

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of February 27, 2013**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated January 24, 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 29 Feb 12	NESCOE answers ISO motion to dismiss Complaint FERC denies Complaint
2	Base ROE Complaint (2012) (EL13-33)	Jan 31	Complainants answer TOs Jan 16 response to the Complaint
2	Base ROE Complaint (2011) (EL11-66)	Feb 12	Respondents' file Cross-Answering Case

**II. Rate, ICR, FCA, Cost Recovery Filings**

* 3	FCA7 Results Filing (ER13-992)	Feb 26	ISO files results of seventh FCA; comment date Apr 12
3	2013 Capital Budget (ER13-192)	Jan 30 Feb 27	CT Agencies requests clarification and/or rehearing of Dec 31 order accepting 2013 Capital Budget FERC issues tolling order affording it additional time to consider CT Agencies request for clarification and/or rehearing of Dec 31 order
4	2013 Administrative Costs Budget (ER13-185)	Jan 30 Feb 4 Feb 6 Feb 7 Feb 12 Feb 14 Feb 21 Feb 27	Joint Agencies request clarification and/or rehearing of Dec 31 order conditionally accepting 2013 Admin Costs Budget MA AG moves to intervene out-of-time ISO and Joint New Agencies move for adoption of a protective order Chief Judge Wagner adopts protective order ISO files answer to Joint Agencies' Jan 30 request NEPOOL files answer to Joint Agencies' Jan 30 request; Chief Judge Wagner issues order continuing settlement judge procedures Chief Judge Wagner grants MA AG intervention FERC issues tolling order affording it additional time to consider Joint Agencies request for clarification and/or rehearing of Dec 31 order; Joint Agencies answer ISO Feb 12 and NEPOOL Feb 14 answers
5	FCA5 Results Filing (VY De-List Bid) (ER11-3891)	Feb 25	FERC gives notice confirming termination of proceeding is final

**III. Market Rule Changes, Interpretations and Waiver Requests**

* 5	Jump Ball Filing: Changes to Modify Day-Ahead Market Schedule (ER13-895)	Feb 7 Feb 11-27 Feb 19	ISO and NEPOOL file alternative proposals to modify Day-Ahead Energy Market Schedule; comment date Feb 28 Calpine, Capital Power, Exelon, GDF Suez, Hess, HQUS, NRG, Vitol intervene; AGT & Maritimes submit comments ISO amends filing by submitting Tariff sheets inadvertently omitted from initial jump ball filing; comment date Feb 28
* 6	eTariff Corrections: Sections III.13.5, 13.6, and 13.7 (ER13-876)	Feb 4 Feb 20-25	ISO files conforming corrections to eTariff; comment date Feb 25 Exelon, NEPOOL intervene doc-lessly
6	IMM Information Sharing Revisions (ER13-750)	Jan 30- Feb 1	Exelon, NRG, NU intervene
6	CSO Termination: Concord Steam (ER13-735)	Feb 22	FERC accepts termination of Concord Steam CSO (14666)

6	CSO Termination: MATEP (ER13-729)	Feb 22	FERC accepts termination of MATEP's CSO (37090)
6	CSO Bilateral Transaction and Reconfiguration Auction Enhancements (ER13-585)	Feb 22	FERC accepts filing, effective as of the dates requested
7	TMNSR Procurement Revision (ER13-465)	Feb 8	FERC accepts Revision, effective Mar 1, 2013
7	Information Policy Pipeline Information-Sharing Changes (ER13-356)	Feb 22	ISO submits compliance filing; comment date Mar 15
7	Generator Audit Revisions (ER13-323)	Feb 8	ISO submits compliance filing correcting definition of Capability Demonstration Year in Tariff Section I.2.2; comment date Mar 1
8	Revised <i>Order 755</i> Compliance Filing (Regulation Market Changes) (ER12-1643)	Feb 6 Feb 15	ISO submits revised compliance filing; comment date Feb 27 NEPOOL files comments
9	FCM Redesign Compliance Filing: FCA8 Revisions (ER12-953 et al.)	Jan 29 Feb 12	MA AG, AWEA, CLF, and RENEW file joint answer to ISO and NEPGA answers; NRG files answer to ISO answer FERC conditionally accepts in part and rejects in part ISO's FCA8 Revisions Compliance Filing

#### IV. OATT Amendments / TOAs / Coordination Agreements

12	Order 1000 Compliance Filing (ER13-193; ER13-196, not consolidated)	Feb 19 Feb 20 Feb 26	NHT files answer to PTO AC and ISO answers Organizations file answer to ISO answer and NESCOE comments FERC grants 90-day extension, to and including Jul 10, of the Order 1000 interregional compliance filing deadline
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#### V. Financial Assurance/Billing Policy Amendments

*No Activity to Report*

#### VI. Schedule 20/21/22/23 Changes

* 14	Schedule 21-GMP: Woodville LSA (ER13-905)	Feb 8	GMP and ISO file LSA; comment date Mar 1
14	Schedule 21-FG&E: Corrections, Conforming and Clean Up Changes (ER13-474)	Feb 5	FG&E submits compliance filing identifying Nov 30, 2012 as the effective date of changes accepted Jan 4, 2013
14	Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)	Feb 25	FERC (i) denies rehearing of <i>GMP Merger Order</i> requested by Cooperatives; and (ii) accepts compliance filing providing notice of effective date for Schedule 21-GMP and cancellation of 21-CVPS

#### VII. NEPOOL Agreement/Participants Agreement Amendments

*No Activity to Report*

#### VIII. Regional Reports

* 15	Capital Projects Report - 2012 Q4 (ER13-935)	Feb 13 Feb 20 Feb 25	ISO files Report; comment date Mar 6 NEPOOL intervenes NEPOOL files comments
* 15	Quarterly Markets Reports - 2012 Q4 (ZZ12-4)	Feb 15	Internal Market Monitor files report for Q4 2012

**IX. Membership Filings**

* 16	February 2013 Membership Filing (ER13-873)	Feb 1	<i>New Members:</i> Abest Power & Gas, Exelon Generation; EverPower Commercial Services; and Howard Wind; <i>Terminations:</i> Rumford Paper, LaValley Energy, New England Building Materials, Constellation Energy Commodities Group
16	January 2013 Membership Filing (ER13-688)	Jan 29	FERC accepts (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); and (ii) the termination of the Participant status of RLtec and Select Energy; all effective Jan 1
16	Negawatt Additional Requirements for Market Participation (ER13-554)	Feb 5	FERC accepts ISO filing for information only

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

* 16	FFT Report: January 2013 (RC13-5)	Jan 31	NERC files Report
16	NERC Compliance Enforcement Initiative (RC11-6)	Feb 25	FERC accepts Oct 12, 2012 compliance filing
17	Revised Reliability Standard: EOP-004-2 (RD13-3)	Jan 30	American Municipal Power intervenes
* 18	Interpretation: BAL-002-1a (RM13-6)	Feb 12	NERC files proposed interpretation
19	<i>Order 775:</i> NPCC Regional Reliability Standard: PRC-006-NPCC-1 (RM12-12)	Feb 21	FERC approves PRC-006-NPCC-1, effective as of the dates requested
19	<i>Order 773:</i> Revised "Bulk Electric System" Definition and Procedures (RM12-7; RM12-6)	Feb 6 Feb 8 Feb 19 Feb 21	Exelon answers NERC request for rehearing ITC Companies answer Holland's request for rehearing FERC issues tolling order affording it additional time to consider requests for clarification and/or rehearing of <i>Order 773</i> NERC answers Exelon's Feb 6 answer
20	NOPR: Revised Reliability Standard: FAC-003-2 (RM12-4)	Feb 5	NERC submits reply comments
21	FERC Performance Audit of NERC (FA11-21)	Feb 1 Feb 22	NERC submits compliance filing containing proposing statutory funding criteria EEI submits comments protesting compliance filing; Large Public Power Council submits comments supporting filing

**XI. Misc. - of Regional Interest**

22	203 Application: FPL Energy Maine Hydro/Brookfield (EC13-62)	Feb 1 Feb 25	NU intervenes FERC authorizes indirect disposition
23	Foley v. UI: Rate Base Complaint (EL12-106)	Feb 3 Feb 21	Foley answers UI Dec 19 motion to dismiss FERC dismisses Complaint without prejudice
* 24	LGIA – GMP Cancellation (ER13-839)	Jan 30 Feb 27	GMP and ISO file notice of cancellation FERC accepts notice of cancellation, effective Jan 2, 2013
* 24	SGIA - HGE Cancellation (ER13-825)	Jan 30	HGE and ISO file notice of cancellation
24	LGIA – Oakfield (BHE/Evergreen /ISO) (ER13-741)	Jan 31 Feb 15 Feb 21	NMISA files protest ISO/BHE and Evergreen Wind file answers to NMISA protest NMISA answers ISO/BHE and Evergreen Wind Feb 15 answers

25	MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844)	Feb 6	FERC Trial Staff, NYISO, PJM, and the NISO, NYISO and PJM TOs file briefs opposing MISO/ITC exceptions
28	FERC Enforcement Action: Show Cause Order – Lincoln Paper & Tissue (IN12-10)	Jan 25	FERC Staff objects to Jan 10 LP&T filing
29	Waiver of Transmission Standards of Conduct: Green Mountain Power Request (TS04-277)	Feb 8	GMP requests FERC to defer action on waiver request pending submission of supplemental filing

