

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of June [ ], 2013**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated May 31, 2013 was circulated. New matters/proceedings since the last report are preceded by an asterisk '\*'. Page numbers precede the matter description.

**I. Complaints**

* 1	FERC-Directed Changes to Fuel Cost Recovery for Certain Reliability Responses (EL13-72)	Jun 14	FERC initiates Section 206 complaint; directs compliance filing by Jul 29; set [ ] refund effective date
2	NEPGA Complaint (EL13-66)		NEPGA files Complaint; comment date Jun 6 Brookfield, Calpine, EPSA, Exelon, GDF Suez, Hess intervene
3	Base ROE Complaint (2011) (EL11-66)	Jun 6	Complainants, EMCOS, TOs, Trial Staff submit initial post-hearing briefs

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

3	RCM Add'l Cost Recovery: Dominion (ER13-1291)	Jun 14	FERC issues order granting cost recovery and instituting a Section 206 proceeding (see EL13-72 above)
4	FCA7 Results Filing (ER13-992)	Jun 11	FERC accepts results filing, effective Jun 26

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

6	Regulation Market Clearing Price Inclusion of Opportunity Costs (ER13-1259)		Beacon, Electricity Storage Assoc., NU intervene Exelon intervenes out of time Dominion intervenes out of time
7	FCM Conforming Changes Reflecting PRD Full Integration (ER12-1627)		Verso answers ISO's Apr 19 answer
9	FCM Redesign Compliance Filing: FCA8 Revisions (ER12-953 et al.)		FERC accepts duration of mitigation tariff revisions, effective May 30, 2013, rejects alternative tariff provisions for the modeling of 8 zones, and accepts the ISO's proposal to retain 4 zones, subject to a further compliance filing

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

10	Order 1000 Compliance Filing (ER13-193; ER13-196)	Jun 17	ISO, NESCOE, PTO AC request rehearing of FERC order conditionally accepting compliance filing
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**V. Financial Assurance/Billing Policy Amendments**

*No Activity to Report*

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

12	Schedule 21-VEC and 20-VEC Annual Informational Filing (ER10-1181)	June 10	VEC submits revised 2013 transmission formula rate update
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**VII. NEPOOL Agreement/Participants Agreement Amendments**

*No Activity to Report*

**VIII. Regional Reports**

- |      |  |        |                                     |
|------|--|--------|-------------------------------------|
| 12   | Capital Projects Report - 2013 Q1<br>(ER13-1459)   | Jun 18 | FERC accepts Report                 |
| * 13 | Quarterly Reports Regarding Non-<br>Generating Resource Regulation<br>Market Participation (ER08-54) | Jun 19 | ISO files its 19th quarterly report |

**IX. Membership Filings***No Activity to Report***X. Misc. - ERO Rules, Filings; Reliability Standards**

- |    |   |                                    |   |
|----|---|------------------------------------|---|
| 18 | NOPR: Revised Reliability Standards:<br>Version 5 CIP Standards (-002<br>through -011) (RM13-5) | Jun 11                             | Encari LLC submits comments; comment date Jun 24  |
| 19 | Order 779: Geomagnetic Disturbance<br>Reliability Standards (RM12-22)                           | Jun 17                             | MISO requests rehearing of Order 779  |
| 20 | Order 773-A: Revised "Bulk Electric<br>System" Definition and Procedures<br>(RM12-7; RM12-6)    | Jun 4<br>Jun 6<br>Jun 13<br>Jun 14 | NERC submits reply comments<br>Parkland, Western Publicly-Owned Utility Group submit comments<br>FERC grants effective date extension to Jul 1, 2014<br>FERC issues tolling order on NRECA/APPA rehearing request |

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

- |      |   |                            |  |
|------|---|----------------------------|--|
| 22   | 203 Application: Dominion / ECP<br>(Brayton Point) (EC13-82)  | Jun 12                     | Local Union 464, Utility Workers Union of America, AFL-CIO intervenes  |
| 24   | National Grid IAs<br>(ER13-1618 et al.)   | Jun 10<br>Jun 17<br>Jun 20 | FERC accepts Industrial Power Services Agreement<br>FERC accepts Ice House Partners, Lowell Energy, French River, and Trigen Revere Agreements<br>FERC accepts Lawrence Hydroelectric Agreement  |
| 25   | MISO Methodology to Involuntarily<br>Allocate Costs to Entities Outside<br>Its Control Area (ER11-1844) | Jun 6-7                    | FERC Staff, NYISO, PJM, PJM TOs oppose MISO motion to lodge slide from OE's 2012 State of the Markets Report   |
| * 27 | FERC Enforcement Action: Enerwise<br>(Comverge) (IN12-15)   | Jun 7                      | FERC approves Agreement resolving OE's investigation of Enerwise (Comverge subsidiary); Enerwise required to pay \$780,000 civil penalty, disgorge \$20,726, and develop/ make \$500,000 in DR metering & automatic load control technology improvements |
| 29   | Waiver of Transmission Standards of<br>Conduct: Green Mountain Power<br>Request (TS04-277)              | Jun 2                      | VT DPS supports Green Mountain's waiver request  |

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

- |  |          |  |
|--|----------|--|
| NOPR: Revisions to Pro Forma<br>SGIA and SGIP (RM13-2) | Jun 3-10 | Parties, including ISO-NE, NRECA/EEI/APPA, NARUC, NRG, and UCS, submits comment comments |
|--|----------|--|

**XIII. Natural Gas Proceedings**

- |   |   |
|---|---|
| Natural Gas and Electric Market<br>Coordination (AD12-12) | FERC issues notice of May 16 meeting<br>FERC meeting held at which RTO/ISO representatives shared experiences and described progress made towards better coordination between the natural gas and electric industries and ensuring adequate fuel supplies |
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Enforcement Actions  
(IN13-10)

FERC approves settlement agreements with DTE Gas Co. and  
Washington 10 Storage Corp.

