a threshold matter that there was not yet sufficient basis to conclude a GMD Standard was needed. A number of commenters suggested that industry efforts already underway, particularly NERC's Geomagnetic Disturbance Task Force ("GMDTF"), be completed before much, if any, progress is made towards GMD Standard development. In light of the circumstances, some argued that it would be unwise, if not unlawful, to compel NERC to act on the FERC's proposed rule. Should NERC develop GMD Standards, however, most commenters cautioned against the imposition of a "one-size fits all" approach, favoring instead implementation that accounts for differences in location, function, and risk profile. There was a clear recognition that the benefits of any GMD mitigation mechanism must be cost effective and justified. There is also an acknowledgement that there should be for all Functional Entities a mechanism for recovery of costs incurred in compliance with GMD Standards. Finally, most, but not all, commenters indicated that the NOPR provides insufficient time or unrealistic timeframes in which to develop the GMD Standards, though thoughts on what would be sufficient, realistic, or acceptable varied widely.

Since the last report, reply comments were submitted by NERC and the Foundation for Resilient Societies. Additional comments, including those of the Nuclear Regulatory Commission were posted on e-Library. This matter is pending before the FERC.

⁷⁰ *Reliability Standards for Geomagnetic Disturbances*, 141 FERC ¶ 61,045 (2012).

⁷¹ The NOPR was published in the *Fed. Reg.* on Oct. 24, 2012 (Vol. 77, No. 206) pp. 64,936-64,943.

- **Revised Reliability Standard: MOD-028-2 (RM12-19)**

On August 24, 2012, NERC filed for approval proposed clarifications to its Area Interchange Methodology (MOD-028-2) Standard. NERC explained that the proposed revisions clarify the timing and frequency of Total Transfer Capability calculations needed for Available Transfer Capability calculations. The revised Standard is proposed to become effective the first day of the first calendar quarter following FERC approval. As of the date of this report, a comment date has not been set.

- **Revised Reliability Standards: FAC-001-1, FAC- 003-3, PRC-004-2.1a, PRC-005-1.1b (RM12-16)**

On July 30, NERC filed for approval proposed revisions to four Reliability Standards, including VRFs, VSLs, and implementation plans, for Facility Connection Requirements (FAC-001-1), Transmission Vegetation Management (FAC-003-3), Analysis and Mitigation of Transmission and Generation Protection System Misoperations (PRC-004-2.1a) and Transmission and Generation Protection System Maintenance and Testing (PRC-005-1.1b). NERC explained that the proposed revisions to the Reliability Standards address the application of Reliability Standards to generator interconnection Facilities (generator tie-lines). The Standards will obviate the need to register all generators as Transmission Owners and/or Transmission Operators with respect to generator interconnection Facilities, unless individual circumstances warrant otherwise. The revised FAC Standards are proposed to become effective the first day of the first calendar quarter that is one year following the effective date of the revisions. As of the date of this report, a comment date has not been set.

- **NOPR: NPCC Regional Reliability Standard: PRC-006-NPCC-1 (RM12-12)**

On September 20, the FERC issued a notice that it proposes to approve the Regional Reliability Standard, including VRFs, VSLs, and an implementation plan, for Automatic Underfrequency Load Shedding in the NPCC region (PRC-006-NPCC-1) submitted by NERC on May 4, 2012, as modified on August 3, 2012. As NERC explained, the proposed NPCC-specific Reliability Standard is to ensure development of an effective automatic underfrequency load shedding (“UFLS”) program in order to preserve the security and integrity of the BPS during declining system frequency events, in coordination with the NERC UFLS reliability standard characteristics, PRC-006-1. For New England, the applicable effective dates requested were as follows: for Requirements R1 - R7, the first day of the first calendar quarter following applicable regulatory approval, but no earlier than January 1, 2016; for Requirements R8 - R23, the first day of the first calendar quarter two years following applicable governmental and regulatory approval. Comments on the proposed NPCC Standard were due on or before November 26, 2012⁷² and were filed by Dominion, NERC, NYISO, NPCC, and PSEG. Reply comments were filed by NERC and NPCC on December 11, 2012. This matter is pending before the FERC.

- **Order 773: Revised “Bulk Electric System” Definition and Procedures (RM12-7; RM12-6)**

On December 20, 2012, the FERC issued *Order 773*⁷³ that approved the following:

- ▶ a modified and more detailed definition of “Bulk Electric System” developed by NERC;
- ▶ NERC’s contemporaneously filed revisions to its Rules of Procedure, which creates an exception procedure to add elements to, or remove elements from, the definition of “bulk electric system” on a case-by-case basis;
- ▶ NERC’s proposed form entitled “Detailed Information to Support an Exception Request” that entities will use to support requests for exception from the “bulk electric system” definition; and
- ▶ NERC’s proposed implementation plan for the revised “bulk electric system” definition.

The revised definition of “bulk electric system” removes language allowing for regional discretion in the currently-effective bulk electric system definition. The revised definition establishes a bright-line threshold that includes all facilities operated at or above 100 kV. The modified definition also identifies specific categories of facilities and configurations as inclusions and exclusions to provide clarity in the definition of “bulk electric system.”

⁷² The NOPR was published in the *Fed. Reg.* on Sep. 26, 2012 (Vol. 77, No. 187) pp. 59,151-59,156.

⁷³ *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) (“*Order 773*”).

Order 773 will become effective will become effective March 5, 2013.⁷⁴ Requests for rehearing of *Order 773* were filed on January 22, 2013 by APPA, AWEA, Dow Chemical, Holland, Michigan Board of Public Works, NARUC, NERC, NRECA, NY PSC, Snohomish County PUD No. 1, Transmission Access Policy Study Group (“TAPS”), and Utility Services. The requests for clarification and/or rehearing are pending before the FERC, with FERC action required on or before February 21, 2013, or the requests will be deemed denied.

- **NOPR: Revised Reliability Standard: FAC-003-2 (RM12-4)**

On October 18, 2012, the FERC issued a notice that it proposes to approve the Transmission Vegetation Management Reliability Standard (FAC-003-2), including VRFs (with additional revisions to requirement R2), VSLs, implementation plan, and new or revised definitions for Right-of-Way, Vegetation Inspection, and Minimum Vegetation Clearance Distance, as submitted by NERC on December 11, 2011.⁷⁵ As FERC explained, FAC-003-2 “would expand the applicability of the standard to include overhead transmission lines that are operated below 200 kV, if they are either an element of an Interconnection Reliability Operating Limit or an element of a Major WECC Transfer Path. In addition, the proposed Reliability Standard incorporates a new minimum annual vegetation inspection requirement, and incorporates new minimum vegetation clearance distances into the text of the standard.” Comments on the proposed Standard were due on or before December 24, 2012,⁷⁶ and were filed by 20 parties, including EEI, EPRI, NERC, NESCOE, and VELCO. This matter is pending before the FERC.

- **NOPR: Revised Reliability Standard: TPL-001-2 (RM12-1)**

On April 19, 2012, the FERC issued a NOPR in which it proposes to remand this Reliability Standard to NERC for further consideration. The FERC noted its concerns with a provision that would allow a transmission planner to plan for load shedding, following a single contingency provided that the plan is documented and alternatives are considered and subject to review in an open and transparent stakeholder process, which the FERC found vague and unenforceable because the Standard did not adequately define the circumstance in which an entity can plan for non-consequential load loss following a single contingency. Notwithstanding improvements contained in other provisions of proposed Standard, the FERC noted that, pursuant to Section 215 of the FPA, it must remand to NERC any Standard disapproved in whole *or in part*. As previously reported, NERC requested that the FERC approve the Standard⁷⁷ on October 19, 2011. Comments were filed by ATC, BPA, EEI, IESO, ISO-NE (jointly with ERCOT, MISO, NYISO PJM, and SPP), ITC Companies, MISO, NERC, and Powerex. This matter remains pending before the FERC.

- **Proposed Clarification to Available Transfer Capability Reliability Standards (RM08-19)**

In compliance with *Order 729*, NERC submitted on December 1, 2010 (in sub-docket -004) proposed VRFs and VSLs for six Available Transfer Capacity (“ATC”) Reliability Standards: MOD-001-1a (Available Transmission System Capability); MOD-004-1 (Capacity Benefit Margin); MOD-008-1 (Transmission Reliability Margin Calculation Methodology); MOD-028-1 (Area Interchange Methodology); MOD-029-1a (Rated System Path Methodology); and MOD-030-2 (Flowgate Methodology). No comments were submitted by the January 10, 2011 comment date, and those VRFs and VSLs are pending before the FERC.

⁷⁴ *Order 773* was published in the *Fed. Reg.* on Jan. 4, 2013 (Vol. 78, No. 3) pp. 804-851.

⁷⁵ *Revisions to Reliability Standard for Trans. Vegetation Management*, 141 FERC ¶ 61,046 (2012).

⁷⁶ The NOPR was published in the *Fed. Reg.* on Oct. 24, 2012 (Vol. 77, No. 206) pp. 64,920-64,935.

⁷⁷ In the Oct. 19, 2011 filing, NERC explained that the new Standard (i) a revised Transmission Planning Standard (“TPL”) TPL-001-2 (ii) retirement of four existing Reliability Standards: TPL-001-1 (System Performance Under Normal (No Contingency) Conditions (“Category A”); TPL-002-1b (System Performance Following Loss of a Single Bulk Electric System (“BES”) Element (“Category B”); TPL-003-1a (System Performance Following Loss of Two or More BES Elements (“Category C”); and TPL-004-1 — System Performance Following Extreme Events Resulting in the Loss of Two or More Bulk Electric System Elements (“Category D”); and (iii) withdrawal of two pending Reliability Standards: TPL-005-0 (Regional and Interregional Self-Assessment Reliability Reports); and TPL-006-0.1 (Data From the Regional Reliability Organization Needed to Assess Reliability).

- **2013-2015 Reliability Standards Development Plan (RM06-16 et al.)**

Pursuant to Section 310 of the NERC's Rules of Procedure, NERC submitted for informational purposes, on December 31, 2012, its Reliability Standards Development Plan ("Plan") for 2013 through 2015. NERC submits its Plan prior to the beginning of each calendar year. The Plan is designed to (i) serve as a management tool to guide and coordinate the development of Reliability Standards and provide benchmarks for assessing progress; (ii) serve as a communications tool for coordinating standards development work with applicable governmental agencies and for engaging stakeholders in Reliability Standards development activities; and (iii) provide a basis for developing annual plans and budgets for the NERC Reliability Standards program. The 2013-2015 Plan includes three areas of work to be completed and covers all currently identified Reliability Standards development projects in the Plan. The 2013-2015 Plan also provides Project schedule and timeline updates, as well as action plans for the Directives, 5-Year Review, and Projects and Emerging Issues Teams. This informational filing was not noticed for public comment.