### XII. Misc. - Administrative & Rulemaking Proceedings

29	Policy Statement: Allocation of Capacity on New Transmission Projects (AD12-9; AD11-11)	Feb 19	NRECA requests clarification and reconsideration of Jan 17 Policy Statement
31	<i>Order 768</i> : Electricity Market Transparency (RM10-12)	Feb 8	FERC partially grants extension of time such that EQR filers need not include e-Tag ID data in EQRs beginning in the third quarter of 2013
30	<i>Order 771</i> : Availability of E-Tag Information to FERC Staff (RM11-12)	Feb 19	FERC issues tolling order affording it additional time to consider requests for clarification and/or rehearing of <i>Order 771</i> ; PJM/SPP file answer to Rehearing Requests
31	<i>Order 764-A</i> : Variable Energy Resources (RM10-11)	Feb 19	FERC issues tolling order affording it additional time to consider the Iberdrola and Powerex requests for clarification and/or rehearing of <i>Order 764-A</i>
32	<i>Order 676-G</i> : Incorporation of WEQ DR and EE M&V Standards (RM05-5)	Feb 21	FERC issues <i>Order 676-G</i> ; effective 60 days from its publication in the <i>Fed. Register</i>

### XIII. Natural Gas Proceedings

33	Natural Gas and Electric Market Coordination (AD12-12)	Jan 29 Feb 13	FERC issues supplemental notice of Feb 13 technical conf FERC staff holds technical conf
34	NOI: Enhanced Natural Gas Market Transparency (RM13-1)	Jan 25 - Feb 12	Over 40 parties submit comments

### XIV. State Proceedings & Federal Legislative Proceedings

*No Developments to Report*

### XV. Federal Courts (Appeals of FERC Decisions)

35	Orders 1000 and 1000-A (12-1232 consol.)	Feb 6	Court consolidates 12-1478 with 12-1232 <i>et al.</i>
36	FCM Re-Design (12-1060 consol.)	Feb 5	NSTAR, NEPGA and NRG, MMWEC and NHEC file Petitioner Reply Briefs
36	FCM Settlement Appeal Remand and Remand Rehearing Orders (11-1422 and 11-1465 consol.)	Feb 15	DC Circuit dismisses challenges to FCM Remand Rehearing Order by NEPGA (for lack of standing) MA AG/CT AG/MPUC (holding FERC does have asserted discretion)

**MEMORANDUM**

**TO:** NEPOOL Participants Committee Member and Alternates

**FROM:** Patrick M. Gerity, NEPOOL Counsel

**DATE:** February 27, 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 of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures through the mid-afternoon of February 27, 2013. If you have questions, please contact us.<sup>1</sup>

**I. Complaints**

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

On February 12, 2013, the FERC denied NESCOE’s FCM Renewable Exemption Complaint.<sup>2</sup> As previously reported, NESCOE instituted a complaint, on December 28, 2012, 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 asserted that the ISO’s proposed offer floor mitigation construct would 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”). NESCOE requested 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.

In denying the Complaint, the FERC found that “NESCOE has failed to meet its burden under section 206 to demonstrate that ISO-NE’s MOPR is unjust, unreasonable or unduly discriminatory” as applied to the New England Capacity Market.<sup>3</sup> The FERC declined to set the case for hearing, and therefore denied the motion to consolidate this proceeding with the FCA8 Revisions Compliance Filing proceeding (ER12-953),<sup>4</sup> on which it concurrently issued an order conditionally accepting in part and dismissing in part the ISO’s proposed compliance filing (*see* Section III below).

If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)), Harold Blinderman (860-275-0357; [hblinderman@daypitney.com](mailto:hblinderman@daypitney.com)) or Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)).

<sup>1</sup> 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”).

<sup>2</sup> *New England States Comm. on Electricity v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013).

<sup>3</sup> *Id.* at P 32.

<sup>4</sup> *Id.* at P 30.

- **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 to reduce the Base ROE from the still effective 11.14% to 8.7%. Complainants acknowledged that the Base ROE is already the subject of ongoing hearing procedures in EL11-66 (see below) but offered 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”)<sup>5</sup> 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 asked 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,<sup>6</sup> MA AG, MOPA, MPUC, TEC, and the VT DPS. On January 16, the TOs filed their answer, asserting that the FERC should dismiss the Complaint as contrary to Section 206’s 15-month refund limitation and that the Complaint failed to show that the TOs’ Base ROE is unjust and unreasonable. Alternatively, the TOs argued 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. On January 31, Complainants answered the TOs January 16 answer. The request to consolidate this proceeding with EL11-66, as well as the complaint, answers, 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](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@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.<sup>7</sup> The FERC set the refund effective date at October 1, 2011, as requested. The order addressed a complaint filed on September 30, 2011 against the TOs by a number of State, consumer, and consumer advocate parties (the “Complainants”)<sup>8</sup> seeking a FERC order reducing the 11.14 percent Base ROE used in calculating formula rates for

<sup>5</sup> 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.

<sup>6</sup> EMCOS or the “Eastern Massachusetts Consumer-Owned Systems” are Braintree, Hingham, Reading, and Taunton.

<sup>7</sup> *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.

<sup>8</sup> 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.

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,<sup>9</sup> 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. Since the last report, Respondents' filed on February 12, 2013 their "Cross-Answering Case" consisting of the testimony and exhibits of Dr. William E. Avera and Ellen Lapson. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## II. Rate, ICR, FCA, Cost Recovery Filings

- **FCA7 Results Filing (ER13-992)**

On February 26, the ISO filed the results of the seventh FCA ("FCA7") held February 4-5, 2013. The ISO reported that the Capacity Zones for FCA7 are Connecticut, Maine, NEMA/Boston and Rest of Pool. The Maine, Connecticut, and Rest of Pool Capacity Zones reached the \$3.15 kW-mo. Capacity Clearing Price Floor, with excess capacity of 669 MW, 241 MW, and 2,342 MW respectively. The HQ Phase II and New York AC Ties external interfaces also had excess supply at the conclusion of the auction, with excess capacity of 240 MW and 269 MW, respectively. The auction for the NEMA/Boston Capacity Zone, however, closed during the first round.<sup>10</sup> Pursuant to the Tariff provisions for Insufficient Competition, existing capacity resources in NEMA/Boston will receive \$6.661/kW-month; new resources, \$14.999/kW-month. The ISO also reported that, of the 268 (or 1,560 MW of capacity) de-list bids received from all four Capacity Zones,<sup>11</sup> none were rejected for reliability reasons. The ISO asked the FERC to accept the rates for capacity generated by FCA7 and to accept the FCA7 results, effective June 26, 2013. Comments on this filing are due on or before April 12, 2013. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **2013 Capital Budget (ER13-192)**

As previously reported, the FERC accepted on December 31, 2012, (i) the ISO's proposed capital budget and supporting materials for calendar year 2013 ("2013 Capital Budget"), effective January 1, 2013, and (ii) the ISO's Capital Projects Report and Schedule of Unamortized Costs covering the third quarter ending September 30, 2012 (the "2012 Q3 Report"), effective October 1, 2012.<sup>12</sup> The 2013 Capital Budget was contested, with CT Agencies<sup>13</sup> requesting the FERC consider the 2013 Capital and Administrative Costs Budgets at the same time, set the Budgets for evidentiary hearing, and to "reform [the ISO's] budget-making process to allow more meaningful input from the states whose residents pay for the budget and to conduct an evidentiary hearing if one is requested by any affected state commission." In accepting the 2013 Capital Budget, the FERC found that the ISO supported the costs in the 2013 Capital Budget, including those of the listed and reasonably included conceptual projects, as just and reasonable.<sup>14</sup> The FERC rejected as beyond the scope of the proceeding CT Agencies' proposed reforms to the budget process, including the requests to require (i) the ISO to file its administrative and capital budgets together, (ii) the ISO to provide its final budgets to state commissions prior to submitting them to the FERC, and (iii) the FERC to

<sup>9</sup> 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.

<sup>10</sup> The auction for the NEMA/Boston Zone closed during when a new resource (Footprint), without which the NEMA/Boston Local Sourcing Requirement would not have been met, submitted an offer to withdraw from the auction.

<sup>11</sup> The ISO reviewed 67 Static De-List Bids, totaling 259 MW, prior to the auction; 201 Dynamic De-list Bids, totaling 1,301 MW, during the auction.

<sup>12</sup> *ISO New England Inc.*, 141 FERC ¶ 61,275 (2012) ("2013 Capital Budget Order"), *reh'g requested*.

<sup>13</sup> "CT Agencies" are the CT PURA, CT AG, and CT OCC.

<sup>14</sup> *Id.* at P 20.

establish standard hearing procedures for ISO capital budgets.<sup>15</sup> The FERC noted, however, the ISO's commitment to include the states' feedback as part of its future budget filings, and that the ISO could submit future budget filings together if it so chooses.<sup>16</sup> On January 30, 2013, CT Agencies challenged the *2013 Capital Budget Order*. The FERC issued on February 27, 2013, a tolling order affording it additional time to consider the CT Agencies' rehearing request, which remains pending before the FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@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.<sup>17</sup> 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 Agencies'<sup>18</sup> 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.<sup>19</sup> The FERC also noted that the ISO may submit its capital and administrative budgets together if it so chooses.

Chief Judge Wagner designated ALJ Michael J. Cianci, Jr. as the Settlement Judge for this proceeding on January 4, 2013. A first settlement conference was held on January 24. 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.