**XIV. State Proceedings & Federal Legislative Proceedings**

*No Activity to Report*

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

*No Activity to Report*

## M E M O R A N D U M

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

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

**DATE:** June [ ], 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 June [ ], 2013. If you have questions, please contact us.<sup>1</sup>

**I. Complaints**

- **FERC-Directed Changes to Fuel Cost Recovery for Certain Reliability Responses (EL13-72)**

On June 14, the FERC initiated, in response to Dominion’s fuel cost recovery filing summarized below (see ER13-1291), a Section 206 proceeding finding Section III.A.15 of Appendix A to Market Rule 1 “unjust, unreasonable, unduly discriminatory or preferential, because it does not provide resources an adequate opportunity to recover costs incurred to comply with [ISO] directives to ensure reliability in instances when their supply offers were not mitigated.”<sup>2</sup> Accordingly, the FERC directed the ISO to submit, no later than July 29, revisions to Appendix A that

allow resources to submit a section 205 filing for cost recovery, including fuel and variable operation and maintenance costs for the resource, in circumstances where for reliability reasons a resource is dispatched: (1) beyond its day-ahead schedule, where there is no opportunity to refresh the offer price to reflect current costs; or (2) after the results of the day-ahead market schedule are published, where the resource did not receive a day-ahead market schedule. This provision will be in addition to the current provisions allowing cost recovery when a resource is mitigated or when a supply offer was submitted at the energy offer cap.

The FERC indicated that its intention is for Market Rule 1 to provide enough flexibility to allow for cost recovery by resources that respond under extraordinary circumstances like those faced by the New England Market on February 8 and 9, 2013. The changes directed should be “sufficiently restrictive to discourage anticompetitive offering behavior but still allow for cost recovery” in extraordinary circumstances where, for example, “a resource submits an offer based on one fuel type but is required to run on another or cannot burn natural gas based on an Operation Flow Order restriction”<sup>3</sup> The FERC directed the ISO to submit these revisions in a compliance filing no later than July 29, 2013. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)), Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)) or Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@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> *Dominion Energy Marketing, Inc. and ISO New England Inc.*, 143 FERC ¶ 61,233 (2013) (“*Dominion Fuel Cost Recovery Order*”).

<sup>3</sup> *Id.* at P 28.

- **NEPGA Complaint (EL13-66) [UPDATE]**

On May 17, the New England Power Generators Association (“NEPGA”) filed a formal complaint against the ISO pursuant to section 206 of the Federal Power Act (“FPA”) alleging that certain obligations articulated in a November 5, 2012 memorandum issued by the ISO are new and unfiled with the FERC, and thereby violate FPA section 205 and are unenforceable. NEPGA asks the FERC to “restore the status quo—what the tariff actually says today—which is that capacity resources must exercise Good Utility Practice to procure fuel or face the consequences as outlined in the tariff.” NEPGA further requested that the FERC “hold that there is no firm fuel obligation in the existing tariff (i.e., that it is not a tariff violation to be unable to procure fuel after exercising Good Utility Practice to do so).” The ISO’s answer, interventions and any protests or comments are due on or before June 6. Thus far, interventions have been filed by Brookfield, Calpine, EPSA, Exelon, GDF Suez, and Hess. 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; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)).

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

Rehearing of the FERC’s February 12, 2013, order denying NESCOE’s FCM Renewable Exemption Complaint has been requested<sup>4</sup> and is pending before the FERC. 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 implemented 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 and proposed an alternative renewables exemption (the “Renewables Exemption Proposal”). 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>5</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>6</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). Rehearing was requested by NESCOE, the CT PURA, and the MA DPU on March 14. On March 29, NEPGA filed an answer challenging NESCOE’s request for rehearing. On April 15, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain 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)), Harold Blinderman (860-275-0357; [hblinderman@daypitney.com](mailto:hblinderman@daypitney.com)) or Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)).

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

The request to consolidate this proceeding with EL11-66, as well as the Complaint itself, answers, and comments remain pending before the FERC. As previously reported, Environment Northeast (“ENE”), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition (the “2012 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%. 2012 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 2012 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-

<sup>4</sup> *New England States Comm. on Electricity v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013), *reh’g requested*.

<sup>5</sup> *Id.* at P 32.

<sup>6</sup> *Id.* at P 30.

66 if the evidence leads there; (4) to reset the New England Transmission Owners (“TOs”)<sup>7</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%, 2012 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>8</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, 2012 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)**

On June 6, initial post-trial briefs were filed by Complainants, EMCOS, TOs, and FERC Trial Staff. Reply briefs are due June 28, 2013 and the issuance of an initial decision by ALJ Michael J. Cianci is expected on or before September 10, 2013. By way of reminder, the FERC established hearing and settlement judge procedures<sup>9</sup> following a complaint by a number of State, consumer, and consumer advocate parties (the “2011 Complainants”)<sup>10</sup> seeking a FERC order reducing the 11.14 percent Base ROE used in calculating formula rates for transmission service in the ISO’s OATT to 9.2 percent. 2011 Complainants stated that “due to changes in the capital markets since the *Bangor Hydro* proceeding,<sup>11</sup> the [Base ROE] is no longer just and reasonable.” After settlement judge procedures before Judge Judith A. Dowd were ultimately unsuccessful and terminated, these proceedings proceeded to now-completed hearings before Judge Cianci. 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)).