- **FERC Performance Audit of NERC (FA11-21)**

On January 16, FERC approved a Settlement Agreement between the Office of Enforcement ("OE") and NERC that comprehensively resolved all outstanding issues related to OE's findings and recommendations arising out of its 2012 performance audit of NERC.⁷⁸ As previously reported, the Director of OE issued a May 4, 2012 order approving the four (4) *uncontested* audit findings and recommendations made by the Division of Audits following its financial performance audit of NERC that evaluated NERC's budget formulation, administration, and execution covering the August 23, 2006 to March 23, 2012 period. Based on its findings, Audit staff made a total of 42 recommendations. NERC requested rehearing of the May 4 letter order and the FERC ultimately adopted NERC's proposed schedule for a paper hearing with modifications and created a separation of functions among staff for this proceeding.⁷⁹ The January 16, 2013 Settlement Agreement provides that, to confirm implementation of the Settlement Agreement, NERC will submit to OE's Division of Audits: (a) a plan for NERC's implementation of the Settlement Agreement and all Audit Report recommendations as revised; (b) quarterly reports detailing NERC's progress toward implementing the Settlement Agreement and all recommendations; and (c) a report describing NERC's final implementation of the Settlement Agreement and all recommendations. The Settlement Agreement also provides that OE will conduct a post-audit review of NERC's implementation of the Settlement Agreement and all recommendations. Finally, the Settlement Agreement specifically indicates that nothing in the Settlement Agreement limits the FERC's ability to determine the sufficiency of the criteria NERC is required to submit to the FERC on February 1, 2013 regarding section 215 of the FPA or whether any NERC activity is or is not eligible for funding under FPA Section 215. The FERC will address those issues in a subsequent order.

XI. Misc. - of Regional Interest

- **CFTC Exemption Request**

On August 21, 2012, the Commodity Futures Trading Commission ("CFTC") issued a proposed order and request for comment⁸⁰ on a February 7, 2012 petition by the RTO/ISOs, including ISO-NE,⁸¹ to exempt FTRs, Energy Transactions (Day-Ahead or Real-Time), Forward Capacity Transactions (Generation, Demand Response, Energy Efficiency), and Reserve or Regulation Transactions (each of which is a class of contract, agreement or transaction authorized under a FERC- or Public Utility Commission of Texas ("PUCT")-approved tariff), from law or regulations administered and enforced by the CFTC:

The proposed order, if finalized without change, would largely confirm the requested exemptions ("Proposed Exemption"), subject to the following conditions:

⁷⁸ *N. Am. Elec. Reliability Corp.*, 1429 FERC ¶ 61,042 (2013) ("*NERC 2012 Audit Settlement Order*").

⁷⁹ *N. Am. Elec. Reliability Corp.*, 139 FERC ¶ 61,179 (2012) ("*NERC Audit Order*").

⁸⁰ The Proposed Order was published in the *Fed. Reg.* on Aug. 28, 2012 (Vol. 77, No. 167) pp. 52,138-52,173.

⁸¹ A copy of the 391-page "Consolidated Request" was circulated to the Committee by the ISO on February 8, and is also available at <http://www.iso-ne.com/regulatory/ferc/fed/index.html>.

- ▶ All parties to the agreements, contracts or transactions that are covered by the Proposed Exemption must be either “appropriate persons”⁸² or “eligible contract participants” (“ECPs”)⁸³; and
 - *Please note: the CFTC requests comment as to whether there are currently entities engaging in transactions in the ISOs that are neither appropriate persons nor ECPs under the above definitions; if so, on what basis the CFTC may conclude that such entities are appropriate persons or ECPs for the purpose of the Proposed Exemption.*
- ▶ Agreements, contracts or transactions covered by the Proposed Exemption must be offered or sold pursuant to a ISO or ERCOT tariff which has been approved or permitted to take affect by FERC or PUCT (“Approved Tariffs”); and
- ▶ No Approved Tariff or other governing document may include any requirement that a member be notified prior to an RTO/ISO providing information to the CFTC in response to a subpoena or other request for information or documentation; and
- ▶ There must be in full force and effect information sharing arrangements between the CFTC and FERC that are satisfactory to the CFTC (current CFTC-FERC MOU qualifies).

Comments on the August 21 proposed order were filed on September 27, 2012 by NEPOOL (as approved at the September 14 Participants Committee meeting), AB Energy, Financial Marketers Coalition, Tarachand Enterprises, Inc., FERC Staff, Texas Energy Association for Marketers Alliance for Retail Markets, Industrial Customer Coalitions of NEPOOL, PJM, and Coalition of Midwest Transmission Customers, APPA, EPSA/EEI/APP/NRECA/Large Public Power Council, Texas PUC, NY DPS, DC Energy, Financial Institutions Energy Group, Coalition of Physical Energy Companies, Commercial Energy Working Group, and CAISO ERCOT ISO-NE MISO NYISO PJM.

The April 30 ISO-NE request for supplemental order clarifying that the contracts, agreements, and transactions entered into under the ISO’s Tariff (including internal bilaterals) are exempt from the Act and CFTC regulations hereunder to the same degree and extent as the relief requested in the February 7 Consolidated Request remains pending.⁸⁴

On October 11, 2012, the CFTC issued a no-action letter that preserves the regulatory status quo “with respect to any of the contracts, agreements or transactions entered into pursuant to a currently (i.e., as of the Effective Date [10/11/12]) [FERC-] Approved Tariff, and any other Subject Transactions that would fall within the scope of the Proposed Order.” This status quo will remain in place until the earlier of March 31, 2013 or the date on which the CFTC establishes in a final order on the ISO/RTO petition. The no-action relief applies to the ISOs/RTOs filing the petition and any person who is or would be eligible to participate in their markets under those tariffs.

If there are questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

- **203 Application: FPL Energy Maine Hydro / Brookfield (EC13-62)**

On January 14, 2013, FPL Energy Maine Hydro and Brookfield Power US Holding America Co. (“Brookfield”) requested FERC authorization for the indirect disposition of the equity interests in Maine Hydro to Brookfield. Comments on this filing are due on or before February 4, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁸² “Appropriate persons” are defined in §§ 4(c)(3)(A) through (J) of the Commodity Exchange Act (“CEA”) (generally certain specific types of financial institutions, government entities and business entities meeting defined financial standards).

⁸³ ECPs as defined in section 1a(18)(A) of the CEA and in CFTC regulation 1.3(m).

⁸⁴ A copy of the supplemental request was circulated to the Committee on Apr. 30 and is also available at <http://www.iso-ne.com/regulatory/ferc/fed/index.html>.

- **203 Application: NEET / NEP (EC13-50)**

On January 15, 2013, the FERC authorized, as requested, the transfer of the fully depreciated VAR support equipment associated with the Monroe HVDC Phase I Converter facility from the New England Electric Transmission Corporation (“NEET”) to the New England Power Company (“NEP”).⁸⁵ A notice that the disposition and acquisition of the VAR support equipment has been consummated must be filed with the FERC within 10 days of that transaction. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: CMP, MEPCO / BHE (EC13-49)**

On January 22, 2013, the FERC authorized two transactions:⁸⁶ (1) the exchange as between CMP and MEPCO of certain jurisdictional facilities, including easements and parcels of land; and (2) the transfer of 4.87 miles of 345 kV transmission line and related facilities located near the town of Orrington, Maine to BHE (the “Orrington Assets”) located in BHE’s service territory and part of the larger Maine Power Reliability Program (“MPRP”). As previously reported, the Orrington Assets were energized on November 12, 2012. CMP stated that the total cost of this transaction, including easement transfers and new 115 kV lines may exceed \$10 million. On January 4, the Filing Parties, in response to questions from FERC Staff concerning the proposed treatment of the related transaction costs, supplemented their filing with information clarifying that CMP intends to recover transaction costs related to the transfers, estimated to total approximately \$78,600, through regional transmission rates. Unless the January 22 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: Boston Gen/Constellation Mystic Power (EC10-85)**

Rehearing remains pending of FERC’s December 22, 2010 order authorizing Fore River Development, LLC, Mystic I, LLC, Mystic Development, LLC, and Boston Generating, LLC (together, “Boston Gen”) and Constellation Mystic Power, LLC (“Mystic Power”) to sell five of Boston Gen’s generating facilities (Fore River, Mystic 7, 8, and 9, and Mystic Jet) and certain other assets to Constellation Holdings, Inc. or its designee (in this case, its wholly-owned affiliate Mystic Power).⁸⁷ As previously reported, the Bankruptcy Court authorized on November 24, 2010 the sale of the generating facilities and other assets to Constellation (“Sale Order”). Mystic Power notified the FERC that the transaction was consummated on January 3, 2011. On January 21, 2011, NSTAR filed a request for rehearing of FERC’s order authorizing the transaction to correct the common mode failure reliability condition of Mystic 8 and 9. On February 22, 2011, the FERC issued a tolling order affording it additional time to consider NSTAR’s request. On June 3, NSTAR submitted to the FERC additional information to accompany its January 21 request for rehearing. Mystic Power requested on June 20 that the FERC disregard NSTAR’s June 3 filing, and affirm its December 22, 2010 order. NSTAR’s request for rehearing remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Foley v. UI: Rate Base Complaint (EL12-106)**

On September 17, 2012, as amended October 5, 2012, J. William Foley Inc. (“Foley”) filed a formal complaint against UI seeking an order to reduce UI’s rate base to exclude certain costs which were not reasonably and/or prudently incurred, and/or were not incurred in good faith. In the amended Complaint, Foley challenges “the inclusion of excess costs irresponsibly incurred by UI in connection with the design and execution of the Middletown - Norwalk 345kV Transmission Line Project (the “Overall M-N Project”), as well as the related 115kV interconnects.” Foley, who was general the contractor on the Project for the portion known as the Civil Work for 345kV Cable System for Singer-Housatonic West Bank (the “Project”), under the streets of Bridgeport and Stratford, Connecticut and is a UI customer, describes, in part in the public document, and in part under seal, both underground obstacles and contaminated soil issues that Foley alleges were “approached by UI in a manner designed to understate

⁸⁵ *New England Power Co. and New England Electric Trans. Corp.*, 142 FERC ¶ 62,032 (2013).

⁸⁶ *Central Maine Power Co. and Maine Elec. Power Co., Inc.*, 142 FERC ¶ 62,051 (2013).

⁸⁷ *Fore River Dev., LLC*, 133 FERC ¶ 61,248 (2010).

the cost of the Project at the outset, at the expense of substantial additional – and unnecessary – expense at the conclusion of the Project.”