Since the last report, the "Joint Agencies" requested clarification and/or rehearing of the decision in the *2013 ISO Budget Order* to suspend the budget-related Tariff changes "for a nominal period, to become effective January 1, 2013, subject to refund". The Joint Agencies urged the FERC to clarify that it "expects the ISO to take precautionary measures to ensure that, if a refund is ordered, the ISO will be able to provide funds without a surcharge" (e.g. by "setting aside the incremental revenues associated with the rate increase that the [FERC] made effective subject to refund—or at least not spending those incremental revenues—until the [FERC] either approves a settlement in this proceeding or determines through adjudication what portion of the challenged increase is just and reasonable.")<sup>20</sup> The ISO and NEPOOL answered the Joint New England Agencies January 30 request on February 12 and 14, respectively. In its answer, NEPOOL opposed the Joint Agencies' Motion for Clarification to the extent that the Joint Agencies motion would require a change to the ISO's work plan upon which the 2013 Revenue Requirement was based, stating that any required changes in the Work Plan or in collections to effect refunds should be addressed in the stakeholder process. On February 27, Joint Agencies filed an answer to the ISO and NEPOOL answers and the FERC issued a tolling order affording it additional time to consider the Joint Agencies' rehearing request, which remains pending before the FERC.

With respect to the settlement proceedings, the ISO and the Joint Agencies moved on February 6 for adoption of a protective order that would allow for the voluntary exchange of proprietary/ commercially sensitive information

<sup>15</sup> *Id.* at PP 20-22.

<sup>16</sup> *Id.* at P 23.

<sup>17</sup> *ISO New England Inc.*, 141 FERC ¶ 61,272 (2012) ("*2013 ISO Budget Order*"), *reh'g requested*.

<sup>18</sup> "Joint Agencies" are CT PURA, CT OCC, CT AG, RI PUC, RI AG, NH OCA, and MOPA.

<sup>19</sup> *Id.* at P 33.

<sup>20</sup> Joint New England Agencies Request for Clarification and/or Rehearing at 4, n. 6.



between the ISO and the Joint Agencies. The requested protective order was adopted by Chief Judge Wagner on February 7, 2013. Chief Judge Wagner issued an order continuing the settlement judge procedures on February 14, and granting the MA AG's motion to intervene out-of-time on February 21. If there are any questions on this matter, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)) or Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

- **FCA5 Results Filing (VY De-List Bid) (ER11-3891)**

On February 25, the FERC issued a "Notice of Finality of Order Terminating Proceeding,"<sup>21</sup> allowing the order of the Chief Administrative Law Judge (ALJ), which dismissed the September 14, 2013 offer of settlement (aspects of which were opposed by NEPOOL and NRG), terminated the settlement judge procedures, and terminated the proceeding,<sup>22</sup> to become a final Commission decision. As reported in the January 24 Report, the ALJ issued that order following a VT DPS request for the same, which NEPOOL supported, in light of the ISO's notice to Entergy that the Vermont Yankee ("VY") FCA5 Dynamic De-list Bid request had, following additional study and analysis, been accepted and VY de-listed. The *Notice of Finality* concludes this proceeding. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order<sup>23</sup> that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding<sup>24</sup> 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 Generators<sup>25</sup> 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.

### III. Market Rule Changes, Interpretations and Waiver Requests

- **Jump Ball Filing: Changes to Modify Day-Ahead Market Schedule (ER13-895)**

On February 7, as amended on February 19,<sup>26</sup> the ISO and NEPOOL jointly filed alternative changes to the Day-Ahead Energy Market ("DAM") Market Rules to provide for earlier clearing of the DAM and earlier completion of the initial Reserve Adequacy Analysis ("RAA") process. Specifically, both the NEPOOL Proposal and the ISO

<sup>21</sup> *ISO New England Inc.*, 142 FERC ¶ 61,144 (2013) ("Notice of Finality").

<sup>22</sup> *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).

<sup>23</sup> *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).

<sup>24</sup> *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).

<sup>25</sup> "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.

<sup>26</sup> On February 19, the ISO submitted Tariff sheets inadvertently omitted from the initial February 7 filing. The comment date for the additional Tariff sheets is the same as for the initial filing, or February 28, 2013.

Proposal modify various provisions of Market Rule 1, Appendices A and F to Market Rule 1, and Section I.2.2 (Definitions) and delete Appendix H to Market Rule 1, but with one key and critical difference: the NEPOOL Proposal provides one more hour for submission of bids and offers in the DAM by 10:00 a.m. as opposed to the 9:00 a.m. deadline proposed by the ISO, with the rest of the process timing shifted by one hour as well, in order to provide gas-fired generators the ability to submit informed bids in the DAM based on the most liquid trading portions of the day for providing gas. The ISO and NEPOOL asked the FERC to choose, pursuant to the Jump Ball provisions of the Participants Agreement, between the two alternatives and to permit the changes it chooses to become effective on May 1, 2013, with two weeks' notice of the actual effective date to be provided by the ISO. The NEPOOL Proposal was supported by the Participants Committee at its January 4, 2013 meeting; the ISO Proposal was not. Comments on this filing are due on or before February 28, 2013. Thus far, interventions have been filed by Calpine, Capital Power, Exelon, GDF Suez, Hess, HQUS, NRG, and Vitol; comments by Algonquin Gas Transmission, LLC ("AGT") and Maritimes & Northeast Pipeline, L.L.C. ("Maritimes"). Additional materials to be filed by NEPOOL, as well as any additional comments, protests, and/or interventions will be summarized in the next Report. If you have any questions concerning this matter, please contact Harold Blinderman (860-275-0357; [hblinderman@daypitney.com](mailto:hblinderman@daypitney.com)), Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **eTariff Corrections: Sections III.13.5, 13.6 and 13.7 (ER13-876)**

On February 4, the ISO submitted corrections to Sections III.13.5, 13.6 and 13.7 of its eTariff that consolidate, effective January 15, 2013, changes accepted in ER12-609 (Load Reconstitution Methodology), ER12-1651 (Order 741 Compliance Filing (Central Counterparty Proposal)),<sup>27</sup> ER12-1627 (FCM Conforming Changes Reflecting PRD Full Integration), ER12-2041 (Defined Terms Revisions), and ER12-2697 (Various FCM Rule Revisions). Doc-less interventions were filed by Exelon and NEPOOL. No substantive comments were submitted by the February 25 comment date and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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. Doc-less interventions were filed by Exelon, NRG, and NU. No substantive comments on this filing were submitted and 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](mailto:slombardi@daypitney.com)).

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

On February 22, the FERC accepted the termination of the CSO held by Project Sponsor Concord Steam Corporation ("Concord Steam") for Resource 14666. As the ISO indicated, the amount of financial assurance provided by Concord Steam with respect to the CSO will be drawn down. Unless the February 22 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](mailto:pmgerity@daypitney.com)).

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

Also on February 22, the FERC accepted the termination of the CSO held by Project Sponsor MATEP LLC for Resource 37090. As the indicated, the amount of financial assurance provided by MATEP with respect to the CSO will be drawn down. Unless the February 22 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](mailto:pmgerity@daypitney.com)).

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

On February 22, the FERC accepted changes to the FCM rules related to CSO Bilaterals and reconfiguration auctions jointly filed by the ISO and NEPOOL on December 19, 2012. The rule changes (with effective dates noted

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<sup>27</sup> ISO New England Inc. and New England Power Pool, 139 FERC ¶ 61,178 (2012).

in parentheses) will: (i) allow Market Participants to submit CSO Bilaterals before the current submission windows open (September 1, 2013 (upon two weeks' prior notice)); (ii) move the second annual reconfiguration auction to August (rather than May) each year (April 1, 2013); and (iii) permit Real-Time Emergency Generation ("RTEG") Resources to shed their CSOs in reconfiguration auctions (April 19, 2013). Unless the February 22 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

On February 8, the FERC accepted jointly filed changes to the procurement of Ten-Minute Non-Spinning Reserve ("TMNSR") in the Forward Reserve Market (the "TMNSR Procurement Revision"). As previously reported, the TMNSR Procurement 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. The TMNSR Procurement was accepted effective March 1, 2013, as requested. Unless the February 8 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC conditionally accepted, on January 23, 2013, 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.<sup>28</sup> The *Pipeline Information Sharing Changes Rehearing Order* was not challenged and is final and unappealable. On February 22, the ISO filed changes in response to the requirements of the FERC's *Pipeline Information Sharing Changes Rehearing Order*. Those changes were unanimously recommended for Participants Committee support by the Markets Committee and will be considered via the March 1, 2013 Consent Agenda (item #2). NEPOOL will report on the vote taken and provide any other information, as appropriate, on or before the March 15, 2013 comment date. For a more detail history of this proceeding, please refer to the January 24, 2013 Report. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)), Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, 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").<sup>29</sup> 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. "In the interest of clarity", the FERC directed a 30-day compliance filing "to define and consistently refer to "Capability Demonstration Year," not "Capacity Demonstration Year," in its Tariff provisions."<sup>30</sup> That compliance filing was submitted on February 8, 2013, with any comments on the one-word change due on or before March 1, 2013. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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<sup>28</sup> *ISO New England Inc.*, 142 FERC ¶ 61,058 (2013) ("*Pipeline Information Sharing Changes Rehearing Order*").

<sup>29</sup> *ISO New England Inc. and New England Power Pool*, 142 FERC ¶ 61,024 (2012) ("*Gen Audit Revisions Order*"). The *Gen Audit Revisions Order* was not challenged and is final and unappealable.

<sup>30</sup> *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.