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

- **RCM Add’l Cost Recovery: Dominion (ER13-1291)**

On June 14, the FERC issued an order (i) granting the fuel cost recovery request of Dominion Energy Marketing, Inc. (“Dominion”) (subject to condition with respect to Dominion’s request for regulatory costs); and (ii)

<sup>7</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>8</sup> EMCOS or the “Eastern Massachusetts Consumer-Owned Systems” are Braintree, Hingham, Reading, and Taunton.

<sup>9</sup> *Martha Coakley, Mass. Att’y Gen et al.*, 139 FERC ¶ 61,090 (May 3, 2012) (“*Base ROE Complaint Order*”). The *Base ROE Complaint Order* was not challenged and is final.

<sup>10</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.

<sup>11</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.



instituting a section 206 proceeding (see EL13-72 above) requiring the ISO to submit within 45 days certain revisions to Appendix A to Market Rule 1 to allow resources to submit a section 205 filing for cost recovery in circumstances where for reliability reasons a resource is dispatched (a) beyond its Day-Ahead schedule (where there is no opportunity to refresh the offer price to reflect current costs) or (b) after the results of the Day-Ahead Market schedule are published (where the resource did not receive a Day-Ahead Market schedule).<sup>12</sup> The FERC acknowledged that long-term changes to the Market Rules were under discussion, specifically stated it did not intend to prejudge any alternative approaches that might result from the stakeholder process and that the cost-recovery mechanism it required may be replaced by a long-term solution resulting from the on-going stakeholder process, but since those changes will not be in effect for winter 2013-14, felt compelled to act now to address critical reliability concerns in the near-term.<sup>13</sup> The revisions to Appendix A are to be in addition to the current provisions allowing cost recovery when a resource is mitigated or when a supply offer was submitted at the energy offer cap. The ISO was directed to submit the revisions in a compliance filing no later than July 29, 2013.<sup>14</sup>

As previously reported, Dominion requested, on April 15, 2013, pursuant to Appendix A to Market Rule 1 § 15, that the FERC authorize the recovery of \$336,095 in costs associated with the Reliability Commitment Mitigation (“RCM”) process for the operation of the Manchester Street Units on February 10, 2013. Specifically, Dominion requested (i) \$336,095 in IMM-determined under-recovered fuel and variable operating and maintenance costs and (ii) reasonable, related regulatory costs to be identified in a compliance filing. In addition, Dominion asked the FERC to direct ISO-NE to implement Market Rule changes before the 2013-2014 winter period that would (i) provide a mechanism for generation resources committed for reliability to recover their actual fuel costs incurred in meeting the reliability need without the necessity of having its Supply Offer first mitigated and without submitting a Section 205 filing at FERC; and (ii) allow resources to update their Supply Offers in Real-Time to reflect changes to their operating costs after the reoffer period. Doc-less interventions were filed by Capital Power, GDF Suez, and NRG. NEPOOL filed comments on May 6 taking no position, either in support of or in opposition to, the amount sought by Dominion to be recovered for February 10 operations, but opposing Dominion’s additional request for Market Rule changes as procedurally improper and premature (though taking no position on the merits of Dominion’s requested reforms). In its comments, the ISO, while generally supportive of Dominion’s request for additional cost recovery for February 10, did not support Dominion’s request for additional cost recovery and also protested Dominion’s requested Tariff changes. Dominion answered the ISO and NEPOOL pleadings on May 21.

Unless the Dominion Fuel Cost Recovery Order is challenged, with any challenges due on or before July 15, the Order will be 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)).

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

On June 11, the FERC accepted, effective June 26, 2013, as requested, the results of the seventh FCA (“FCA7”). As reported previously, the ISO indicated 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>15</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>16</sup> none were

<sup>12</sup> *Dominion Energy Mkt’ing, Inc. and ISO New England Inc.*, 143 FERC ¶ 61,233 (2013).

<sup>13</sup> *Id.* at P 29.

<sup>14</sup> *Id.* at P 26.

<sup>15</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>16</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.

rejected for reliability reasons. Unless the FERC's June 11 letter 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)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On May 15, the ISO submitted, and on May 28 Judge Cianci certified to the FERC, an uncontested Settlement Agreement between the ISO, the New England State Parties, the MA AG, and NEPOOL (together, the "Settling Parties") to resolve the issues in this and the 2013 Administrative Cost Budget proceedings ("ISO 2013 Budget Settlement"; see ER13-185 below for further details on the Settlement). As previously reported, although the FERC accepted, effective January 1, 2013,<sup>17</sup> the ISO's proposed capital budget for calendar year 2013 ("2013 Capital Budget"), CT Agencies<sup>18</sup> challenged that order. That challenge remains pending, pursuant to a February 27, 2013 tolling order affording the FERC additional time to consider the CT Agencies' rehearing request, but will be made moot should the Budget Settlement be approved. 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 noted immediately above, an uncontested settlement agreement to resolve the contested matters in this proceeding (as well as the 2013 Capital Budget proceeding) was filed on May 15, certified by Judge Cianci to the FERC on May 28, and is pending before the FERC. As previously reported, the FERC accepted 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>19</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>20</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>21</sup> The FERC also noted that the ISO may submit its capital and administrative budgets together if it so chooses. "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 FERC issued a tolling order affording it additional time to consider the Joint Agencies' rehearing request, which remains pending before the FERC.