On November 5, 2012, UI submitted its answer and motion to dismiss or, in the alternative, to hold proceedings in abeyance. UI moved to dismiss the Complaint on the grounds that (a) the Complaint does not comply with the specificity requirements of Rule 206, (b) the Complaint is premature, (c) the issues raised in the Complaint are not within the FERC’s jurisdiction, and, in any event, are being litigated in the CT Superior Court, and (d) the Complaint is insufficient and lacks any evidentiary basis. Alternatively, UI asked the FERC to hold the proceeding in abeyance pending resolution of the related CT litigation, or if not held in abeyance and not dismissed, set for hearing and settlement judge procedures. On November 8, Foley asked for additional time, to and including December 14, to respond to UI’s pleading, which UI opposed on November 13. Since that time, Foley submitted on November 22 (as corrected November 23) a memorandum of law in opposition to UI’s motion to dismiss, and on December 4, as a second amended complaint, and on December 5, an amended opposition to UI’s motion to dismiss. On December 19, 2012, UI submitted its response to the second amended complaint. Since the last report, on January 7 through January 11, 2013, Foley filed additional exhibits. If there are questions on this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Allco Renewable Energy v. National Grid (PURPA Complaint) (EL12-12)**

On November 30, 2011, Allco Renewable Energy Limited (“Allco”) filed a complaint against Massachusetts Electric Company d//b/a National Grid (in this summary, “National Grid”). Allco seeks a FERC order that among other things would require National Grid to purchase all of the output from Allco’s multiple solar photovoltaic projects in Massachusetts at a rate equal to its long-term avoided cost rate (which it argues includes environmental compliance costs, such as costs of compliance with the MA RPS, RGGI and the MA Global Warming Solutions Act). For timing reasons described in its filing, Allco requested that a settlement judge be appointed in accordance with FERC Rule 603 as soon as possible. On December 21, 2011, National Grid submitted an answer to Allco’s complaint urging the FERC to find the complaint is without merit and to deny it in its entirety. One party, the Massachusetts Department of Public Utilities (“MA DPU”), submitted comments by the December 21, 2011 comment date, and on January 5, 2012, the MA DPU also submitted for FERC’s reference a letter from the MA DPU to Allco declining to open a rulemaking to amend the MA DPU’s regulations with respect to sales of electricity by a renewable energy qualifying facility. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **UI Declaratory Order – Sales to Elm Electric Coop (EL10-67)**

As noted below, these proceedings have been stayed pending CT DPUC action on an agreement before it that would resolve the dispute in this proceeding. As previously reported, on May 12, 2010, the United Illuminating Company (“UI”) filed a petition for a declaratory order (“Petition”) that its sales to Elm Electric Cooperative (“Elm”), for resale to Elm’s members, is a transaction at wholesale subject to FERC jurisdiction. As indicated by UI in the Petition, Elm is a Connecticut electric cooperative formed to sell and distribute electricity to its members, who will be tenants of a large, mixed-use residential and commercial building now under construction in New Haven, Connecticut. Elm will serve its members in part by using a 400 kW fuel cell located at the site, and to the extent the fuel cell production is insufficient to meet the building’s load, Elm will purchase electricity from UI that will be re-sold and distributed to its members. Elm also expects to sell the excess power generated by the fuel cell in the New England Market, netting the excess against its UI bill. Elm will install four meters that will handle the building’s load and engage a third party to supply sub-meters to each of Elm’s members. UI reports that Elm has asserted in CT proceedings that the FERC either does not have jurisdiction or that it would likely disclaim jurisdiction over the matter.⁸⁸ On December 7, 2010, UI asked the FERC to stay these proceedings, noting that UI and Elm had negotiated and executed an agreement that, if accepted by the CT DPUC, would resolve the dispute in this proceeding. The motion to stay the proceedings, and the Petition itself, remain pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁸⁸ See *PacifiCorp*, 92 FERC ¶ 61,032 (2000); *Ala. Power Co.*, 95 FERC ¶ 61,002 (2001); *u*, 114 FERC ¶ 61,175 (2006).

- **LGIA – Oakfield (BHE/Evergreen/ISO) (ER13-741; ER13-678)**

On January 10, the ISO and BHE re-filed a conforming, but not fully executed LGIA (LGIA-ISONE/BHE-12-02) under Schedule 22 of the ISO Tariff to govern the interconnection of the 147.6 MW facility of Evergreen Wind Power II (“Evergreen”) in Oakfield, Maine. The LGIA was re-filed for technical reasons (the transmittal letter to the original filing in ER13-678 not appearing on the FERC’s eLibrary). As previously reported, the filing parties indicated that, though the Oakfield LGIA fully conforms to the FERC-approved *pro forma* LGIA contained in Appendix 6 of Schedule 22 of the OATT, the Oakfield LGIA is non-conforming agreement in that it has not been executed by BHE (which continues to pursue the appropriate clarifications and/or approvals necessary because of its affiliate relationship to Evergreen). A March 2, 2013 effective date was requested. Comments on the re-filed LGIA are now due on or before January 31, 2013. The December 31, 2012 LGIA filing docketed in ER13-678 was withdrawn also on January 10, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **IA – Fitchburg/Pinetree (ER13-446)**

On January 8, 2013, the FERC accepted an amended interconnection agreement (“IA”) between Fitchburg and Pinetree Power-Fitchburg, inc. (“Pinetree”) filed by Fitchburg on November 21, 2012 to govern the interconnection of Pinetree’s 18 MW cogeneration facility located in Westminster, Massachusetts. The IA was accepted effective November 22, 2012, as requested. Unless the January 8 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844)**

On December 18, 2012, Judge Sterner issued his 374-page initial decision which, following hearings described in previous reports, found at its core that “it is unjust, unreasonable, and unduly discriminatory to allocate costs of Phase Angle Regulating Transformers (“PARs”) of the International Transmission Company (“ITC”) to NYISO and PJM”,⁸⁹ which the Midwest ISO (“MISO”) and ITC proposed unilaterally to do (without the support of either PJM or NYISO) in its October 20, 2010 filing initiating this proceeding. Specifically, the issues and findings of the Initial Decision were as follows:

<i>Issue</i>	<i>Findings</i>
1: Whether the FPA and applicable FERC policies thereunder permit MISO and ITC to make, and the FERC to approve, the Oct 20, 2010, filing (as amended on Jan 31, 2012)?	1. There is no customer or contractual relationship between the Joint Applicants and PJM or NYISO that justifies the proposed cost allocation, as required by FPA section 205. 2. The FER has rejected unilateral filings by a utility to impose loop flow costs on neighboring utilities, requiring instead consensual resolution, which is absent here. 3. Orders 1000 and 1000-A do not apply, but the policy contained therein predates issuance of those Orders and precludes this filing.
2: Whether the JOA between MISO and PJM precludes allocation of costs associated with the ITC PARs to PJM?	1. The ITC PARs are like-kind replacement facilities, not new transmission facilities. 2. The cost allocation provisions of the JOA apply to the ITC PARs. 3. The ITC PARS are not eligible for cross-border cost allocation because they do not qualify as either a Cross-Border Baseline Reliability Project or a Cross-Border Market Efficiency Project. 4. The JOA is not the exclusive agreement to address interregional cost allocation between MISO and PJM. 5. Although the JOA is not the exclusive vehicle for interregional cost allocation, it is the only relevant customer or contractual relationship in this proceeding and the only one that provides for cross-border cost allocation. 6. The Joint Applicants do not meet the <i>Mobile-Sierra</i> criteria
3: Whether there are any other customer or contractual relationships or	1. Other than the JOA, there are no customer or contractual relationships, or interregional plans, between the Joint Applicants and PJM or NYISO

⁸⁹ *Midwest Indep. Trans. Sys..Op., Inc.*, 141 FERC ¶ 63,021 (2012) (“*MISO Initial Decision*”) at P 923.

<p>interregional plans, or lack thereof, that are relevant to the proposed cost allocation?</p>	<p>that are relevant in this proceeding. 2. The lack of a customer or contractual relationship is relevant. 3. The lack of an interregional plan is relevant. 4. The Joint Applicants' pre-existing contract obligations are relevant. 5. The MISO Tariff and applicable policy are relevant 6. The MISO-IESO Operating Instruction is relevant.</p>
<p>4. Whether the allocation of the costs of the ITC PARs to NYISO and PJM, and the level of such allocations, is just, reasonable, and not unduly discriminatory or preferential under the FPA and the applicable FERC policies, orders, and precedent thereunder (including but not limited to the policies, if applicable, contained in Order 1000)?</p>	<p>1. The Joint Applicants' filing violates the FPA and FERC policy. 2. The proposed cost allocation violates postage stamp rate and sunken cost recovery policies. 3. The Joint Applicants have not met their burden of proving that the proposed rate treatment is just and reasonable. 4. The Joint Applicants have not met their burden of proving that the proposed cost allocation is not unduly discriminatory or preferential.</p>
<p>5. Whether any allocation of costs of the ITC PARs to NYISO and PJM and their customers (or others) is appropriate based on cost causation/incurrence and/or beneficiary pays principles or on other considerations and, if so, is the proposed cost allocation roughly commensurate with: (a) the extent to which NYISO and PJM and their customers (or MISO, IESO, or others) caused ITC to incur the costs of the installation and operation of the ITC PARs (and, to the extent relevant, the reasons for which DEC/ITC incurred costs for installation of the Original PAR); and/or (b) the extent to which NYISO and PJM and their customers (or MISO, IESO, or others) will benefit from (or be harmed by) the installation and operation of the ITC PARs?</p>	<p>1. The Joint Applicants have failed to show that NYISO or PJM caused the harm that resulted in the Joint Applicants' need to install the ITC PARs 2. The Joint Applicants have failed to show that NYISO or PJM will be benefitted by the operation of the ITC PARs</p>
<p>6: What is the extent of the contributions to loop flows of MISO, IESO, NYISO, PJM, and others, and do they represent a basis for MISO/ITC to allocate the costs of the ITC PARs to PJM and NYISO?</p>	<p>1. The Joint Applicants failed to submit credible and persuasive evidence showing NYISO's and PJM's harmful contributions to Lake Erie loop flow. 2. The Joint Applicants' failure to account for IESO's contributions to Lake Erie loop flow, whether neutral, negative, or positive, makes the proposal unjust and unreasonable. 3. Ignoring PJM's and NYISO's effective loop flow mitigation solutions, while crediting IESO, is unduly discriminatory and preferential.</p>
<p>7. Whether the MISO/ITC DFAX Study provides an adequate basis for the proposed cost allocation?</p>	<p>1. Joint Applicants' DFAX Study does not provide an adequate basis to support the proposed cost allocation.</p>
<p>8. Whether the filing creates a service obligation of MISO and ITC to NYISO or PJM or their customers and, if so, what is the nature of the obligation?</p>	<p>1. Joint Applicants assume no service obligation to NYISO or PJM or to their customers pursuant to the filing</p>
<p>9. Whether and to what extent will the PARs control Lake Erie loop flow, including whether, if any of the ITC PARs (or the Hydro One PARs) are unavailable, bypassed, or not being operated in a manner that is consistent with the Presidential Permit issued to ITC by DOE, NYISO, PJM, or their customers nonetheless should be required to pay the charges at issue in this proceeding?</p>	<p>1. The Joint Applicants have offered no evidence of multi-regional benefits of the ITC PARs 2. The arguments that the Michigan-Ontario PARs are prone to failure and will not perform as expected are beyond the scope of this proceeding. 3. The doctrine of judicial estoppel does not apply to the facts of this case. 4. Addressing the justness and reasonableness of rates is not a collateral attack on the Presidential Permit</p>
<p>10. Whether, if the costs of the ITC PARs are allocated to PJM, the cost</p>	<p>1. The increased amount assigned to PJM and the decreased amount assigned to NYISO in MISO's January 2012 testimony may not be imposed.</p>