- **Revised Order 755 Compliance Filing (Regulation Market Changes) (ER12-1643)**

As previously reported, the FERC rejected, on November 8, 2012, the proposed April 30 *Order 755* compliance filing jointly filed by the ISO and NEPOOL.<sup>31</sup> In rejecting the compliance filing, the FERC found that New England’s proposal did not comply with *Order 755*’s requirements that (i) “the clearing performance price be paid uniformly to all resources cleared during the same settlement period”<sup>32</sup>; and (ii) the Tariff provide for a two-part payment (for both capacity and resource performance) to frequency regulation resources.<sup>33</sup> The FERC also concluded that the ISO had not made a showing that “the present market conditions and characteristics warrant a deviation from *Order 755*’s requirements”.<sup>34</sup> Accordingly, the ISO was directed to submit a revised compliance filing within 90 days, or by February 6, 2013. As for the requested extension for the effective date of the Tariff changes, the FERC rejected the initial request and indicated that it would establish the new effective date in its order on the revised compliance filing.

On February 6, the ISO submitted a revised Order 755 Compliance Filing (“Revised Compliance Filing”). The ISO stated that the Revised Compliance Filing addresses the deficiencies identified in the *First Order 755 Compliance Order*. Specifically, the Revised Compliance Filing changes include separate, uniform prices for regulation capacity and service and provide two-part compensation for regulation capacity and service based on the uniform prices for each. An effective date of January 1, 2015, with two weeks’ notice of the actual effective date to be provided by the ISO, was requested. The Revised Compliance Filing changes were unanimously supported by the Participants Committee at its February 1 meeting. Comments on the Revised Compliance Filing were due on or before February 27. On February 15, NEPOOL filed comments indicating its unanimous support for the revised compliance changes, explaining its reason for not joining the February 6 filing due to an inability to support the expansive discussion in Section III of the filing with respect to matters unrelated to the revised compliance changes, and urging the FERC not to issue an order in this proceeding that would upset the priorities of other substantial initiatives in the Work Plan. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC, on January 14, 2013, 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 (currently scheduled to become effective on June 1, 2017).<sup>35</sup> 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. The FERC found just and reasonable the “must-offer requirement for demand response resources with a capacity supply obligation in ISO-NE’s FCM,”<sup>36</sup> agreed that “the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties,”<sup>37</sup> and found the “proposal will be beneficial to both demand response providers and wholesale electricity customers”.<sup>38</sup> 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

<sup>31</sup> *ISO New England Inc. and New England Power Pool*, 141 FERC ¶ 61,110 (2012) (“*First Order 755 Compliance Order*”).

<sup>32</sup> *Order 755 Compliance Order* at P 26, citing *Order 755* at PP 99, 131. (The FERC found that, under the Vickery approach, “each of the resources that clear during a given settlement period receives a different effective clearing price”.)

<sup>33</sup> *Id.* at P 27, citing *Order 755* at P 197.

<sup>34</sup> *Id.* at P 28.

<sup>35</sup> *ISO New England Inc.*, 142 FERC ¶61,027 (2012) (“*January 14 Order*”).

<sup>36</sup> *Id.* at P 27.

<sup>37</sup> *Id.* at P 28.

<sup>38</sup> *Id.* at P 29.

reductions and behind-the-meter generation.<sup>39</sup> 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;<sup>40</sup>
- ▶ 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 rules<sup>41</sup> (noting its concern about the interaction between the must-offer requirement and the need for demand response resources to refresh their baselines);<sup>42</sup>
- ▶ why the removal of using transmission losses in its calculation of demand resource capacity values is justified;<sup>43</sup>
- ▶ whether, and if so how, the ISO it will otherwise adjust the total capacity requirement to reflect avoided transmission losses when procuring capacity;<sup>44</sup> and
- ▶ how considering the duration of a shortage event when evaluating the performance of demand response resources but not generation resources provides for comparable treatment.<sup>45</sup>

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. No challenges to the *January 14 Order* were filed and it is now final and unappealable. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

On February 12, the FERC conditionally accepted in part and rejected in part the revisions to the FCM and FCM-related rules in the Tariff (“FCA8 Revisions”) filed by the ISO and the PTO AC.<sup>46</sup> As previously reported, the FCA8 Revisions were submitted in response to a number of FERC orders,<sup>47</sup> and included the following revisions: (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,

<sup>39</sup> *Id.* at PP 44-46 .

<sup>40</sup> *Id.* at P 36.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at P 35.

<sup>43</sup> *Id.* at P 57.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at P 58.

<sup>46</sup> *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013) (“FCA8 Revisions Order”).

<sup>47</sup> 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”).

APPA/NPPA/NRECA, Capital Power, CLF, CT AG, CT OCC, CT PURA, EMCOS, EnerNOC, EPSA, Exelon, Massachusetts,<sup>48</sup> 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 were included with the January 24, 2013 Report. Since that report, answers to the ISO and NEPGA answers were filed jointly by the MA AG, AWEA, CLF and RENEW and NRG filed an answer solely to the ISO answer.

**FCA8 Revisions Order.** As noted above, the *FCA8 Revisions Order* conditionally accepted in part and rejected in part the FCA8 Revisions. The *FCA8 Revisions Order* accepted the following aspects of the FCA8 Revisions as compliant with its prior FCM Orders:

- ▶ Offer-floor mitigation mechanism.
  - Trigger Prices. The FERC accepted: (i) the ISO’s offer review trigger prices.<sup>49</sup> In response to concerns raised by EnerNOC, the FERC “strongly encourage[d the ISO], during the next complete update of trigger prices, to revise its demand response trigger price methodology so that it does not rely on [] limited data”, but declined to direct any changes.<sup>50</sup> The FERC also accepted the proposal to recalculate trigger prices no less than every three years, and noted that it would not prejudice any issues related to the updating of trigger prices, noting an ISO commitment to develop in time for FCA9, a mechanism for the adjustment of offer review trigger prices by index or combination of indices in years for which no full recalculation is performed.<sup>51</sup>
  - Unit Specific Offer Review. The FERC found that the ISO’s proposal complied with the *April 13, 2011 Order’s* requirement that the MOPR include a mechanism by which a capacity resource may request an offer floor that is lower than the applicable default offer floor because it allows a resource to cost-justify a new resource offer floor price that is lower than the relevant trigger price.<sup>52</sup>
  - Duration of Mitigation for Cleared Resources. The FERC accepted the ISO’s proposal *in part* (see below). Specifically, the FERC found that the ISO proposal to subject a resource to offer floor mitigation until that resource clears in one FCA complied with the *April 13, 2011 Order*.
  - Imports’ treatment under MOPR.<sup>53</sup>
  - No Exemptions to MOPR for New Self-Supplied Resources.<sup>54</sup> The FERC rejected requests for self-supply exemptions for the MOPR..
  - New Renewable Resources. The FERC accepted the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives. The FERC rejected the MA AG’s and NESCOE’s alternative proposals as beyond the scope of the proceeding<sup>55</sup> (see EL13-34 above). However, given the support for a renewable exemption, the FERC encouraged the ISO “to undertake the development of a stakeholder process for such an exemption, which could include the development of a demand curve.”<sup>56</sup>

<sup>48</sup> “Massachusetts” is the MA DPU and MA DOER.

<sup>49</sup> *Id.* at PP 37-38.

<sup>50</sup> *Id.* at P 40.

<sup>51</sup> *Id.* at P 43.

<sup>52</sup> *Id.* at P 53.

<sup>53</sup> *Id.* at P 70.

<sup>54</sup> *Id.* at P 80.

<sup>55</sup> *Id.* at PP 96-97.

<sup>56</sup> *Id.* at P 97.

- ▶ \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids.<sup>57</sup>
- ▶ Additional revisions, including the elimination of the remaining uses of the Cost of New Entry (“CONE”), complete removal of the FCA administrative price floor, revisions addressing the treatment of long lead time resources, the capacity carry forward rule, IMM-review of low-price offers, references to “out-of-market” capacity, “interim out-of-market” capacity, and additional financial assurance.<sup>58</sup>

The *FCA8 Revisions Order* rejected:

- ▶ ISO’s proposed methodology for reducing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA. Indicating that “a resource that has not yet cleared in an FCA would be allowed an offer floor that was lower than its first-year levelized cost, because its total investment cost would be reduced by the amount of accumulated straight-line depreciation”,<sup>59</sup> the FERC directed the ISO to submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market.<sup>60</sup>
- ▶ ISO’s request to model only 4 capacity zones for FCA8. The FERC concluded that the ISO “failed to support any type of waiver request or otherwise show that remaining with its four-zone model for FCA 8 would be just and reasonable.” Accordingly, the ISO will be required to submit on or before March 14, 2013, revised tariff sheets to model 8 zones. The FERC noted that its finding does not preclude the ISO from making an additional filing to request and adequately support the modeling of fewer than eight zones in FCA8. Should it make such a filing, the FERC stated that the ISO “would have to explain in detail how the various projects predicted to come on-line prior to 2017 will alleviate existing or forecasted constraints such that fewer than eight zones would be appropriate.”<sup>61</sup>

Any challenges to the *FCA8 Revisions Order* will be due on or before March 14, 2013, the same deadline as the compliance filing with (i) a revised proposal addressing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA and (ii) the directed capacity zone modeling changes. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)), Harold Blinderman (860-275-0357; [hblinderman@daypitney.com](mailto:hblinderman@daypitney.com)) or Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto: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 report<sup>62</sup> 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 February 8, 2010, NEPOOL filed comments reflecting the results of that consideration and vote. NESCOE submitted

<sup>57</sup> *Id.* at P 126.

<sup>58</sup> *Id.* at P 127.

<sup>59</sup> *Id.* at P 64.

<sup>60</sup> *Id.* at PP 63-64.

<sup>61</sup> *Id.* at P 117.