The uncontested ISO 2013 Budget Settlement, to which NEPOOL unanimously agreed to be a Settling Party at its May 16 special teleconference meeting, would resolve the remaining contested issues in this proceeding. Highlights of the Settlement include:

- ▶ With respect to 2013's budget:
  - The 2013 Administrative Revenue Requirement will be reduced by \$2.25 million; the 2013 Capital Budget, by \$600,000. The reduction in the Administrative Revenue Requirement (i) will not constrain ISO operations or the 2013 work plan; and (ii) will not result in surcharges. Reduced revenues will be treated as a guaranteed true-up credit, to be reflected in subsequent years' rates, and the reduction in the capital budget will be reflected in the second quarter 2013 capital funding tariff filing.

<sup>17</sup> *ISO New England Inc.*, 141 FERC ¶ 61,275 (2012) ("*2013 Capital Budget Order*"), *reh'g requested*.

<sup>18</sup> "CT Agencies" are the CT PURA, CT AG, and CT OCC.

<sup>19</sup> *ISO New England Inc.*, 141 FERC ¶ 61,272 (2012) ("*2013 ISO Budget Order*"), *reh'g requested*.

<sup>20</sup> "Joint Agencies" are CT PURA, CT OCC, CT AG, RI PUC, RI AG, NH OCA, and MOPA.

<sup>21</sup> *Id.* at P 33.



- ▶ With respect to future budgets:
  - The process for annual review of the ISO's administrative and capital budgets was revised to provide greater opportunity and responsibility for informed input by all stakeholders within the budget setting process. The budgets will be filed together in one FERC proceeding going forward.
  - A defined-contribution pension plan for new employees effective January 1, 2014 will be implemented (moving away from the current defined-benefit pension plan).
  - Costs for charitable contributions and golf tournaments will no longer be budgeted for or included in rates.

The ISO 2013 Budget Settlement is currently pending before the FERC. Settlement Judge procedures were officially terminated by Chief Judge Wagner on May 30. 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)).

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order<sup>22</sup> that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding<sup>23</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>24</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

- **CSO Termination: RI Genco (ER13-1516)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on May 17 to terminate the CSO held by Project Sponsor Rhode Island Engine Genco, LLC ("RI Genco") for Resource 14619. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by RI Genco with respect to the CSO. NEPOOL submitted a motion to intervene on May 24, 2013. No comments on this filing were submitted and this filing 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)).

- **Regulation Market Clearing Price Inclusion of Opportunity Costs (ER13-1259)**

On April 11, the ISO and NEPOOL jointly filed changes to include opportunity costs in the Regulation Market clearing price. This change in design is intended to provide better incentives for efficient long-run investment through a more precise reflection of the marginal cost of providing regulation in the regulation clearing price. The filing also states that the changes, which can be implemented quickly, accomplish a key objective of Order 755 while

<sup>22</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>23</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>24</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.

the ISO continues to work on implementation of the regulation market changes that were filed in Docket No. ER12-1643 (*see* below). These changes were unanimously supported by the Participants Committee by way of its April 5 Consent Agenda. A July 1, 2013 effective date was requested. Doc-less motions to intervene were filed by Beacon, Dominion, Electricity Storage Association, Exelon, and NU. No comments on this filing were submitted. 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)).

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

The revised Order 755 Compliance Filing (“Revised Compliance Filing”) remains pending before the FERC. 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>25</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>26</sup>; and (ii) the Tariff provide for a two-part payment (for both capacity and resource performance) to frequency regulation resources.<sup>27</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>28</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 the Revised Compliance Filing. The ISO stated that the Revised Compliance Filing addressed the deficiencies identified in the *First Order 755 Compliance Order* by including 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. Comments supporting the compliance filing but protesting the proposed January 1, 2015 effective date were filed by Beacon and the Electricity Storage Association (“ESA”), on February 27 and March 1, respectively. On March 15, the ISO filed a response to ESA’s comments and reported on the status of short-term changes to include energy market opportunity costs in the regulation clearing prices in the existing regulation market. On April 17, the ISO supplemented its response by reporting on the April 5 Participants Committee support for, and April 11 filing of, those changes (*see* ER13-1259 above). 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)).

- **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>29</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

<sup>25</sup> *ISO New England Inc. and New England Power Pool*, 141 FERC ¶ 61,110 (2012) (“*First Order 755 Compliance Order*”).

<sup>26</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>27</sup> *Id.* at P 27, citing *Order 755* at P 197.

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

<sup>29</sup> *ISO New England Inc.*, 142 FERC ¶61,027 (2012) (“*January 14 Order*”).