responsibility assigned to PJM by MISO's January 2012 testimony, which increases PJM's allocation above the amount allocated by the MISO/ITC filing, may be imposed on PJM?	2. A section 206 action is not appropriate.
11. Whether, if the costs of the ITC PARs are allocated to PJM or NYISO, PJM or NYISO is responsible (respectively) for paying MISO in the case of a PJM or NYISO customer's failure to pay PARs-related charges?	Since Judge Sterner found that it is unjust, unreasonable, and unduly discriminatory to allocate the costs of the ITC PARs to NYISO and PJM, Issue 11 is moot and not addressed.

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. This matter is pending before the FERC. If there are any questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FERC Enforcement Action: EnerNOC (IN13-6)**

On December 17, 2012, the FERC approved on a Stipulation and Consent Agreement between OE and EnerNOC, Inc. and Celerity Energy Partners San Diego LLC (together "EnerNOC") that, among other things, levied a **\$820,000 civil penalty** and required EnerNOC to **disgorge \$656,806** in unjust profits and interest.⁹⁰ OE determined that EnerNOC submitted inaccurate metering data for five assets in 2012 in New England's demand response markets, without exercising due diligence and in violation of the ISO Tariff, being overpaid for two of those assets. OE determined that Celerity unintentionally violated 18 C.F.R. §§ 35.7, 35.37(a)(1), and its market-based rate tariff, by failing to comply with two FERC filing obligations in 2010. EnerNOC also agreed to develop and maintain an effective compliance program focusing on compliance with applicable Tariff and FERC requirements, and to make semi-annual reports to OE for one year following the Effective Date of the Agreement. The December 17 order was preceded on December 14, 2012 by a staff notice of alleged violations.

- **FERC Enforcement Action: Show Cause Order – Richard H. Silkman (IN12-13)**

As previously reported, the Commission issued an order, on July 17, 2012, directing Dr. Silkman to show cause why (i) he should not be found to have violated the FERC's prohibition against Electric Energy Market Manipulation⁹¹ by engaging in fraud in the ISO's Day-Ahead Load Response Program ("DALRP"); and, as a result, (ii) he should not be assessed a **\$1.25 million civil penalty**.⁹² OE Staff alleges that, from approximately July 2007 through February 2008, Dr. Silkman advised an industrial load response participant in Rumford, Maine to engage in a fraudulent practice to collect payments in the DALRP. Specifically, Staff alleges that Dr. Silkman advised the participant to curtail on-site generation during DALRP program hours when it enrolled in the DALRP, which Staff believes artificially inflated the participant's baseline load and misrepresented the participant's load profile. Staff also alleges that Dr. Silkman advised and assisted the participant to ensure that its baseline did not appreciably change. The participant was paid for the difference between its inflated baseline load and its normal operational load as a "load reduction" even though no load reduction actually occurred.

On September 14, Dr. Silkman answered and opposed the Show Cause Order. On September 21, FERC Staff filed an unopposed motion for a 30-day extension of time, to November 13, 2012, to reply to the Silkman answer. That request was granted on September 26, and Staff's reply was filed on November 13, 2012. This matter is pending before the FERC.

⁹⁰ *EnerNOC, Inc. and Celerity Energy Partners San Diego LLC*, 141 FERC ¶ 61,211 (2012).

⁹¹ 18 CFR § 1c.2 (2011).

⁹² *Richard Silkman*, 140 FERC ¶ 61,033 (2012).

- **FERC Enforcement Action: Show Cause Order – Competitive Energy Services (“CES”) (IN12-12)**

As previously reported, the Commission issued an order, on July 17 2012, directing CES to show cause why (i) it should not be found to have violated the FERC’s prohibition against Electric Energy Market Manipulation by engaging in fraud in the ISO’s DALRP; and, as a result, (ii) it should not be assessed a **\$7.5 million civil penalty** and required to **disgorge \$166,841** of payments received as a result of participation in the DALRP (plus interest).⁹³ As previously reported, OE Staff alleges that, from approximately July 2007 through February 2008, CES advised an industrial load response participant in Rumford, Maine to engage in a fraudulent practice to collect payments in the DALRP. Specifically, staff alleges that CES advised the participant to curtail on-site generation during DALRP program hours when it enrolled in the DALRP, which Staff believes artificially inflated the participant’s baseline load and misrepresented the participant’s load profile. Staff also alleges that CES advised and assisted the participant to ensure that its baseline did not appreciably change. The participant was paid for the difference between its inflated baseline load and its normal operational load as a “load reduction” even though no load reduction actually occurred.

On September 14, CES answered and opposed the Show Cause Order. On September 21, FERC Staff filed an unopposed motion for a 30-day extension of time, to November 13, 2012, to reply to the CES answer. That request was granted on September 26, and Staff’s reply was filed on November 13, 2012. This matter is pending before the FERC.

- **FERC Enforcement Action: Show Cause Order – Rumford Paper Company (“Rumford”) (IN12-11)**

The Commission issued an order, on July 17 2012, directing Rumford to show cause why (i) it should not be found to have violated the FERC’s prohibition against Electric Energy Market Manipulation by engaging in fraud in the ISO’s DALRP; and, as a result, (ii) it should not be assessed a **\$13.25 million civil penalty** and required to **disgorge just under \$2.9 million** of payments received as a result of participation in the DALRP (plus interest).⁹⁴ As previously reported, OE Staff alleges that, from approximately July 2007 through February 2008, Rumford engaged in a fraudulent practice to collect payments in the DALRP by intentionally curtailing on-site generation during DALRP program hours when it enrolled in the DALRP. Staff believes that this practice artificially inflated Rumford’s baseline load and misrepresented its load profile. Staff also alleges that Rumford took actions to ensure that its baseline did not appreciably change for over six months. Rumford was paid for the difference between its inflated baseline load and its normal operational load as a “load reduction” even though no load reduction actually occurred. On August 14, Rumford elected, pursuant to Ordering Paragraph (D), an immediate penalty assessment by the FERC, if the FERC finds a violation, which a United States district court would be authorized to review *de novo*. On September 14, Rumford answered and opposed the Show Cause Order. On September 21, FERC Staff filed an unopposed motion for a 30-day extension of time, to November 13, 2012, to reply to the Rumford answer. That request was granted on September 26, and Staff’s reply was filed on November 13, 2012. This matter is pending before the FERC.

- **FERC Enforcement Action: Show Cause Order – Lincoln Paper & Tissue (“LP&T”) (IN12-10)**

The Commission issued an order, on July 17 2012, directing LP&T to show cause why (i) it should not be found to have violated the FERC’s prohibition against Electric Energy Market Manipulation by engaging in fraud in the ISO’s DALRP; and, as a result, (ii) it should not be assessed a **\$4.4 million civil penalty** and required to **disgorge just under \$380,000** of payments received as a result of participation in the DALRP (plus interest).⁹⁵ As previously reported, OE Staff alleges that, from approximately July 2007 through February 2008, LP&T engaged in a fraudulent practice to collect payments in the DALRP by intentionally curtailing on-site generation during DALRP program hours when it enrolled in the DALRP. Staff believes that this practice artificially inflated LP&T’s baseline load and misrepresented its load profile. Staff also alleges that LP&T took actions to ensure that its baseline did not appreciably change for over six months. LP&T was paid for the difference between its inflated baseline load and its normal operational load as a “load reduction” even though no load reduction actually occurred. On August 14, Lincoln elected, pursuant to Ordering Paragraph (D), an immediate penalty assessment by the FERC, if the FERC

⁹³ *Competitive Energy Services, LLC*, 140 FERC ¶ 61,032 (2012).

⁹⁴ *Rumford Paper Co.*, 140 FERC ¶ 61,030 (2012).

⁹⁵ *Lincoln Paper and Tissue, LLC*, 140 FERC ¶ 61,031 (2012).

finds a violation, which a United States district court would be authorized to review *de novo*. On September 14, LP&T answered and opposed the Show Cause Order. On September 21, FERC Staff filed an unopposed motion for a 30-day extension of time, to November 13, 2012, to reply to the LP&T answer. That request was granted on September 26, and Staff's reply was filed on November 13, 2012. On November 28, 2012, LP&T filed an answer to FERC Staff's November 13 reply, with FERC Staff opposing that answer on November 30. Since the last report, LP&T filed supplemental information suggesting that the FERC's decision in the recent *Energy Spectrum* case⁹⁶ could not be reconciled with Enforcement Staff's position in this case and requested that the FERC "reject any finding of manipulation against Lincoln and terminate this proceeding." This matter remains pending before the FERC.

- **Waiver of Transmission Standards of Conduct: Bangor Hydro Request (TS11-5)**

Bangor Hydro's October 31, 2011 amended waiver request remains pending before the FERC. As previously reported, the FERC denied, without prejudice, Bangor Hydro's initial request for waiver of the FERC's Standards of Conduct requirements.⁹⁷ Bangor Hydro requested a limited waiver from the FERC's Standards of Conduct requirements,⁹⁸ to the extent necessary, to permit its transmission function personnel to undertake the actions necessary to re-sell into the New England Market energy from the Rollins Project which the MPUC has mandated it purchase but can not otherwise sell at retail. The FERC stated that it would revisit its determination if Bangor Hydro brought forward information demonstrating that it met the criteria for waiver set forth in section 358.1(c) and summarized in the order (i.e. a demonstration that Bangor Hydro has no access to information concerning the operation of the transmission facilities by the ISO and that it obtains information about such matters only by viewing the ISO's OASIS). In response to the *BHE Standards of Conduct Order*, Bangor Hydro amended its waiver request in 2 respects: First, Bangor Hydro revised its request to apply only to the energy required to be purchased from the Rollins Project and the Exeter Agri-Energy Project. Second, Bangor Hydro committed, as a condition of the waiver (if granted), not to engage in any purchases or sales of wholesale electric capacity or energy except for those required under Maine laws and/or regulations or orders of the MPUC. The MPUC filed comments supporting Bangor Hydro's amended waiver request on November 15, 2011. This matter is pending before the FERC.