<sup>62</sup> 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).

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](mailto: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, 2012 meeting. An amended package of compliance changes was, however, supported by the Participants Committee at that meeting 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,<sup>63</sup> PSEG, Southern New England States.<sup>64</sup> On January 8, NESCOE and “Five NE States”<sup>65</sup> responded to various comments and protests submitted in this proceeding. On January 10, RENEW

<sup>63</sup> “Organizations” are Environment Northeast, the National Consumer Law Center (“NCLC”), the Natural Resources Defense Council (“NRDC”), and the Sustainable FERC Project.

<sup>64</sup> “Southern New England States” are the MA DPU, RI PUC, and CT PURA.

<sup>65</sup> “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 PTO 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](mailto:pmgerity@daypitney.com)). On February 19, NHT filed an answer to the ISO and PTO AC answers. On February 20, Organizations filed an answer to the ISO answer and NESCOE comments. This matter, including the Filing Parties motion to consolidate the proceedings and the TOs<sup>66</sup> 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.

Also, on February 26, the FERC granted a 90-day extension, to and including July 10, 2013, of the Order 1000 interregional compliance filing deadline to enable all public utility transmission providers to work with their stakeholders and develop interregional compliance filings (addressing interregional transmission coordination procedures and cost allocation method(s)) with broad-based support. If you have any comments or concerns, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto: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*<sup>67</sup> 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,<sup>68</sup> 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 FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

## V. Financial Assurance/Billing Policy Amendments

### *No Activity to Report*

<sup>66</sup> Bangor-Hydro, CMP, National Grid, NU, UI, and VELCO.

<sup>67</sup> *ISO New England Inc. and the Participating Trans. Owners Admin. Comm.*, 134 FERC ¶ 61,057 (2011) ("*Capability Clarifications Order*"), *reh'g requested*.

<sup>68</sup> *See PSEG Power Conn. LLC v. ISO New England Inc.*, 132 FERC ¶ 61,022 at P 6 (2010).

**VI. Schedule 20/21/22/23 Changes**

- **Schedule 21-GMP: Woodsville LSA (ER13-905)**

On February 8, Green Mountain Power (“GMP”) and the ISO submitted an amended Local Service Agreement (“LSA”) between the ISO, GMP, and Woodsville Water and Light Department (“Woodsville”) designated under Schedule 21-GMP as Service Agreement No. 71. GMP indicated that the LSA provides for LNS service by GMP to Woodsville (the same as that provided under predecessor arrangements, 3<sup>rd</sup> Rev Service Agreement No. 14 under Schedule 21-CV) as well as for a pass-through billing function for ISO-provided RNS and LNS provided by National Grid and in rare circumstances by VTransco. For reasons explained in the filing, the LSA was filed following a post-merger evaluation of the LSA and out of an abundance of caution that the LSA could be considered non-conforming. An April 26, 2011 effective date, the date on which service began under the predecessor LSA began, and waiver of the FERC’s time-value refund requirement were requested. Comments on this filing are due on or before March 1, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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 was 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. However, on February 15, following reported discussions with FERC staff, National Grid requested that it be permitted to withdraw the filing so that it might re-file the Letter Agreement at a later date under a new eTariff database with a tariff title identifying its association with Schedule 21-NEP. In the absence of an answer opposing National Grid’s February 15 motion to withdraw, or an order disallowing the withdrawal, the withdrawal will become effective on March 2, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

As previously reported, the FERC accepted, on January 4, 2013, 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.<sup>69</sup> 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. On February 5, FG&E submitted the directed compliance filing, identifying November 12, 2012 as the effective date of the changes. No comments on the compliance filing were submitted 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](mailto: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.<sup>70</sup> 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.”<sup>71</sup> Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and

<sup>69</sup> The January 4 letter order was not challenged and is final and unappealable.

<sup>70</sup> *ISO New England, Inc., Central Vt. Pub. Srv. Corp. and Green Mountain Power Corp.*, 140 FERC ¶ 61,239 (2012) (“*GMP Merger Order*”), *reh’g denied*, 142 FERC ¶ 61,146 (2013).

<sup>71</sup> *Id.* at PP 21-22.

WEC (“Cooperatives”)<sup>72</sup> were denied on February 25, 2013.<sup>73</sup> Also on February 25, the FERC accepted GMP’s October 31, 2012 compliance filing, rejecting Cooperatives’ arguments protesting the compliance filing as beyond the scope of the compliance filing proceeding.<sup>74</sup>

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. Judge Johnson’s most recent status report (issued January 9, 2013) (i) indicates that the participants continue to negotiate and exchange documents and were optimistic that they will be able to reach a settlement in the near future; and (ii) recommended that settlement judge procedures be continued. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VII. NEPOOL Agreement/Participants Agreement Amendments

*No Activity to Report*

## VIII. Regional Reports

- **Capital Projects Report - 2012 Q4 (ER13-935)**

In a new matter since the last report, the ISO filed on February 13 its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter (“Q4”) of calendar year 2012 (the “Report”). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the ISO Tariff. Comments on this filing are due March 6, 2013. Thus far, NEPOOL intervened on February 20 and filed comments supporting the filing on February 25, 2013. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

- **LFTR Implementation: 17<sup>th</sup> 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 conforming changes are accepted by the FERC. These status reports are not noticed for public comment and no comments were filed.

- **Quarterly Markets Reports - 2012 Q4 (ZZ12-4)**

On February 15, 2012, the internal Market Monitor filed with the FERC its report for the fourth quarter of 2012 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. A report on

<sup>72</sup> Cooperatives asserted that the FERC failed to appropriately address the Mobile Sierra claim contained in WEC’s Protest and further explained in WEC’s Answer. WEC separately requested that the FERC correct three statements in the *GMP Merger Order* concerning positions taken by WEC.

<sup>73</sup> *ISO New England, Inc., Central Vt. Pub. Srv. Corp. and Green Mountain Power Corp.*, 142 FERC ¶ 61,146 (2013).

<sup>74</sup> *Green Mountain Power Corp.*, 142 FERC ¶ 61,147 (2013). The FERC noted that Cooperatives’ raised the same issues in their joint request for rehearing of the *GMP Merger Order*, submitted in Docket No. ER12-2304-001, and their arguments will be addressed in that proceeding. *Id.* at n. 7.

the 2012 Q4 Report will be presented at the March 1, 2013 Participants Committee meeting. These filings are not noticed for public comment by the FERC.

## IX. Membership Filings

- **February 2013 Membership Filing (ER13-873)**

On February 1, NEPOOL requested that the FERC accept (i) the memberships of Abest Power & Gas (Supplier Sector), Exelon Generation (Supplier Sector); and EverPower Commercial Services and Howard Wind (Supplier Sector); and (ii) the termination of the Participant status of Constellation Energy Commodities Group (February 1, 2013), Rumford Paper (January 1, 2013), and LaValley Energy and New England Building Materials (January 1, 2013). This matter is pending before the FERC.

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

On January 29, 2013, the FERC accepted (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).

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

On February 5, the FERC accepted as an informational filing only an ISO reporting of additional conditions to participation in the New England Markets that will be imposed on Negawatt Business Solutions (“Negawatt”). As previously reported, the filing was submitted pursuant to Section II.A.1(b) of the Financial Assurance Policy. 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 FERC directed that any future filings addressing additional conditions to participation in the New England Markets that will be imposed on future applicants/Participants be filed in this docket.

## 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](mailto:pmgerity@daypitney.com)).

- **FFT Report: January 2013 (RC13-5)**

NERC submitted on January 31, 2013, its Find, Fix, Track and Report (“FFT”) informational filing for the month of January 2013. The January FFT resolves 38 possible violations of 13 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.<sup>75</sup> The 22 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.<sup>76</sup> In the 60-day

<sup>75</sup> 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.

<sup>76</sup> *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (2012), *clarification granted in part and reh’g denied*, 139 FERC ¶ 61,168 (2012).

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, 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.<sup>77</sup>

On September 20, 2012, the FERC accepted NERC's 60-day compliance filing.<sup>78</sup> 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.<sup>79</sup> 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. The October 12, 2012 filing was accepted on February 25, 2013.

- **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. No comments on these filings were submitted and this matter is pending before the FERC.

- **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, NERC responded to the PPL comments. This matter is pending before the FERC.

- **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.

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<sup>77</sup> *N. Am. Elec. Reliability Corp.*, 139 FERC ¶ 61,168 (2012) at PP 7-8.

<sup>78</sup> *N. Am. Elec. Reliability Corp.*, 140 FERC ¶ 61,215 (2012).

<sup>79</sup> *Id.* at P 12.

- **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.

- **Interpretation: BAL-002-1a (RM13-6)**

On February 12, NERC filed for approval a proposed interpretation of BAL-002 (Disturbance Control Performance Reliability Standard) to prevent Registered Entities from shedding load to avoid possible violations of BAL-002. The proposed interpretation clarifies that BAL-002-1 is intended to be read as an integrated whole and relies in part on information in the Compliance section of the Reliability Standard. Specifically, the proposed interpretation clarifies that: (1) a Disturbance that exceeds the most severe single Contingency, regardless if it is a simultaneous Contingency or non-simultaneous multiple Contingency, would be a reportable event, but would be excluded from compliance evaluation; (2) a pre-acknowledged Reserve Sharing Group would be treated in the same manner as an individual Balancing Authority; however, in a dynamically allocated Reserve Sharing Group, exclusions are only provided on a Balancing Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. As of the date of this report, a comment date has not been set.

- **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.<sup>80</sup> 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.<sup>81</sup>

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. This matter is pending before the FERC.