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>30</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>31</sup> and found the "proposal will be beneficial to both demand response providers and wholesale electricity customers".<sup>32</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 reductions and behind-the-meter generation.<sup>33</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>34</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>35</sup> (noting its concern about the interaction between the must-offer requirement and the need for demand response resources to refresh their baselines);<sup>36</sup>
- ▶ why the removal of using transmission losses in its calculation of demand resource capacity values is justified,<sup>37</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>38</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>39</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, which it filed on March 15, 2013. Protests on that compliance filing were submitted on April 5 by DR Supporters<sup>40</sup> and Verso Paper. DR Supporters protest the absence of any provision in the ISO Tariff or Manuals that provide details about the factors that the ISO and the IMM will consider in evaluating energy offers from DR Resources, though they "emphasize that they do not contest the reasonableness or level of specificity provided in aggregate by ISO-NE in its written assertions regarding how it will go about evaluating offers or the various factors it anticipates may be considered in 'legitimate offer strategies'". For its part, Verso Paper stated that "ISO-NE's proposed 'know it when they see it' process for monitoring and evaluating demand response offers will not work in practice for all demand response providers, and ISO-NE's explanation for retaining a 10 day refreshment period fails to recognize that, with a must-offer requirement, 10 days is too short a time to refresh the baseline." On April 19, the ISO answered the DR Supports and Verso Paper protests. On April 30, Verso answered the ISO's April 19 answer. The ISO's compliance filing and protests and answers related thereto are

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<sup>30</sup> *Id.* at P 27.

<sup>31</sup> *Id.* at P 28.

<sup>32</sup> *Id.* at P 29.

<sup>33</sup> *Id.* at PP 44-46 .

<sup>34</sup> *Id.* at P 36.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at P 35.

<sup>37</sup> *Id.* at P 57.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at P 58.

<sup>40</sup> DR Supporters are Comverge, EnerNOC, NICC, Wal-Mart, and the IECG.

pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dtodoot@daypitney.com](mailto:dtodoot@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.)**

As previously reported, the FERC, on February 12, 2013, 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>41</sup> The *FCA8 Revisions Order* accepted the following aspects of the FCA8 Revisions as compliant with its prior FCM Orders: the ISO’s offer review trigger prices;<sup>42</sup> unit specific offer review;<sup>43</sup> the ISO’s proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports’ treatment under MOPR;<sup>44</sup> no exemptions to MOPR for new Self-Supplied Resources;<sup>45</sup> the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;<sup>46</sup> \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;<sup>47</sup> and a number of other additional revisions.<sup>48</sup> The *FCA8 Revisions Order* rejected: the 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 (directing 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>49</sup>; the ISO’s request to model only 4 capacity zones for FCA8. Two requests for rehearing of the *FCA8 Revisions Order* were filed on March 15, 2013, one by MMWEC, NHEC, APPA, NEPPA, and NRECA; the other, by EMCOS and Danvers. On April 11, NEPGA filed an answer to the MM WEC et al. request. On April 15, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

***FCA8 Revisions Compliance Filing.*** On March 15, 2013, the ISO submitted a compliance filing that (i) revised the ISO’s proposal by addressing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA; (ii) provided additional justification for retaining four Capacity Zones for FCA8; and (iii) submitted the “core” Tariff provisions necessary to implement eight Capacity Zones for FCA8 should the FERC not accept the additional justification provided. On May 31, the FERC issued an order accepting the tariff revisions related to the duration of mitigation, to become effective May 30, 2013, rejected the ISO’s alternative tariff provisions which would have provided for the modeling of eight zones, and accepted the ISO’s proposal to retain four zones, subject to a further compliance filing.<sup>50</sup> The FERC found that the additional evidence in the ISO’s Compliance Filing “sufficiently demonstrates that remaining with ISO-NE’s four-zone model for FCA 8 would be just and reasonable.”<sup>51</sup> The FERC “remains concerned, however, that despite having addressed zonal issues since 2010, ISO-NE has not developed an adequate process for determining the appropriate number of, and boundaries of, capacity zones in the New England region over time as conditions change.”<sup>52</sup> Accordingly, the FERC directed the ISO to consider in the stakeholder process to address how capacity zones and the associated zonal requirements are determined to consider during that process and to explain how it addressed: (1) the appropriate level of zonal modeling going forward; (2) the appropriate rules to govern intra- and inter-zonal transactions; and (3) whether objective criteria by which zones may automatically be created in response to rejected delist bids, generation

<sup>41</sup> *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013) (“*FCA8 Revisions Order*”).

<sup>42</sup> *FCA8 Revisions Order* at PP 37-38.

<sup>43</sup> *Id.* at P 53.

<sup>44</sup> *Id.* at P 70.

<sup>45</sup> *Id.* at P 80.

<sup>46</sup> *Id.* at P 97.

<sup>47</sup> *Id.* at P 126.

<sup>48</sup> *Id.* at P 127.

<sup>49</sup> *Id.* at PP 63-64.

<sup>50</sup> *ISO New England Inc.*, 143 FERC ¶ 61,198 (2013) (“*FCA8 Compliance Order*”).

<sup>51</sup> *Id.* at P 31.

<sup>52</sup> *Id.* at P 35.

retirements or other changes in system conditions would be appropriate in New England, or if not, why not. In a subsequent filing, the ISO must: (i) develop and file revisions to the Tariff that articulate appropriate objective criteria to revise the number and boundaries of capacity zones automatically as the relevant conditions change, or (ii) file an explanation as to why such criteria are unnecessary. The ISO was directed to submit a schedule for the completion of those tasks on or before July 30, 2013.<sup>53</sup> Any challenges to the *FCA8 Compliance Order* are due on or before July 1, 2013.