- **Waiver of Transmission Standards of Conduct: Green Mountain Power Request (TS04-277)**

As previously reported, Green Mountain Power requested on July 27, 2012, a continued waiver of the FERC's Standards of Conduct requirements notwithstanding the material change in facts (its merger with CVPS) upon which the FERC relied in granting Green Mountain a waiver of those requirements. Green Mountain stated that it continues to satisfy the FERC's waiver standards because its control over transmission facilities is limited to small, discrete, stand-alone transmission facilities that are not part of the high voltage grid and are not operated by the ISO and there was no material change in these facts as a result of its merger with CVPS. A notice of this filing was finally issued on January 17, 2013, with comments due on or before February 7, 2013.

XII. Misc. - Administrative & Rulemaking Proceedings

- **NOI: Open Access and Priority Rights on Interconnection Facilities (AD12-14; AD11-11)**

On April 19, 2012, the FERC issued a notice of inquiry ("NOI") seeking comments on whether, and, if so, how the FERC should revise its current policy concerning priority rights and open access with regard to certain interconnection facilities. The FERC reports that, to date, it has on a case-by-case basis permitted an owner of interconnection facilities to have priority to capacity over its facilities for its existing use at the time of a third-party request for service. In the instance where an owner of interconnection facilities has specific, pre-existing generator expansion plans with milestones for construction of generation facilities and can demonstrate that it has made material progress toward meeting those milestones, the FERC may grant priority rights for the capacity on the interconnection facilities to those future generation projects or expansions as well. Further, an affiliate of the current interconnection

⁹⁶ *Energy Spectrum, Inc. v. New York Indep. Sys. Operator Inc.*, 141 FERC ¶ 61,197 (2012) ("*Energy Spectrum*").

⁹⁷ *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (2011) ("*BHE Standards of Conduct Order*").

⁹⁸ See 18 C.F.R. § 358 (2011) *et seq.*

facility owner that is developing its own generator projects also may obtain priority rights to the capacity on the interconnection facilities by meeting the “specific plans and milestones” standard with respect to future use, provided that the plans include a future transfer of ownership of the interconnection facilities to such an affiliate. More than twenty-five parties filed comments on options for addressing priority rights on interconnection facilities. This matter is pending before the FERC.

- **Policy Statement: Allocation of Capacity on New Transmission Projects (AD12-9; AD11-11)**

On January 17, 2013, the FERC issued a final policy statement to clarify and refine its policies governing the allocation of capacity for new merchant transmission projects and new non-incumbent, cost-based, participant-funded transmission projects (“Policy Statement”).⁹⁹ Under the Policy Statement, the FERC will allow developers of such projects to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement on the key rates, terms, and conditions for procuring up to the full amount of transmission capacity, when the developers (1) broadly solicit interest in the project from potential customers, and (2) demonstrate to the FERC that the developer has satisfied the solicitation, selection and negotiation process criteria set forth in the Policy. The Policy’s clarifications and refinements will be implemented prospectively within the FERC’s existing four-factor analysis used to evaluate requests for negotiated rate authority for transmission service.

- **NOPR: Revisions to *Pro Forma* SGIA and SGIP (RM13-2)**

On January 17, 2013, the FERC issued a NOPR¹⁰⁰ proposing to revise the *pro forma* Small Generator Interconnection Procedures (“SGIP”) and *pro forma* Small Generator Interconnection Agreement (“SGIA”) originally set forth in Order 2006 in order to ensure that the time and cost to process small generator interconnect requests will be just and reasonable and not unduly discriminatory. Specifically, the NOPR proposes modifications to the SGIP to: (1) incorporate provisions that would provide an Interconnection Customer with the option of requesting from the Transmission Provider a pre-application report providing existing information about system conditions at a possible Point of Interconnection; (2) revise the 2 MW threshold for participation in the Fast Track Process included in section 2 of the *pro forma* SGIP; (3) revise the customer options meeting and the supplemental review following failure of the Fast Track screens so that the supplemental review is performed at the discretion of the Interconnection Customer and includes minimum load and other screens to determine if a Small Generating Facility may be interconnected safely and reliably; and (4) revise the *pro forma* SGIP Facilities Study Agreement to allow the Interconnection Customer the opportunity to provide written comments to the Transmission Provider on the upgrades required for interconnection. The FERC also proposes to clarify or correct certain sections of the *pro forma* SGIP and SGIA. The FERC indicated that market changes are driving the reevaluation of the SGIP and SGIA. This proceeding will supersede RM12-10 (see below). Comments on this NOPR will be due 120 days after its publication in the *Federal Register*.

- **Request to Update SGIP for Solar Generation (RM12-10)**

In light of the NOPR described immediately above in RM13-2, reporting on the Solar Energy Industries Association (“SEIA”) request that the FERC initiate a rulemaking to update its SGIP for solar generation will be discontinued. As previously reported, SEIA filed a petition on February 16, 2012 requesting that the FERC initiate a rulemaking to update its SGIP for solar generation. Specifically, the SEIA urged the FERC to provide an alternative to the “15% rule or screen” that applies to the fast track interconnection of small solar generation, asserting that the 15% rule has become a “major barrier to solar market access”. On July 17, 2012, the FERC convened a technical conference to discuss issues related to the petition and comments submitted in response to the technical conference are posted in eLibrary. The FERC granted in its NOPR issued in RM13-2 (see immediately above), a Public Utilities Commission of the State of California (“CPUC”) motion to lodge in this proceeding (i) its September 13 decision adopting settlement agreement revising distribution level interconnection rules and regulations (Electric Tariff Rule

⁹⁹ *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects and Priority Rights to New Participant-Funded Transmission*, 142 FERC ¶ 61,038 (2013).

¹⁰⁰ *Small Generator Interconnection Agreements and Procedures*, 142 FERC ¶ 61,049 (2013) (“*SGIA/SGIP NOPR*”).

21), (ii) a revised Rule 21 Tariff; and (iii) an Amended Scoping Memo, all of which CPUC asserted were relevant to the SEIA petition.¹⁰¹

- **Order 770: Revisions to EQR Filing Processes (RM12-3)**

On November 15, 2012, the FERC issued *Order 770*¹⁰² amending its regulations to change the process for filing Electric Quarterly Reports (“EQR”s), adopting a web-based approach to filing EQRs that will allow EQRs to be filed directly through the FERC’s website, either through a web interface or by submitting an Extensible Mark-Up Language-formatted (“XML”) file. *Order 770* follows a June 21, 2012 NOPR which, as previously reported, proposed to discontinue the use of FERC Fox-pro-based software in favor of the web interface or XML-formatted file approach. The implementation of any changes to the EQR filing process will apply to EQR filings beginning with the third quarter 2013 EQR (providing data for July through September 2013). *Order 770* will become effective April 1, 2013.¹⁰³ On December 12, 2012, FERC Staff held a technical conference to review the changes in the EQR filing process.

- **NOPR: 3rd-Party Provision of Ancillary Services; New Electric Storage Technology Accounting and Financial Reporting (RM11-24; AD10-13)**

On June 22, 2012, the FERC issued a NOPR that proposes to revise FERC policies governing the sale of ancillary services at market-based rates (“MBR”). The NOPR also proposes to require transmission providers outside of the organized energy markets to explain in their tariffs how they will determine regulation and frequency response reserve requirements, taking into account the speed and accuracy of the resources. Finally, the NOPR proposes revisions to FERC’s Uniform System of Accounts and its annual and quarterly forms, statements and reports to better account for and report transactions involving energy storage technologies. Under the NOPR, sellers that pass FERC’s existing MBR analyses for energy and capacity would be presumed to lack market power for energy and generator imbalance services in that geographic market. The NOPR also seeks comment on a reporting requirement that would give potential sellers of other ancillary services the information needed to develop market power analyses based on an optional screen designed solely for ancillary services, and it proposes the use of price caps or competitive solicitations to mitigate market power. The NOPR makes a preliminary finding that the proposal to require transmission providers to account for resource speed and accuracy in determining regulation and frequency response reserve requirements is needed to prevent potential undue discrimination against customers that choose to meet their own needs for that ancillary service. It does not mandate a method for meeting this requirement, but proposes that FERC evaluate those determinations on a case-specific basis. Comments on the NOPR were due on or before September 7, 2012.¹⁰⁴ Comments were submitted by, among others, APPA, Beacon Power, EEI, EPSA, Indicated Suppliers,¹⁰⁵ the Federal Trade Commission, NU, and SDG&E. This matter is pending before the FERC.

- **Order 771: Availability of e-Tag Information to FERC Staff (RM11-12)**

On December 20, the FERC issued *Order 771*.¹⁰⁶ *Order 771* grants the FERC access, on a non-public and ongoing basis, to the complete electronic tags (“e-Tags”) used to schedule the transmission of electric power interchange transactions in wholesale markets. *Order 771* will require e-Tag Authors (through their Agent Service) and Balancing Authorities (through their Authority Service) to take steps to ensure FERC access to the e-Tags covered by this Rule by designating the FERC as an addressee on the e-Tags. The FERC stated that the information made available under this Final Rule will bolster its market surveillance and analysis efforts by helping it detect and prevent market manipulation and anti-competitive behavior. In addition, *Order 771* will require that e-Tag information be made available to RTO/ISOs and their Market Monitoring Units, upon request to e-Tag Authors and

¹⁰¹ *SGIA/SGIP NOPR* at P 55.

¹⁰² *Revisions to Elec. Quarterly Report Filing Process*, Order 770, 141 FERC ¶ 61,120 (2012) (“*Order 770*”)

¹⁰³ *Order 770* was published in the *Fed. Reg.* on Nov. 30, 2012 (Vol. 77, No. 231 pp. 71,288-71,312).

¹⁰⁴ The NOPR was published in the *Fed. Reg.* on Jul 9, 2012 (Vol. 77, No. 131) pp. 40,414-40,458.

¹⁰⁵ “Indicated Suppliers” are Exelon, Calpine, Dynegy, GenOn and Tenaska.

¹⁰⁶ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012) (“*Order 771*”).