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<sup>80</sup> *Reliability Standards for Geomagnetic Disturbances*, 141 FERC ¶ 61,045 (2012).

<sup>81</sup> 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.

- **Order 775: NPCC Regional Reliability Standard: PRC-006-NPCC-1 (RM12-12)**

On February 21, 2013, the FERC issued Order 775<sup>82</sup> approving a Regional Reliability Standard, including VRFs, VSLs, and an implementation plan, for Automatic Underfrequency Load Shedding in the NPCC region (PRC-006-NPCC-1). 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 are as follows: for Requirements R1 - R7, January 1, 2016; for Requirements R8 - R23, April 1, 2015. In accepting *Order 775*, the FERC rejected the protests filed by Dominion and PSEG. Unless *Order 775* is challenged, with any protests due on or before March 25, 2013, this proceeding will be concluded.

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

On December 20, 2012, the FERC issued *Order 773*<sup>83</sup> 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.” *Order 773* will become effective will become effective March 5, 2013.<sup>84</sup> Requests for rehearing of *Order 773* were

<sup>82</sup> *Regional Reliability Standard PRC-006-NPCC-1 - Automatic Underfrequency Load Shedding*, 142 FERC ¶ 61,128 (2013) (“*Order 775*”).

<sup>83</sup> *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) (“*Order 773*”).

<sup>84</sup> *Order 773* was published in the *Fed. Reg.* on Jan. 4, 2013 (Vol. 78, No. 3) pp. 804-851.

filed on January 22, 2013 by APPA, AWEA, Dow Chemical, Holland, Michigan Board of Public Works (“Holland”), NARUC, NERC, NRECA, NY PSC, Snohomish County PUD No. 1, Transmission Access Policy Study Group (“TAPS”), and Utility Services. On February 6, Exelon filed an answer to the NERC request for rehearing. On February 8, the ITC Companies filed an answer to the Holland request. And on February 21, NERC filed an answer to Exelon’s February 6 answer. On February 19, 2013, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing. The requests for clarification and/or rehearing remain pending before the FERC.

- **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.<sup>85</sup> 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,<sup>86</sup> and were filed by 20 parties, including EEI, EPRI, NERC, NESCOE, and VELCO. NERC submitted reply comments on February 5, 2013. 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 Standard<sup>87</sup> 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.

<sup>85</sup> *Revisions to Reliability Standard for Trans. Vegetation Management*, 141 FERC ¶ 61,046 (2012).

<sup>86</sup> The NOPR was published in the *Fed. Reg.* on Oct. 24, 2012 (Vol. 77, No. 206) pp. 64,920-64,935.

<sup>87</sup> 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).



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

**Settlement Agreement.** As previously reported, the FERC approved, on January 16, 2013, 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.<sup>88</sup> 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.

**Compliance Filing – Statutory Funding Criteria.** On February 1, NERC submitted its proposed criteria for determining if a reliability activity is eligible to be funded under FPA §215. Comments on the February 1 compliance filing were due on or before February 22. On February 22, EEI submitted comments requesting that the FERC consolidate this proceeding with the with the proceeding governing the 2013 Business Plans and Budgets of NERC and the Regional Entities in Docket No. RR12-13 and direct NERC to revised the Proposed Criteria so that they “hew closely to the statutory text itself and the only three statutory obligations of the ERO: Standards development, Standards enforcement, and periodic reliability assessments.” The compliance filing is pending before the FERC

## 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 comment<sup>89</sup> on a February 7, 2012 petition by the RTO/ISOs, including ISO-NE,<sup>90</sup> 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:

- ▶ All parties to the agreements, contracts or transactions that are covered by the Proposed Exemption must be either “appropriate persons”<sup>91</sup> or “eligible contract participants” (“ECPs”)<sup>92</sup>; 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.***

<sup>88</sup> *N. Am. Elec. Reliability Corp.*, 1429 FERC ¶ 61,042 (2013) (“*NERC 2012 Audit Settlement Order*”).

<sup>89</sup> The Proposed Order was published in the *Fed. Reg.* on Aug. 28, 2012 (Vol. 77, No. 167) pp. 52,138-52,173.

<sup>90</sup> 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>.

<sup>91</sup> “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).

<sup>92</sup> ECPs as defined in section 1a(18)(A) of the CEA and in CFTC regulation 1.3(m).

- ▶ 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.<sup>93</sup>

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](mailto:pnbelval@daypitney.com)) or Dave Doot (860-275-0102; [dtodoot@daypitney.com](mailto:dtodoot@daypitney.com)).

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

On February 25, the FERCC authorized the indirect disposition of the equity interests in FPL Energy Maine Hydro to Brookfield Power US Holding America Co. (“Brookfield”).<sup>94</sup> A notice that the transaction was consummated must be submitted within 10 days of the closing. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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).<sup>95</sup> 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.

<sup>93</sup> 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>.

<sup>94</sup> *FPL Energy Maine Hydro LLC and Brookfield Power US Holding America Co.*, 142 FERC ¶ 62,150 (2013).

<sup>95</sup> *Fore River Dev., LLC*, 133 FERC ¶ 61,248 (2010).

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](mailto:pmgerity@daypitney.com)).

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

On February 21, 2013, the FERC dismissed this complaint without prejudice.<sup>96</sup> As previously reported, J. William Foley Inc. ("Foley") filed, on September 17, 2012, as amended October 5, 2012, 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. Foley challenged "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, described, in part in the public document, and in part under seal, both underground obstacles and contaminated soil issues that Foley alleged were "approached by UI in a manner designed to understate the cost of the Project at the outset, at the expense of substantial additional – and unnecessary – expense at the conclusion of the Project."

In its order dismissing the Complaint without prejudice, the FERC found that the Complaint raised "only broad and unsubstantiated allegations of imprudently incurred costs, which fail to make a *prima facie* showing warranting further proceedings before [the FERC]".<sup>97</sup> However, the FERC noted that Foley may "may choose to file a new section 206 complaint, if it believes [following resolution of the pending litigation in state court] UI's transmission rate base includes costs that were imprudently incurred."<sup>98</sup> Unless the February 21 order is challenged, with any challenges due on or before March 27, 2013, this proceeding will be concluded. If there are questions on this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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](mailto: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

<sup>96</sup> *J. William Foley Inc. v. United Illuminating Co.*, 142 FERC ¶ 61,125 (2013).

<sup>97</sup> *Id.* at P 19.

<sup>98</sup> *Id.* at P 21.

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.<sup>99</sup> 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](mailto:pmgerity@daypitney.com)).

- **LGIA – GMP Cancellation (ER13-839)**

On January 30, the Green Mountain Power (“GMP”) and the ISO filed a notice of cancellation of a non-conforming LGIA that was to govern the interconnection of GMP's proposed 46.2 MW Large Generating Facility, located in Colchester, Vermont, to GMP's transmission system at the Gorge Substation. GMP withdrew the Interconnection Request associated with the proposed GMP facility on October 4, 2012 and, accordingly, requested termination of the LGIA effective January 2, 2013. The parties requested a January 2, 2013 effective date to coincide with the GMP request. Comments on this filing were due February 20, 2013, but none were filed. On February 27, the FERC accepted the notice of cancellation, effective January 2, 2013, as requested. Unless the February 27 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](mailto:pmgerity@daypitney.com)).

- **SGIA - HGE Cancellation (ER13-825)**

On January 30, 2013, the ISO and The City of Holyoke Gas and Electric Department (“HGE”) filed a notice of cancellation of the non-conforming SGIA (SGIA-ISONNE/HGE-10-01 under Schedule 23 of the ISO Tariff) that was to govern the interconnection of HGE's proposed Small Generating Facility located in Holyoke, MA. HGE withdrew the Interconnection Request associated with the proposed HGE Facility on January 14, 2013 and, accordingly, requested termination of the SGIA effective February 11, 2013. A February 11, 2013 effective date, or such later date that the FERC may allow, was requested. No comments on this filing were submitted by the February 20, 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](mailto:pmgerity@daypitney.com)).

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

On January 10, the ISO and BHE re-filed a conforming, but not fully executed LGIA (LGIA-ISONNE/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. 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. On January 31, the Northern Maine Independent System Administrator (“NMISA”) filed a protest asking the FERC to reject the Oakfield LGIA without prejudice to allow NMISA's completion of assessments under the NMISA Tariff and Market Rule 8 to determine whether the proposed 59-mile 115 kV generator lead has any adverse impacts on the Northern Maine Transmission System (NMISA states that approximately 80% of the line will be in Northern Maine). On February 15, the ISO and BHE jointly, and Evergreen individually, answered the NMISA protest. The answers request that the protest be dismissed largely because, although the generator lead will be partially located in Northern Maine, it will not connect to the NMITS, making the NMISA Tariff and Market Rule, and related arguments, inapplicable. On February 21, NMISA answered the February 15 answers asserting that *any* “entity seeking to locate any 69-kV or above transmission facility in Northern Maine must submit the proposal to the NMISA for evaluation regardless of whether the transmission facility is or will

<sup>99</sup> See *PacifiCorp*, 92 FERC ¶ 61,032 (2000); *Ala. Power Co.*, 95 FERC ¶ 61,002 (2001);     , 114 FERC ¶ 61,175 (2006).