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; [dtdoot@daypitney.com](mailto:dtdoot@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>54</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 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)**

Rehearing has been requested of the FERC's May 17, 2013 order on the region's Order 1000 compliance filing<sup>55</sup> (described in previous Reports). As previously reported, the *Order 1000 Compliance Order* accepted the ISO-NE/PTO compliance filing as partially complying with Order 1000, but required changes to the compliance proposal. The primary change is the elimination of the Right of First Refusal ("ROFR") and the establishment of competitive transmission development for all regional transmission projects (with an exception to the elimination of the ROFR for transmission needed for reliability within three years of the needs assessment determination and subject to certain other limiting criteria). Additionally, the *Order 1000 Compliance Order* requires that the public policy transmission proposal be revised to: (i) make the ISO, rather than the New England states, the entity that evaluates and selects which transmission projects will be built to meet transmission needs driven by public policy; and (ii) include an *ex ante* default cost allocation method, transparent to all stakeholders, developed in advance of particular transmission facilities being proposed, rather than leaving it to the states to decide cost allocation on a project-specific basis after particular projects are proposed. While requiring these fundamental changes to the public policy transmission part of the filing, the *Order 1000 Compliance Order* also allowed for the NESCOE-driven proposal for both selection of projects and cost allocation to remain in the tariff as a complementary process for voluntary transmission projects alongside the Order 1000-compliant process. A more detailed summary of the *Order 1000 Compliance Order* was

<sup>53</sup> *Id.*

<sup>54</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).

<sup>55</sup> *ISO New England Inc.*, 143 FERC ¶ 61,150 (2013) ("*Order 1000 Compliance Order*").



circulated to the Participants Committee on May 20, 2013. The additional compliance filing is due on or about September 17, 2013.

On June 17, the ISO, PTO AC and NESCOE each filed requests for rehearing of the *Order 1000 Compliance Order*. [Summarize?] Those requests are pending before the FERC, with FERC action required on or before July 17, 2013, or the requests will be deemed denied. 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>56</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>57</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*

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

- **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>58</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

<sup>56</sup> *ISO New England Inc. and the Participating Trans. Owners Admin. Comm.*, 134 FERC ¶ 61,057 (2011) ("*Capability Clarifications Order*"), *reh'g requested*.

<sup>57</sup> *See PSEG Power Conn. LLC v. ISO New England Inc.*, 132 FERC ¶ 61,022 at P 6 (2010).

<sup>58</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).



procedures we order.”<sup>59</sup> Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and WEC (“Cooperatives”)<sup>60</sup> were denied on February 25, 2013.<sup>61</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>62</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 May 30, 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)).

- **Schedule 21-VEC and 20-VEC Annual Informational Filing (ER10-1181)**

On June 10, VEC submitted a revised annual update to the formula rates contained in Schedules 21-VEC and 20-VEC covering the July 1, 2013 – June 30, 2014 period. The revised update resulted in a slight reduction in the Schedule 21-VEC charge to be effective July 1, 2013, or \$5.61/MW-month. As with the prior update filing, this revision will not be noticed for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)**

On May 31, 2013, NSTAR submitted an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period January 1, 2012 through December 31, 2012. NSTAR stated that the filing complies with the requirements of Section 4 and Attachment D of Schedule 21-NSTAR, as well as the Settlement Agreement previously approved by the FERC.<sup>63</sup> The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. 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 - 2013 Q1 (ER13-1459)**

On June 18, the FERC accepted the ISO’s Capital Projects Report and Unamortized Cost Schedule covering the first quarter (“Q1”) of calendar year 2013 (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. As previously reported, highlights included the following new projects: Divisional Accounting (\$2,910,800); Web Enhancements – Phase II (\$1,278,500); Pre-requisite UDS Changes for GCA (\$886,000); Day Ahead Market Timeline Project (\$752,600); Markets Data Publication

<sup>59</sup> *Id.* at PP 21-22.

<sup>60</sup> Cooperatives asserted that the FERC failed to appropriately address the Mobile Sierra claim contained in VEC’s Protest and further explained in WEC’s Answer. WEC separately requested that the FERC correct three statements in the *GMP Merger Order* concerning positions taken by WEC.

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

<sup>62</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.

<sup>63</sup> *See NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

Enhancements Phase I (\$256,300); and SSO Hardware Replacement & System Enhancements (\$149,300). Projects reported to have significant changes include decreases in (i) CTS Scheduling (by \$1 million, reflecting an updated timeline); (ii) Generation Control Application Phase II (by \$786,000 due to the need to complete prerequisite work noted earlier); and (iii) Q2 2013 Release (by \$300,000 (deferred)). Unless the June 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

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

The ISO filed its nineteenth report on June 19, 2013. As previously reported, the ISO committed in the August 5, 2008 Regulation Filing to provide the FERC with quarterly reports on its progress in implementing and carrying out market rule revisions to allow non-generating resources to provide Regulation, including the Alternative Technologies Pilot Program.<sup>64</sup> In the 19<sup>th</sup> report, the ISO indicated that it had filed its revised Order 755 Compliance Filing on February 6 (*see* Section III above), which provides for uniform regulation prices and separate payments for regulation capacity and service, and would accommodate participation by all resource types, including non-generation alternative resources, in the new regulation market once it is implemented. The ISO reported that it had requested that the regulation market compliance changes become effective on or after January 1, 2015 with two weeks' prior notice of the actual effective date to be provided by the ISO. In addition, the ISO reported that interim regulation market design changes, to include energy opportunity costs in the clearing price, were filed on April 11 in Docket No. ER13-1259 (*see* Section III above) and will become effective July 1, 2013, if accepted. These reports are not noticed for public comment.