Authority Services, subject to appropriate confidentiality restrictions. *Order 771* will become effective February 26, 2013.¹⁰⁷ On January 22, requests for clarification and/or rehearing of *Order 771* were filed by EEI/NRECA, Open Access Technology International, Inc., NRECA (separately), and Southern Companies. EEI/NRECA also requested an expedited extension of the order's March 15, 2013 compliance deadline, to 60 days following FERC action on their requests for rehearing and/or clarification, to provide utilities and their services adequate time to implement *Order 771* as clarified. The requests for clarification and/or rehearing are pending before the FERC, with FERC action required on or before February 21, 2013, or the requests will be deemed denied.

- **Order 764-A: Variable Energy Resources (RM10-11)**

On June 22, the FERC issued *Order 764* that adopts two reforms from its November 2010 NOPR to remove barriers to the integration of Variable Energy Resources (“VERs”) into the transmission system by requiring each public utility transmission provider to: (1) offer customers the option of scheduling transmission service at 15-minute intervals; and (2) incorporate provisions into the *pro forma* LGIA requiring interconnection customers whose generating facilities are VERs to provide transmission owners with meteorological and operational data to support power production forecasting.¹⁰⁸ *Order 764* provides guidance on how the FERC will evaluate proposed charges for that service, but does not require a standard approach to (or new schedule for) generator regulation service as proposed in the VER NOPR. The FERC will continue to evaluate proposed charges for generator regulation service on a case-by-case basis, and the Final Rule provides a framework for transmission providers to develop proposed charges. In response to comments on the NOPR by several parties, including the joint comments submitted by NEPOOL and the ISO, the Final Rule explicitly clarified that in its compliance filing, a transmission provider may demonstrate how its existing tariffs, business practices or market rules are adequate to satisfy any requirements of the Final Rule. A more detailed summary was circulated by NEPOOL counsel on June 25 under separate cover. *Order 764* became effective on September 11, 2012.¹⁰⁹ On October 19, EEI requested that the FERC extend for an addition 62 days, to November 12, 2013, the deadline for the compliance filings, so that the initial roll-out and implementation of intra-hour scheduling does not commence during summer peak conditions.

Requests for rehearing and/or clarification of *Order 764* were filed on July 23, 2012 by AWEA, BPA, Iberdrola, NRECA, Powerex, Public Interest Organizations, and Public Power. On August 7, Powerex filed an answer to BPA's request for rehearing. On December 20, 2012, the FERC affirmed its basic determinations in *Order 764*, provided clarification, and granted EEI's request to extend the period for compliance filings.¹¹⁰ *Order 764-A* clarified (i) that the intra-hour scheduling reform adopted in the *Order 764* applies to *all* transmission customers that schedule transmission service under an OATT;¹¹¹ (ii) in the absence of sub-hourly settlement and dispatch, a public utility transmission provider must account for intra-hour imbalances in order to ensure that they are properly factored into the calculation of hourly imbalance charges;¹¹² and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.¹¹³ Remaining requests for clarification and/or rehearing were denied. Requests for clarification and or rehearing of *Order 764-A* were submitted on January 22, 2013 by Powerex and Iberdrola. The requests for clarification and/or rehearing are pending before the FERC, with FERC action required on or before February 21, 2013, or the requests will be deemed denied. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

¹⁰⁷ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹⁰⁸ *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) (“*Order 764*”), *order on reh'g*, 141 FERC ¶ 61,232 (2012).

¹⁰⁹ *Order 764* was published in the *Fed. Reg.* on July 13, 2012 (Vol. 77, No. 135) pp. 41,482-41,546.

¹¹⁰ *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (2012) (“*Order 764-A*”).

¹¹¹ *Id.* at P 15.

¹¹² *Id.* at P 19.

¹¹³ *Id.* at P 23.

- **NOPR: Incorporation of WEQ DR and Energy Efficiency M&V Standards (RM05-5)**

On April 19, 2012, the FERC issued a NOPR proposing to amend its regulations at 18 CFR § 38.2 to incorporate by reference the business practice standards adopted by the NAESB Wholesale Electric Quadrant (“WEQ”) that pertain to the measurement and verification (“M&V”) of demand response and energy efficiency resources participating in RTO/ISOs. The FERC states that adoption of the standards is intended to improve the methods and procedures used to accurately measure and compensate demand response and energy efficiency resource performance.

On June 14, 2012, NAESB filed a report informing FERC that it is in the process of revising the relevant energy efficiency business practice standards to remove references to the International Performance Measurement and Verification Protocol. NAESB intends for these minor revisions to create consistency between the WEQ and Retail Electric Quadrant version of the standards. This matter is pending before the FERC.

XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Jennifer Galiette (860-275-0338; jgaliette@daypitney.com).

- **Natural Gas and Electric Market Coordination (AD12-12)**

As previously reported, the FERC held a regional technical conference, on August 20, 2012, in Boston, aimed at New England stakeholders to discuss coordination between the natural gas and electric markets. This was one of five regional technical conferences the FERC convened in August to discuss gas-electric interdependence issues. The impetus for these technical conferences were the comments gas and electric stakeholders submitted to the FERC earlier this year in this docket, many of which called for such regional technical conferences. A memo discussing the New England technical conference in more detail was distributed to the Participants Committee on September 7, 2012. On November 15, FERC staff released a report detailing the discussions that took place at the five regional technical conferences. The report is available on the FERC’s eLibrary.

On November 15, 2012, the FERC issued an order directing further conferences and reports in the gas-electric coordination initiative.¹¹⁴ Based on the issues raised during the regional technical conferences in August, this *November 15 Order* directs FERC staff to conduct two technical conferences: one focusing on ways to enhance communication between the two industries; and one focusing on how to design the most efficient scheduling systems for both industries. The *November 15 Order* also requires each ISO and RTO to appear before the FERC on May 16, 2013 and October 17, 2013 to detail their efforts and progress in improving coordination between the industries. At those times, FERC will also want the ISOs and RTOs to discuss any natural gas transportation concerns that arise during the winter heating season and any fuel-related generator outages during the winter and spring. Finally, to monitor the progress made by the two industries, the order directs FERC staff to report to the FERC on natural gas and electric coordination activities at least once each quarter in 2013 and 2014.

In accordance with the *November 15 Order*, FERC staff issued a notice on December 7 that it will hold a technical conference on February 13, 2013 to elicit input pertaining to information sharing and communications issues between the natural gas and electric power industries. FERC staff requested that interested parties file comments on questions set forth in the notice in advance of the technical conference. Responses to these questions were filed on January 7 by nearly 30 parties, with all RTO/ISOs but MISO responding, as well as comments from the following New England Parties: MMWEC, National Grid, NEPGA (with EPSA), and the New England LDCs. As previously reported, these comments will form the basis of the agenda for and discussion at the February 13 technical conference.

Also since the last report, a meeting of the New England Gas-Electric Focus Group was held on January 23, 2013, with the next focus group meeting scheduled for February 26, 2013 (again, all those interested and who wish to

¹¹⁴ *Coordination Between Natural Gas and Elec. Markets*, 141 FERC ¶ 61,125 (2012) (“*November 15 Order*”).

participate directly, if they have not already done so, should let us know so that they can be added to the focus group distribution list).

- **NOI: Enhanced Natural Gas Market Transparency (RM13-1)**

On November 15, the FERC issued a NOI seeking comments on what changes, if any, should be made to the regulations under the natural gas market transparency provisions of section 23 of the Natural Gas Act (“NGA”). In particular, the FERC is considering the extent to which quarterly reporting of every jurisdictional natural gas transaction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas) would provide useful information for improving natural gas market transparency. Pursuant to a January 18, 2013 notice, the date for filing comments was extended to and including February 12, 2013.¹¹⁵ Thus far, comments have been received from the Coalition for Renewable Natural Gas.

- **Enforcement Notice of Alleged Violations**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines. Since the last report, OE issued the following notices that in a nonpublic investigation it has preliminarily determined that there has been a violation of the FERC’s regulations:

<u>Company</u>	<u>Alleged Violation(s)</u>
Michigan Consolidated Gas Company	54 back-to-back capacity release transactions without posting the capacity on an Electronic Bulletin Board; multiple flipping transactions. (2001-2006)
Washington 10 Storage Corporation (“W10”)	32 firm transportation storage contracts and 72 park and loan (“PAL”) contracts misclassified as intrastate (rather than interstate); As a result of misclassification, W10 preliminarily determined to have provided unauthorized service, and failed to have identified contracts in required semi-annual reports. Staff also alleged that W10 failed to file annual reports reflecting hub services in violation of FERC regulations. (2003-2007)

A Notice of Alleged Violations is not a formal charge, but suggests that the advanced inquiry is likely to move forward.

XIV. State Proceedings & Federal Legislative Proceedings

- **Connecticut: CT DEEP Study of ISO-NE Impact on Connecticut Ratepayers**

As legislatively directed, the Connecticut Department of Energy and Environmental Protection (“CT DEEP”) provided to the CT General Assembly’s Energy and Technology Committee on August 28 a report

- ▶ reviewing the accountability of ISO-NE to CT ratepayers and energy policymakers;
- ▶ considering strategies and mechanisms that might mitigate any adverse impacts Market Rule 1 may have on wholesale generation prices in CT and New England and may reduce CT’s reliance on the wholesale power market, including, but not limited to, long-term contracts;
- ▶ considering the costs and benefits associated with participating in ISO-NE and any potential benefits of joining another RTO or operating outside of the RTO structure;
- ▶ examining the FERC framework that has contributed to CT’s high electricity rates, and
- ▶ considering methods to foster greater transparency.

¹¹⁵ The NOI was published in the *Fed. Reg.* on Nov 21, 2012 (Vol. 77, No. 225) pp. 69,780-69,785. The comment date was extended by notice dated Jan. 18, 2013 in this proceeding.

DEEP indicates that it intends to conduct further study of key policy issues highlighted in this preliminary investigation. DEEP notes that the lack of consumer cost accountability in ISO-NE's mission statement requires additional analysis of the wholesale power markets outside of what ISO-NE and FERC have addressed to date. Within available resources, DEEP will engage experts to study the current markets, and determine whether there are alternatives that could improve efficiency, reduce ratepayer costs, and improve the balance of market objective, engaging ISO-NE, FERC, and other New England states when preparing these evaluations. DEEP also indicated that it will continue to participate and advocate for improvements to the regional market design that can further CT's policy objectives. The report reflects comments submitted by NEPOOL and NEPGA on the initial draft. A copy of the report is available on-line at <http://www.dpuc.state.ct.us/DPUCservlist.nsf/DocumentSendOut?OpenView>. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Massachusetts: DPU Investigation Into Need for Additional NEMA/Boston Generation**

On October 1, 2012, the MA DPU voted to open an investigation into the need for capacity in NEMA/Boston within the next 10 years pursuant to Chapter 209, Section 40 of the Acts of 2012. In making its determination, the DPU must include consideration of ISO findings and of the anticipated function of the FCM. Should the DPU "determines that there is a need for additional electric generating capacity in [NEMA/Boston] within the next 10 years," MA DPU may order distribution companies serving NEMA/Boston to solicit competitive proposals from developers and enter into reasonable, cost-effective long-term contracts to deliver such resources to NEMA/Boston. On September 7, MA DPU asked the ISO to provide by October 22 information about the existing generating capacity and demand response resources in NEMA/Boston, the load forecast for the next ten years, the likelihood of retirements and the implementation of transmission upgrades ("Summary of Information").