be part of the Northern Maine Transmission System.” This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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”,<sup>100</sup> 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)?	<ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>3. Orders 1000 and 1000-A do not apply, but the policy contained therein predates issuance of those Orders and precludes this filing.</li> </ol>
2: Whether the JOA between MISO and PJM precludes allocation of costs associated with the ITC PARs to PJM?	<ol style="list-style-type: none"> <li>1. The ITC PARs are like-kind replacement facilities, not new transmission facilities.</li> <li>2. The cost allocation provisions of the JOA apply to the ITC PARs.</li> <li>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.</li> <li>4. The JOA is not the exclusive agreement to address interregional cost allocation between MISO and PJM.</li> <li>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.</li> <li>6. The Joint Applicants do not meet the <i>Mobile-Sierra</i> criteria</li> </ol>
3: Whether there are any other customer or contractual relationships or interregional plans, or lack thereof, that are relevant to the proposed cost allocation?	<ol style="list-style-type: none"> <li>1. Other than the JOA, there are no customer or contractual relationships, or interregional plans, between the Joint Applicants and PJM or NYISO that are relevant in this proceeding.</li> <li>2. The lack of a customer or contractual relationship is relevant.</li> <li>3. The lack of an interregional plan is relevant.</li> <li>4. The Joint Applicants’ pre-existing contract obligations are relevant.</li> <li>5. The MISO Tariff and applicable policy are relevant</li> <li>6. The MISO-IESO Operating Instruction is relevant.</li> </ol>
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)?	<ol style="list-style-type: none"> <li>1. The Joint Applicants’ filing violates the FPA and FERC policy.</li> <li>2. The proposed cost allocation violates postage stamp rate and sunken cost recovery policies.</li> <li>3. The Joint Applicants have not met their burden of proving that the proposed rate treatment is just and reasonable.</li> <li>4. The Joint Applicants have not met their burden of proving that the proposed cost allocation is not unduly discriminatory or preferential.</li> </ol>
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	<ol style="list-style-type: none"> <li>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</li> <li>2. The Joint Applicants have failed to show that NYISO or PJM will be benefitted by the operation of the ITC PARs</li> </ol>

<sup>100</sup> *Midwest Indep. Trans. Sys..Op., Inc.*, 141 FERC ¶ 63,021 (2012) (“*MISO Initial Decision*”) at P 923.

<p>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>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>	<ol style="list-style-type: none"> <li>1. The Joint Applicants failed to submit credible and persuasive evidence showing NYISO’s and PJM’s harmful contributions to Lake Erie loop flow.</li> <li>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.</li> <li>3. Ignoring PJM’s and NYISO’s effective loop flow mitigation solutions, while crediting IESO, is unduly discriminatory and preferential.</li> </ol>
<p>7. Whether the MISO/ITC DFAX Study provides an adequate basis for the proposed cost allocation?</p>	<ol style="list-style-type: none"> <li>1. Joint Applicants’ DFAX Study does not provide an adequate basis to support the proposed cost allocation.</li> </ol>
<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>	<ol style="list-style-type: none"> <li>1. Joint Applicants assume no service obligation to NYISO or PJM or to their customers pursuant to the filing</li> </ol>
<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>	<ol style="list-style-type: none"> <li>1. The Joint Applicants have offered no evidence of multi-regional benefits of the ITC PARs</li> <li>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.</li> <li>3. The doctrine of judicial estoppel does not apply to the facts of this case.</li> <li>4. Addressing the justness and reasonableness of rates is not a collateral attack on the Presidential Permit</li> </ol>
<p>10. Whether, if the costs of the ITC PARs are allocated to PJM, the cost 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?</p>	<ol style="list-style-type: none"> <li>1. The increased amount assigned to PJM and the decreased amount assigned to NYISO in MISO’s January 2012 testimony may not be imposed.</li> <li>2. A section 206 action is not appropriate.</li> </ol>
<p>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?</p>	<p>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.</p>

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. Briefs opposing exceptions were filed by the FERC Trial Staff, MISO TOs, NYISO, NY TOs, PJM, and the PJM TOs. 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](mailto:ekrunge@daypitney.com)).

- **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 Manipulation<sup>101</sup> 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***.<sup>102</sup> 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.

- **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).<sup>103</sup> 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).<sup>104</sup> 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

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<sup>101</sup> 18 CFR § 1c.2 (2011).

<sup>102</sup> *Richard Silkman*, 140 FERC ¶ 61,033 (2012).

<sup>103</sup> *Competitive Energy Services, LLC*, 140 FERC ¶ 61,032 (2012).

<sup>104</sup> *Rumford Paper Co.*, 140 FERC ¶ 61,030 (2012).

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).<sup>105</sup> 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 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. On January 10, 2013, LP&T filed supplemental information suggesting that the FERC’s decision in the recent *Energy Spectrum* case<sup>106</sup> 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.” On January 25, FERC Staff objected to the January 10 LP&T filing, both procedurally and substantively. 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.<sup>107</sup> Bangor Hydro requested a limited waiver from the FERC’s Standards of Conduct requirements,<sup>108</sup> 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.

<sup>105</sup> *Lincoln Paper and Tissue, LLC*, 140 FERC ¶ 61,031 (2012).

<sup>106</sup> *Energy Spectrum, Inc. v. New York Indep. Sys. Operator Inc.*, 141 FERC ¶ 61,197 (2012) (“*Energy Spectrum*”).

<sup>107</sup> *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (2011) (“*BHE Standards of Conduct Order*”).

<sup>108</sup> See 18 C.F.R. § 358 (2011) *et seq.*



- **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. No comments were submitted. However, on February 8, Green Mountain requested that the FERC defer action on this matter until after the submission and review of a supplemental filing that Green Mountain indicated would be filed "in the near future".

## 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 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)**

As previously reported, the FERC issued on January 17, 2013, 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").<sup>109</sup> 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. On February 19, 2013, NRECA requested clarification and reconsideration of the Policy Statement, and that request is pending before the FERC.

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

On January 17, 2013, the FERC issued a NOPR<sup>110</sup> 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:

<sup>109</sup> *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), clarification and reconsideration requested.

<sup>110</sup> *Small Generator Interconnection Agreements and Procedures*, 142 FERC ¶ 61,049 (2013) ("SGIA/SGIP NOPR").

(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. Comments on the *SGIA/SGIP NOPR* are due June 3, 2013.<sup>111</sup>

- **NOPR: 3<sup>rd</sup>-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.<sup>112</sup> Comments were submitted by, among others, APPA, Beacon Power, EEI, EPSA, Indicated Suppliers,<sup>113</sup> 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*.<sup>114</sup> *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 Authority Services, subject to appropriate confidentiality restrictions. *Order 771* will become effective February 26, 2013.<sup>115</sup> 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 (collectively, the “Rehearing

<sup>111</sup> The *SGIA/SGIP NOPR* was published in the *Fed. Reg.* on Feb 1, 2013 (Vol. 78, No. 22) pp. 7,524-7,639.

<sup>112</sup> The NOPR was published in the *Fed. Reg.* on Jul 9, 2012 (Vol. 77, No. 131) pp. 40,414-40,458.

<sup>113</sup> “Indicated Suppliers” are Exelon, Calpine, Dynegy, GenOn and Tenaska.

<sup>114</sup> *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012) (“*Order 771*”), *reh’g requested*.

<sup>115</sup> *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

Requests”). 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. On February 19, the PJM and SPP filed a joint answer to the Rehearing Requests, urging the FERC to direct “the filing of any required compliance plans by a date certain to address certain of the implementation issues raised in the [Rehearing Requests] . . . [to] allow the industry to craft solutions that expedite both [FERC] and ISO/RTO access to complete e-Tag information, and will avoid tasking the [FERC] with devising those solutions.” Also on February 19, 2013, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing. The requests for clarification and/or rehearing remain pending before the FERC.

- **Order 768: Electricity Market Transparency (RM10-12)**

As previously reported, *Order 768*<sup>116</sup> revises FERC regulations to require certain market participants that are not subject to Section 205 of the FPA and have more than a *de minimis* market presence to file EQRs. *Order 768* also refines existing EQR filing requirements by adding new fields for: (1) reporting the trade date and the type of rate; (2) identifying the exchange used for a sales transaction, if applicable; (3) reporting whether a broker was used to consummate a transaction; (4) reporting electronic tag (e-Tag) ID data; and (5) reporting standardized prices and quantities for energy, capacity and booked out power transactions. *Order 768* also requires EQR filers to indicate in the existing ID data section whether they report their sales transactions to an index publisher and, if so, to which index publisher(s), and, if applicable, identify which types of transactions are reported, and eliminates the time zone from the contract section and the DUNS data requirement. The FERC indicated that the refinements would increase market transparency for the FERC and the public, and will allow market participants to file the information in the most efficient manner possible. Pursuant to *Order 768*, the FERC will exempt under the *de minimis* market presence threshold non-public utilities that make 4 million MWh or less of annual wholesale sales (based on an average of the wholesale sales it made in the preceding three years). *Order 768* became effective December 10, 2012.<sup>117</sup>

**Rehearing and Extension of Time to Include e-Tag ID Data in EQRs.** Requests for rehearing and/or clarification of *Order 768* were filed by APPA/Large Public Power Council (“LPPC”), Associated Electric Coop, EDF, EEI/EPSA, Energy Compliance Consulting, NRECA, Powerex, and the Western power Trading Forum. EEI and LPPC also requested the FERC to immediately grant a partial stay of *Order 768*’s eTag ID provisions, pending a technical conference and further study of those requirements. On November 19, 2012, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which are pending before the FERC. On February 8, 2013, the FERC partially granted an extension of time such that EQR filers need not include e-Tag ID data in EQRs beginning in the third quarter of 2013.<sup>118</sup> The FERC noted that the extension would allow it more time to “fully assess the benefits and burdens associated with market participants linking e-Tag ID information and transactions in the EQR considering other recent data collection efforts”<sup>119</sup> and directed FERC Staff to prepare a status report to be issued within one year of the order. The February 8 order did not address any of the other issues raised on rehearing, and does not affect the compliance date for any other aspects of *Order 768*.<sup>120</sup>

If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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

<sup>116</sup> *Elec. Mkt. Transparency Provisions of Sec. 220 of the Federal Power Act*, 140 FERC ¶ 61,232 (2012) (“*Order 768*”), *reh’g requested*.