- **IMM Quarterly Markets Reports - 2013 Q1 (ZZ13-4)**

On May 20, 2013, the Internal Market Monitor ("IMM") filed with the FERC its report for the first quarter of 2013 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. These filings are not noticed for public comment by the FERC.

- **2012 IMM Annual Markets Report (ZZ13-4)**

On May 15, the ISO's IMM filed its 2013 Annual Markets Report, which covers the period from January 1, 2012 to December 31, 2012.<sup>65</sup> The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 12.3 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it did for 2011, that the New England Market operated competitively in 2012, with market concentration low, and energy prices at levels consistent with the short-run marginal cost of production. The IMM stated that the ISO operated through "Superstorm Sandy" without major incident and overall market outcomes were influenced by lower natural gas prices and lower electrical energy demands in comparison to 2011. The IMM concluded that the decline in energy costs was primarily the result of a decrease in natural gas prices. Other highlights included:

- ▶ observed an increase in the number of natural gas resources unable to follow the ISO's dispatch instructions or honor the terms of their supply offers for several reasons. These reasons include differences between the gas sector and electric power sector scheduling days, insufficient gas pipeline infrastructure when the demand for natural gas has been high, and limited flexibility in submitting offers into the electric markets.
- ▶ Although the FCM continued to clear sufficient resources to meet the region's resource adequacy planning requirements, concerns about resource performance has prompted the ISO to consider a number of market enhancements to improve generator performance and reduce reliability risks.

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<sup>64</sup> See Market Rule 1 revisions regarding the provision of Regulation by non-generating resources, ISO New England Inc. and New England Power Pool, Docket Nos. ER08-54-000 and -001 (filed Aug. 5, 2008) (the "Regulation Filing").

<sup>65</sup> Please note that the filings of Annual Markets Reports are not noticed for public comment by the FERC.

- ▶ Capacity payments made to all resources totaled \$1.19 billion, an 11% drop from 2011.
- ▶ FRM auction revenues, totaling \$9.3 million, decreased by 48%. System-wide FRM clearing prices dropped 23%- 24% from 2011.
- ▶ Real-time reserve payments increased 214% from 2011 totaled, totaling \$29.8 million, attributable to large Q3 and Q4 increases in reserve payments, which in turn were influenced by a 25% increase in total 10-minute reserve requirements, a \$100 to \$500/MWh increase in the Reserve Constraint Penalty Factor (RCPF) for system 10-minute operating reserve (TMOR), and several days of tight system conditions in August and November 2012 resulting in numerous TMOR binding constraints.
- ▶ A 7% decrease in regulation payments, totaling \$11.6 million, because of lower natural gas prices.
- ▶ An approximately 23% decrease in the average Real-Time Hub price, with the lowest and highest average zone prices in Maine and Western/Central Massachusetts, respectively. In 2012, average Day-Ahead Hub and Real-Time energy prices were virtually identical.

In light of its review, the IMM made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2013. These recommendations will be discussed in more detail at the Participants Committee June Summer Meeting.

## IX. Membership Filings

- **June 2013 Membership Filing (ER13-1616)**

On May 31, NEPOOL requested that the FERC accept the termination of the Participant status of West Oaks Energy (Supplier Sector), effective May 1, 2013. No comments on this filing have been submitted..

## 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: May 2013 (NP13-39)**

NERC submitted on May 30, 2013, its Find, Fix, Track and Report (“FFT”) informational filing for the month of May 2013. The May FFT resolves 31 possible violations of 12 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.<sup>66</sup> The 16 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 Glossary of Terms: Addition of Terms (RD13-10)**

On May 10, NERC filed for approval the addition to its Glossary of Terms the terms “Bulk-Power System,” “Reliability Standard,” and “Reliable Operation”. No comments were submitted on or before the May 31 comment date, and this matter is pending before the FERC.

- **Interpretation: TPL-003-0a and TPL-004-0 (RD13-8)**

On April 12, NERC filed for approval a proposed interpretation of certain Requirements in TPL-003-0a (System Performance Following Loss of Two or More BES Elements (Category C)) and TPL-004-0 (System Performance Following Extreme Events Resulting in the Loss of Two or More BES Elements (Category D)). The interpretation addresses concerns raised by the FERC in Order 754 regarding protection system single points of

<sup>66</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.

failure. Specifically, the interpretation clarifies that (i) when “or” is used in Table 1 (Transmission System Standards – Normal and Emergency Conditions) *both* conditions must be evaluated; and (ii) “engineering judgment” may be used to select the protection system component failures for evaluation, which includes addressing all protection systems affected by the selected component. No interventions or comments were submitted on or before the May 13 comment date, and this matter is pending before the FERC.

- **Revised VSLs/VRFs (RD13-5 et al.)**

As previously reported, NERC filed proposed modifications and/or additional support for VSL and VRF assignments on February 15, 2013. NERC explained that the filing would ensure consistency with FERC guidelines, and in some cases, provide the modifications and/or additional support required by prior FERC orders.<sup>67</sup> Comments on the VSL/VFR filing were due on or before March 8, 2013, but none were filed. This matter is pending before the FERC.