MA DPU conducted a technical conference on the Summary of Information on November 8, 2012. Interested parties were provided an opportunity to submit initial and reply comments on the Summary of Information and on the question of whether NEMA/Boston needs additional capacity over the next ten years. Interested persons also may comment on the following questions, which will not be addressed at the technical conference: (1) whether the FCM will send the appropriate price signals to incentivize the necessary electric generating capacity or demand response resources to meet any identified need; and (2) whether MA DPU should order distribution companies to enter into cost-effective long-term contracts if a need is identified. Initial comments were due November 27, 2012; reply comments, December 5, 2012. If you have any questions concerning this development, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Maine: Lewiston Loop CPCN (MPUC 2011-420)**

As previously reported, a petition for a CPCN for the Lewiston Loop Project was submitted to the MPUC on November 18, 2011 in Case No. 2011-420. The most recent hearings were held December 6, 2012. CMP submitted oral data requests on December 31, 2012. The briefing schedule in this case has been suspended pending the MPUC's decision in its Transmission Planning Standards case, 2011-494. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

XV. Federal Courts (Appeals of FERC Decisions & Others)

The following are NEPOOL-related matters, including petitions for review of FERC decisions in NEPOOL-related proceedings, that are currently pending before the United States Court of Appeals for the District of Columbia Circuit (unless otherwise noted). An "***" following the Case No. indicates that NEPOOL has intervened or is a litigant in the appeal. The remaining matters are appeals as to which NEPOOL has no organizational interest but that may be of interest to Participants. For further information on any of these proceedings, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **New England's Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹¹⁶
Appellants: EPSA and NEPGA

On July 16, EPSA and NEPGA filed a petition for review of FERC's orders on New England's Order 745 (Demand Response Compensation) filings. On August 16, 2012, EPSA and NEPGA filed a statement of issues as well as an unopposed motion to hold case in abeyance pending the final resolution of Case Nos. 11-1486, et al. (EPSA et al. v. FERC) (*see* Orders 745 and 745-A below). On August 23, 2012, the Court granted the motion to hold the case in abeyance. Motions to govern future proceedings will be due 30 days following the course issuance of mandate in the Order 745 appeal.

- **Orders 1000 and 1000-A ((12-1232 consolidated with 12-1233, 12-1250, 12-1276, 12-1279, 12-1280, 12-1285, 12-1292, 12-1293, 12-1296, 12-1299, 12-1300, 12-1304, 12-1448, and 7th Cir. 12-2248)**
Underlying FERC Proceedings: RM10-23¹¹⁷
Appellants: SC PSA, Coalition for Fair Transmission, PSEG, and Sacramento Municipal Utility District

Petitions for review of FERC's Order 1000 and 1000-A, as identified in previous reports, remain pending before the DC Circuit. Thus far, docketing statements, statement of issues, and various interventions have been filed. The Court granted a number of motions to intervene on September 9, 2012. On November 6, 2012, the Court dismissed (as premature) Case Nos. 12-1290 and 12-1294, and ordered that remaining cases be held in abeyance pending further order of the Court. On November 14, 2012, MISO Transmission Owners filed a petition for review of Order Nos. 1000, 1000-A and 1000-B (Case No. 12-1448), which was then consolidated on November 15 with the cases consolidated under 12-1232. On December 13, 2012, PPL PJM Companies, filed a motion to intervene. On December 17, 2012, MISO TOs filed their Statement of Issues. On January 16, 2013, intervenors and petitioners filed a joint unopposed motion to govern further proceedings, which is pending before the Court.

- **FCM Re-Design (12-1060 consolidated with 12-1074, 12-1085, and 12-1149) ****
Underlying FERC Proceedings: ER10-787; EL10-57; EL10-50¹¹⁸
Appellants: NEPGA, NSTAR, MMWEC/NHEC, VT DPS/VT PSB, NRG

Petitions for review of FERC's orders in the FCM Re-Design proceeding were filed by NEPGA on January 27, 2012; by NSTAR on February 3, 2012; by MMWEC/NHEC on February 10, 2012; by VT DPS/VT PSB on March 1, 2012; and by NRG on March 16, 2012. By orders dated February 7, 2012, February 27, 2012, March 2, and March 22, 2012, the Court consolidated the first four cases, with Case No. 12-1060 remaining the lead Case No. On February 29, 2012, the FERC filed an unopposed motion to hold the NEPGA, NSTAR, MMWEC/NHEC petitions in temporary abeyance pending expiration of the statutory deadline for the filing of petitions for review of the challenged orders. On March 26, 2012, the FERC filed an unopposed motion to allow the parties until April 23, 2012 to negotiate and submit a proposed briefing schedule. On March 27, 2012, the Court granted the FERC's unopposed motion and directed parties to submit proposed formats for the briefing of the cases by April 23, 2012, which were filed. On May 7, 2012, NEPOOL notified the Court of its intent to be aligned as an intervenor in support of NSTAR (12-1074) and MMWEC/NHEC (12-1085), reserving the right to join in an intervenors' brief in support of those petitioners. On October 9, briefs were filed by MMWEC/NHEC, NSTAR, and NEPGA. Supporting petitions were filed on October 23 by NECPUC and PSEG. NEPOOL indicated that it would not join in any intervenor's brief. On January 7, 2013, FERC filed its Respondent Brief. Intervenor for Respondent Briefs were filed on January 22, 2013 by NEPGA and jointly by the CT PURA, HQ US, NICC, NSTAR, and NECPUC. Pursuant to the July 16, 2012 briefing schedule, the next submission will be Reply Briefs for Generator Petitioners and Distribution Utility Petitioners (February 5, 2013) and Final Briefs (March 5, 2013).

¹¹⁶ 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

¹¹⁷ 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

¹¹⁸ 131 FERC ¶ 61,065 (Apr. 23, 2010); 132 FERC ¶ 61,122 (Aug. 12, 2010); 135 FERC ¶ 61,029 (Apr. 13, 2011); 138 FERC ¶ 61,027 (Jan. 19, 2012).

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093)**
Underlying FERC Proceedings: RM10-17-000¹¹⁹
Appellants: EPSA, CAISO, ODEC, EEI, CA PUC

As previously reported, petitions for review of FERC's Order 745 (Demand Response Compensation) were filed by EPSA on December 23, 2011; by CAISO on December 27, 2011; by Old Dominion Electric Cooperative ("ODEC"); and by EEI and the California Public Utilities Commission ("CA PUC") on February 13, 2012. The DC Circuit consolidated the EPSA and CAISO cases on December 28. By orders dated February 13, 2012 and February 15, 2012, the Court consolidated Case Nos. 12-1088, 12-1091 and 12-1093 with 11-1486. All briefing has been completed.

- **FCM Settlement Appeal Remand and Remand Rehearing Orders (11-1422 and 11-1465 consolidated)****
Underlying FERC Proceedings: ER03-563-066, -067¹²⁰ **Appellants: NEPGA and MA AG, CT AG, MPUC**

In continuing litigation arising out of the FCM Settlement, the DC Circuit was requested to review the FERC's 2011 *FCM Settlement Remand Order* and *Remand Rehearing Order* by NEPGA on October 31 and by the MA AG, CT AG and MPUC on November 29, 2011. On November 30, the two cases were consolidated and Petitioners in 11-1465 directed to file their statement of issues by December 30, 2011. On December 28, Petitioners filed their non-binding statement of issues to be raised in proceeding. On December 29, the Court granted the interventions by CT AG, ISO, NEPOOL and NEPGA. On January 13, the Court issued an order that parties and *amicus curiae* submit proposed briefing formats for the cases by February 13, 2012. On February 13, 2012, a joint unopposed motion to govern further proceedings was filed. On March 28, the Court issued an order setting briefing schedule and format, which has since been completed. Oral argument was heard on Nov 15, 2012, and the matter is pending before the Court.

Background. As reported for some time, the Supreme Court decided, on January 13, 2010, *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, a case growing out of challenges to the New England Forward Capacity Market settlement agreement. The settlement agreement provides for application of the *Mobile-Sierra* analysis, which creates a presumption that contractual rates are just and reasonable and allows those rates to be set aside only if they are contrary to the public interest, to challenges to the transition rates and the capacity rates that result from the forward capacity auction process. The D.C. Circuit reversed FERC's approval of that provision on the ground that *Mobile-Sierra* protects contract rates only from attack by the signatories to the contract itself. In its decision, the Supreme Court overturned that holding, but it did not decide, whether the transition and auction rates constitute "contract rates" for the purpose of *Mobile-Sierra*, leaving that question to the D.C. Circuit on remand. The D.C. Circuit heard oral argument on these issues on September 20, 2010. On November 5, 2010, the DC Circuit remanded to the FERC for further proceedings the FERC orders approving the settlement agreement's *Mobile-Sierra* provision.¹²¹ The DC Circuit found that the FERC "never articulated in its orders a rationale for its discretion to approve a *Mobile-Sierra* clause outside the contract context, or an explanation for exercising that discretion" in this case. The DC Circuit indicated that the FERC must explain why, if the auction rates are not contract rates, they are entitled to *Mobile-Sierra* treatment.

FCM Settlement Appeal Remand Order. As noted above, on March 17, 2011, the FERC issued an order on remand finding that the transition rates and the rates that result from the forward capacity auction in the New England Forward Capacity Market (collectively, the "settlement rates") are not "contract rates" for the purpose of applying the *Mobile-Sierra* analysis, which creates a presumption that contractual rates are just and reasonable and allows those rates to be set aside only if they are contrary to the public interest.¹²² The FERC stated, however, that it has the discretion to consider and decide whether future challenges to these settlement rates must overcome a more rigorous application of the statutory just and reasonable standard of review. As part of its ruling, the FERC noted that the settlement rates apply to all suppliers and purchasers of capacity in New England, not just to the settling parties and

¹¹⁹ 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

¹²⁰ 134 FERC ¶ 61,208 (Mar. 17, 2011); 137 FERC ¶ 61,073 (Oct. 20, 2011).