<sup>117</sup> *Order 768* was published in the *Fed. Reg.* on Oct. 11, 2012 (Vol. 77, No. 197) pp. 61,869-61,936.

<sup>118</sup> *Elec. Mkt. Transparency Provisions of Sec. 220 of the Federal Power Act*, 142 FERC ¶ 61,105 (2013).

<sup>119</sup> *Id.* at P 3.

<sup>120</sup> *Id.* at P 5.

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.<sup>121</sup> *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.<sup>122</sup> 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.<sup>123</sup> *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;<sup>124</sup> (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;<sup>125</sup> and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.<sup>126</sup> 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. On February 19, 2013, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing. The requests for clarification and/or rehearing remain pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- ***Order 676-G: Incorporation of WEQ DR and EE M&V Standards (RM05-5)***

On February 19, 2013, the FERC issued *Order 676-G*,<sup>127</sup> which amends FERC regulations to incorporate by reference the business practice standards adopted by the NAESB Wholesale Electric Quadrant ("WEQ") to categorize various demand response ("DR") and energy efficiency ("EE") products and services and to support the measurement and verification ("M&V") of those products and services in RTO/ISOs (collectively, the "Phase II M&V Standards"). The standards provide common definitions and processes regarding DR and EE products in organized wholesale electric markets where such products are offered. The Phase II M&V Standards also require each RTO/ISO to address in its governing documents the performance evaluation methods to be used for DR products. The FERC stated that the Phase II M&V Standards facilitate the ability of DR and EE providers to participate in RTO/ISOs, "reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for

<sup>121</sup> *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) ("*Order 764*"), *order on reh'g*, 141 FERC ¶ 61,232 (2012).

<sup>122</sup> *Order 764* was published in the *Fed. Reg.* on July 13, 2012 (Vol. 77, No. 135) pp. 41,482-41,546.

<sup>123</sup> *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (2012) ("*Order 764-A*"), *reh'g requested*.

<sup>124</sup> *Id.* at P 15.

<sup>125</sup> *Id.* at P 19.

<sup>126</sup> *Id.* at P 23.

<sup>127</sup> *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-G, 142 FERC ¶ 61,131 (2013) ("*Order 676-G*").

customers that operate in more than one organized market”<sup>128</sup> and “represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F.”<sup>129</sup> *Order 676-G* will become effective 60 days after publication in the *Federal Register*, which as of the date of this report has not yet happened.

With respect to implementation, compliance is required beginning on the effective date of Order 676-G (i.e., sixty days after publication in the *Federal Register*), and inclusion in the OATT required, either in a stand-alone filing or as part of an unrelated tariff filing, no later than December 31, 2013.<sup>130</sup> If an RTO/ISO requests waiver of a Standard, it will not be required to comply with the Standard until the FERC acts on its waiver request, and its OATT should specify those Standards for which its has obtained a waiver or has pending a request for waiver.<sup>131</sup>

### XIII. Natural Gas Proceedings

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

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

As previously reported, the FERC issued, on November 15, 2012, an order directing further conferences and reports in the gas-electric coordination initiative.<sup>132</sup> Based on the issues raised during the regional technical conferences in August, the *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 held 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. A webcast of the meeting will be archived and available on the FERC website for three months at <http://www.capitolconnection.net/capcon/ferc/ferc.htm>. Copies of the meeting materials are available on the FERC website at <http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=6676&CalType=&CalendarID=116&Date=&View=Listview>.

Also since the last report, a Gas-Electric System operations Webinar and a meeting of the New England Gas-Electric Focus Group were held on February 21 and 26, respectively. The next focus group meeting is scheduled for March 23, 2013 (again, all those interested and who wish to 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).

<sup>128</sup> *Id.* at P 1.

<sup>129</sup> *Id.* at P 33.

<sup>130</sup> The FERC will allow an RTO/ISO to incorporate the WEQ standard by reference in its OATT using the following language: “Measurement and Verification of Wholesale Electricity Efficiency (WEQ-021 2010 Annual Plan Item 4(d), July 16, 2012; and Measurement and Verification of Wholesale Electricity Demand Response (WEQ-015, 2010 Annual Plan Items 4(a) and 4(b), March 21, 2011)”.

<sup>131</sup> *Id.* at PP 54-57.

<sup>132</sup> *Coordination Between Natural Gas and Elec. Markets*, 141 FERC ¶ 61,125 (2012) (“*November 15 Order*”). FERC Staff’s report detailing the discussions that took place at the five regional technical conferences during summer 2012, including the Aug 20, 2012 conference in Boston, is available on the FERC’s eLibrary.

- **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. Comments were received from over 40 parties. This matter is pending before the FERC.

- **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. As previously reported, OE most recently issued the following notices that in a nonpublic investigation it has preliminarily determined that there has been a violation of the FERC’s natural gas 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**

- **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 submitted November 27, 2012; reply comments, December 5, 2012. In their comments, the Massachusetts Department of Energy Resources, CLF, NEPGA, National Grid, NSTAR, and NHT asked the MA DPU to find that there is no need for additional generation in NEMA/Boston and no need to solicit long-term contracts. Footprint argued that the need for additional generation

has already been established, and that the MA DPU is compelled to order distribution companies to enter into long-term contracts for new generation. A final decision by the MA DPU is expected soon. If you have any questions concerning this development, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto: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](mailto: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](mailto:pmgerity@daypitney.com)).

- **New England's Order 745 Compliance Filing (12-1306)**  
**Underlying FERC Proceedings: ER11-4336<sup>133</sup>**  
**Appellants: EPSA and NEPGA**

On July 16, 2012, 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, 12-1478, and 7<sup>th</sup> Cir. 12-2248)**  
**Underlying FERC Proceedings: RM10-23<sup>134</sup>**  
**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. On January 17, 2013, FERC filed a motion to consolidate petition in Case No. 12-1478 (filed by Oklahoma Gas & Electric) with the petitions already consolidated in Case Nos. 12-1232, et al. The Court granted that motion to consolidate on February 6, 2013.

<sup>133</sup> 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

<sup>134</sup> 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

- **FCM Re-Design (12-1060 consolidated with 12-1074, 12-1085, and 12-1149) \*\***  
**Underlying FERC Proceedings: ER10-787; EL10-57; EL10-50<sup>135</sup>**  
**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. Reply Briefs for Generator Petitioners and Distribution Utility Petitioners were filed on February 5, 2013. Pursuant to the July 16, 2012 briefing schedule, the next submission will be Final Briefs (March 5, 2013).

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093)**  
**Underlying FERC Proceedings: RM10-17-000<sup>136</sup>**  
**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, -067<sup>137</sup>** **Appellants: NEPGA and MA AG, CT AG, MPUC**

**Abbreviated Background.** In continuing litigation arising out of the FCM Settlement, the DC Circuit was requested to review the FERC's 2011 *FCM Settlement Remand Order*<sup>138</sup> and *Remand Rehearing Order*<sup>139</sup> by NEPGA on October 31, 2011 and by the MA AG, CT AG and MPUC on November 29, 2011. NEPGA challenged the holding that auction rates aren't contract rates; MA AG, CT AG, and MPUC, the conclusion that FERC could apply Mobile-Sierra to anything other than contract rates. The two cases were consolidated on November 30, and, following briefing, oral argument was heard on November 15, 2012.

**Order on Petitions.** On February 15, 2013, the DC Circuit dismissed NEPGA's challenge for lack of standing and dismissed the MA AG, CT AG, and MPUC challenge, holding FERC does have the discretion it asserted.<sup>140</sup> The Court, which raised the jurisdictional issue on its own accord, stated that, because NEPGA got the

<sup>135</sup> 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).

<sup>136</sup> 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

<sup>137</sup> 134 FERC ¶ 61,208 (Mar. 17, 2011); 137 FERC ¶ 61,073 (Oct. 20, 2011).

<sup>138</sup> *Devon Power LLC*, 134 FERC ¶ 61,208 (Mar. 17, 2011).

<sup>139</sup> *Devon Power LLC*, 137 FERC ¶ 61,073 (2011) ("*Remand Rehearing Order*").

<sup>140</sup> *New England Power Generators Assoc. Inc. v. FERC*, 2013 U.S. App. LEXIS 3215 (decided Feb. 15, 2013).



result it wanted from FERC, the approval of the application of *Mobile-Sierra* to the rates resulting from the FCA auctions, it had no injury sufficient to establish standing. With respect to the states' arguments, the Court concluded that, because the *Mobile-Sierra* analysis is, as the Supreme Court held in *Stanley*, merely an instance of the "just and reasonable" standard, and because that standard is inherently discretionary, FERC has the authority to apply it when it rationally finds that it should be applied. The court found that the FERC adequately explained its decision to apply *Mobile-Sierra* to the FCA rates.

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

On February 24, 2012, 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.<sup>141</sup> Appellant and amicus briefs were filed and oral argument was held on January 14, 2013. This matter is currently pending before the 2<sup>nd</sup> Circuit.

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<sup>141</sup> *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 2012 U.S. Dist. LEXIS 6894 (VT Cir. Jan. 19, 2012).

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