¹²¹ *ME Pub. Utils. Comm'sn v. FERC*, slip op. (Nov. 5, 2010) at p 11.

¹²² *Devon Power LLC*, 134 FERC ¶ 61,208 (Mar. 17, 2011).

that the settlement rates more closely resemble tariff, not contract rates. The FERC also stated that the utilities, or purchasers of capacity, do not participate in the forward capacity auction and are not contracting with the capacity suppliers. The FERC further stated, however, that nothing in the Federal Power Act or in the court opinions relating to this proceeding, precluded it from applying a more rigorous than just and reasonable standard to settlement rate challenges in the future.

Remand Rehearing Order. Requests for rehearing, challenging aspects of the FERC’s reasoning and conclusions in the FCM Settlement Appeal Remand Order, were filed on April 18, 2011 by NEPGA and a group self-styled as the “Applicants.”¹²³ NEPGA argued that the FERC erred in considering the rates at issue as anything other than contract rates, which would be subject to a *Mobile-Sierra* “public interest” presumption of reasonableness. Applicants argued that the FERC erred in suggesting that the rates at issue, while they are tariff rates, could nevertheless be made subject to the more stringent *Mobile Sierra* “public interest” standard of review. On October 20, 2011, the FERC denied the rehearing requested, rejecting both arguments.¹²⁴

- **Vermont Yankee Complaint (2nd Circuit, 12-707)**
Plaintiffs: Entergy Nuclear Vermont Yankee & Entergy Nuclear Operations
Defendants: VT Governor, Attorney General, and PSB Members

On February 24, Vermont Parties appealed the January 19, 2012 decision of the U.S. District Court for the District of Vermont that, as previously reported, found certain Vermont State Acts were preempted by the Atomic Energy Act and ordered permanent injunctive relief.¹²⁵ Appellant and amicus briefs have been filed. Entergy’s brief was filed on August 31, 2012. Motions to expedite oral argument were granted on October 3, 2012. Oral argument was held on January 14, 2013, and this matter is pending before the 2nd Circuit.

¹²³ “Applicants” are the CT and MA Att’y Generals, NSTAR, NEICC, and the IECG.

¹²⁴ *Devon Power LLC*, 137 FERC ¶ 61,073 (2011) (“*Remand Rehearing Order*”).

¹²⁵ *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 2012 U.S. Dist. LEXIS 6894 (VT Cir. Jan. 19, 2012).

INDEX
Status Report of Current Regulatory and Legal Proceedings
as of January 24, 2013

I. Complaints

Allco Renewable Energy v. National Grid (PURPA Complaint)	(EL12-12)	24
Base ROE Complaint (2011)	(EL11-66)	3
Base ROE Complaint (2012)	(EL13-33)	2
Brookfield FCA7 Complaint	(EL13-23)	3
Foley v. UI: Rate Base Complaint	(EL12-106)	23
HQ US FCA7 Complaint	(EL13-25)	2
NESCOE FCM Renewables Exemption Complaint	(EL13-34)	1

II. Rate, ICR, FCA, Cost Recovery Filings

2013 Administrative Costs Budget	(ER13-185)	4
Base ROE Complaint (2011)	(EL11-66)	3
Base ROE Complaint (2012)	(EL13-33)	2
Brookfield FCA7 Complaint	(EL13-23)	3
FCA1 Results Remand Proceeding	(ER08-633)	5
FCA5 Results Filing	(ER11-3891)	5
FCA7 Qualification Informational Filing	(ER13-335)	4
HQ US FCA7 Complaint	(EL13-25)	2
ICR-Related Values/HQICCs - 2013/2014 ARA3, 2014/2015 ARA2, and 2015/2016 ARA1	(ER13-495)	4
ISO Issuance of Securities: \$40 Million for New Back Up Control Center	(ES12-47)	6

III. Market Rule 1 Changes, Interpretations and Waiver Requests

Brookfield FCA7 Complaint	(EL13-23)	3
Corrections to ISO-NE eTariff Section III.A.15.2	(ER13-510)	7
CSO Bilateral Transaction and Reconfiguration Auction Enhancements	(ER13-585)	6
CSO Termination: Concord Steam	(ER13-735)	6
CSO Termination: MATEP	(ER13-729)	6
FCM Conforming Changes Reflecting PRD Full Integration	(ER12-1627)	9
FCM Redesign Compliance Filing: FCA8 Revisions	(ER12-953 et al.)	11
FCM Static De-List Bid Changes	(ER13-612)	6
Footprint Power Request for Limited Waiver of New Capacity Qualification Deadlines	(ER13-468)	7
Generator Audit Revisions	(ER13-323)	9
HQ US FCA7 Complaint	(EL13-25)	2
IMM Information Sharing Revisions	(ER13-750)	6
Information Policy Pipeline Information-Sharing Changes	(ER13-356)	8
NESCOE FCM Renewables Exemption Complaint	(EL13-34)	1
Tie Benefits Calculation and Allocation	(ER08-41)	11
TMNSR Procurement Revision	(ER13-465)	7

IV. OATT Amendments/Coordination Agreements

Capability Resource Ratings	(ER11-2216)	13
NPC-Supported Revisions to Attachment K and MR1	(ER12-1914)	13
Order 1000 Compliance Filing	(RM10-23)	12

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Updates

Schedule 21-BHE: Cancellation of Evergreen Wind LSA	(ER13-480)	14
Schedule 21-FG&E: Corrections, Conforming and Clean Up Changes	(ER13-474)	14
Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS	(ER12-2304)	14

Schedule 21-NGrid G-33 Line Emergency Switching Instructions Agreement (ER13-623) 14

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

LFTR Implementation: 17th Quarterly Status Report (ER07-476) 15
 Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation . (ER08-54) 15

IX. Membership Filings

December 2012 Membership Filing (ER13-493) 16
 January 2013 Membership Filing (ER13-688) 16
 Negawatt Additional Requirements for Market Participation (ER13-554) 16

X. Misc. - ERO Rules, Filings; Reliability Standards

2013-2015 Reliability Standards Development Plan (RM06-16 et al.) 21
 FERC Performance Audit of NERC (FA11-21) 21
 FFT Report: December 2012 (RC13-3) 16
 Interpretation: CIP-002-4 R3 (RD12-5) 18
 Interpretation: CIP-006-4 R1.1 (RD12-3) 18
 NERC Compliance Enforcement Initiative (RC11-6) 16
 NOPR: Geomagnetic Disturbance Reliability Standards (RM12-22) 18
 NOPR: NPCC Regional Reliability Standard: PRC-006-NPCC-1 (RM12-12) 19
 NOPR: Revised Reliability Standard: FAC-003-2 (RM12-4) 20
 NOPR: Revised Reliability Standard: TPL-001-2 (RM12-1) 20
 Order 773: Revised “Bulk Electric System” Definition and Procedures (RM12-7; RM12-6) 19
 Proposed Clarification to Available Transfer Capability Reliability Standards (RM08-19) 20
 Revised Reliability Standard: EOP-004-2 (RD13-3) 17
 Revised Reliability Standard: MOD-028-2 (RM12-19) 19
 Revised Reliability Standard: VAR-002-2b (RD13-2) 17
 Revised Reliability Standards: FAC-001-1, FAC- 003-3, PRC-004-2.1a, PRC-005-1.1b ... (RM12-16) 19

XI. Misc. Regional Interest

203 Application: Boston Gen / Constellation Mystic Power (EC10-85) 23
 203 Application: CMP, MEPCO / BHE (EC13-49) 23
 203 Application: FPL Energy Maine Hydro / Brookfield (EC13-62) 22
 203 Application: NEET / NEP (EC13-50) 23
 Allco Renewable Energy v. National Grid - PURPA Complaint (EL12-12) 24
 CFTC Exemption Request 21
 FERC Enforcement Action: EnerNOC (IN13-6) 27
 FERC Enforcement Action: Show Cause Order – Competitive Energy Services (IN12-12) 28
 FERC Enforcement Action: Show Cause Order – Lincoln Paper & Tissue (IN12-10) 28
 FERC Enforcement Action: Show Cause Order – Richard H. Silkman (IN12-13) 27
 FERC Enforcement Action: Show Cause Order – Rumford Paper Company (IN12-11) 28
 Foley v. UI: Rate Base Complaint (EL12-106) 23
 IA – Fitchburg/Pinetree (ER13-446) 25
 LGIA – Oakfield (BHE/Evergreen/ISO) (ER13-741; ER13-678) 25
 MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area .. (ER11-1844) 25
 UI Declaratory Order – Sales to Elm Electric Coop (EL10-67) 24
 Waiver of Transmission Standards of Conduct: Bangor Hydro Request (TS11-5) 29
 Waiver of Transmission Standards of Conduct: Green Mountain Power Request (TS04-277) 29

XII. Misc: Administrative & Rulemaking Proceedings

NOI: Open Access and Priority Rights on Interconnection Facilities (AD12-14; AD11-11) 29

NOPR: 3rd-Party Provision of Ancillary Services;
 New Electric Storage Technology Accounting and Financial Reporting (RM11-24; AD10-13)..... 31
 NOPR: Incorporation of WEQ DR and Energy Efficiency M&V Standards (RM05-5)..... 33
 NOPR: Revisions to Pro Forma SGIA and SGIP (RM13-2)..... 30
 Order 764-A: Variable Energy Resources (RM10-11)..... 32
 Order 770: Revisions to EQR Filing Processes (RM12-3)..... 31
 Order 771: Availability of E-Tag Information to FERC Staff (RM11-12)..... 31
 Policy Statement: Allocation of Capacity on New Transmission Projects (AD12-9; AD11-11) 30
 Request to Update SGIP for Solar Generation (RM12-10)..... 30

XIII. Natural Gas Proceedings

Enforcement Notice of Alleged Violations..... 34
 Natural Gas and Electric Market Coordination (AD12-12) 33
 NOI: Enhanced Natural Gas Market Transparency (RM13-1)..... 34

XIV. State Proceedings & Federal Legislative Proceedings

Connecticut: CT DEEP Study of ISO-NE Impact on Connecticut Ratepayers 34
 Maine: Lewiston Loop CPCN (MPUC 2011-420)..... 35
 Massachusetts: DPU Investigation Into Need for Additional NEMA/Boston Generation ... (DPU 12-77) 35

XV. Federal Courts

FCM Re-Design..... 12-1060 (consol.)..... 36
FCM Settlement Appeal Remand and Remand Rehearing Orders 11-1422..... 37
 New England’s Order 745 Compliance Filing..... 12-1306..... 36
 Orders 1000/1000-A..... 12-1232 (consol.)..... 36
 Orders 745/745-A 11-1486 (consol.)..... 37
 Vermont Yankee Complaint 12-707 (2nd Circuit) 38