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

NERC’s December 13, 2012 filing requesting 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 remains pending. 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. On March 7, 2013, a number of RTOs<sup>68</sup> jointly filed to intervene out-of-time and submit adverse comments. The ISO/RTOs suggested that the FERC remove event reporting from the reliability standards framework, whether implemented via the proposed EOP-004-002, or via the existing standards that presently address event reporting. The RTO/ISOs asserted that event reporting does not provide for “Reliable Operations” and should be addressed in other forums outside of the reliability standards (e.g. in the NERC Event Analysis Program and/or the DOE reporting program). Should the FERC disagree, the ISO/RTOs suggested certain revisions to the proposed standard. This matter remains pending before the FERC.

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

Clarification and/or rehearing of the FERC’s March 21, 2013 order remanding NERC’s proposed interpretation of Requirement R3 to Reliability Standard CIP-002-4 (Critical Cyber Asset Identification)<sup>69</sup> has been requested and is pending before the FERC. As previously reported, the interpretation was intended to clarify (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”. In remanding the interpretation, the FERC explained that, although it agreed with the first clarification, it found the second misconstrued what is “essential to the operation” of a Critical Asset and could result in Critical Cyber Assets not being protected by the CIP Reliability Standards.<sup>70</sup> For example, the FERC found that in proposing that a cyber asset that “may” be used but is not “required” for the operation of a Critical Asset is not “essential to the operation of the Critical Asset,” the proposed interpretation failed to consider that a computer (e.g., a laptop) used by utility staff or contractors to control the functions and operations of a Critical Asset is, during such usage, “inherent to or necessary for the operation of a Critical Asset,” and thus falls within the scope of the Standard.<sup>71</sup> Fearing that the proposed interpretation could, in effect, create a window into an EMS network that could

<sup>67</sup> See *Sys. Restoration Reliability Standards*, Order 749, 134 FERC ¶ 61,215 (2011); *N. Am. Elec. Reliability Corp.*, 135 FERC ¶ 61,040 (2011); *Mandatory Reliability Standards for Interconnection Reliability Operating Limits*, Order No. 748, 134 FERC ¶ 61,213 (2011); *Sys. Personnel Training Reliability Standards*, Order No. 742, 133 FERC ¶ 61,159 (2010).

<sup>68</sup> The ISO/RTOs were: ISO-NE, CAISO, ERCOT, IESO, MISO, NYISO and SPP.

<sup>69</sup> *N. Am. Elec. Reliability Corp.*, 142 FERC ¶ 61,204 (2013) (“*CIP-002 Interpretation Order*”).

<sup>70</sup> *Id.* at P 12.

<sup>71</sup> *Id.* at P 13.

be exploited, the FERC remanded the interpretation. On April 22, NERC, EEI, and the ISO/RTO Council requested clarification, and in the alternative, rehearing of the *CIP-002 Interpretation Order*. On May 20, 2013, the FERC issued a tolling order affording it additional time to consider those requests, which remain pending before the FERC.

- **New and Revised Reliability Standards: MOD-025-2, MOD-026-0, MOD-027-0, PRC-019-1 and PRC-024-1 (RM13-16)**

On May 30, 2013, NERC filed for approval changes to MOD-025-2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability) and the following 4 new Reliability Standards:

- ▶ MOD-026-1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var Control Functions);
- ▶ MOD-027-1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions);
- ▶ PRC-019-1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection); and
- ▶ PRC-024-1 (Generator Frequency and Voltage Protective Relay Settings).

NERC also requested approval of the associated implementation plans, Violation Risk Factors (“VRFs”) and Violation Severity Levels (“VSLs”), and retirement of MOD-024-1 (Verification of Generator Gross and Net Real Power Capability) and MOD-025-1 (Verification of Generator Gross and Net Reactive Power Capability) prior to the effective date of MOD-025-2. NERC states that the purpose of the Standards is to ensure (i) that generators will not trip off-line during specified voltage and frequency excursions or as a result of improper coordination between generator protective relays and generator voltage regulator controls and limit functions (such coordination will include the generating unit’s capabilities), and (ii) that generator models accurately reflect the generator’s capabilities and operating characteristics. The Standards will be phased in starting two years from the first day of the calendar quarter that they are approved. As of the date of this report, a comment date has not been set.

- **Revised Reliability Standards: IRO-001-3, IRO-002-3, IRO-005-4, IRO-0014-2 (RM13-15)**

On April 16, 2013, NERC filed for approval changes to the following four Interconnection Reliability Operations and Coordination (“IRO”) Reliability Standards and their associated implementation plans: IRO-001-3 (Reliability Coordination — Responsibilities and Authorities); IRO-002-3 (Reliability Coordination – Analysis Tools); IRO-005-4 (Reliability Coordination – Current Day Operations); and IRO-0014-2 (Coordination Among Reliability Coordinators). NERC states that the changes achieve two important overall reliability benefits: (1) they delineate a clean division of responsibilities between the Reliability Coordinator and Transmission Operators; and (2) they will improve system performance by raising the bar on monitoring of Interconnection Reliability Operating Limits (“IROLs”) and System Operating Limits (“SOLs”) in order to focus monitoring on IROLs and SOLs that are important to reliability. Together with the TOP Standards, TOs will also be assured the ability to identify a sub-set of non-IROL SOLs that are identified as important for local areas, giving them the authority to ensure that any non-IROL SOLs of concern be monitored and local consequences managed. NERC requested that the revised Standards be approved concurrently with the TOP Standards filed in RM13-14 (*see* below) and become effective the first day of the first calendar quarter that is 12 months following the effective date of a Final Rule in this docket. As of the date of this report, a comment date has not been set.

- **Revised Reliability Standards: TOP-001-2, TOP-002-3, TOP-003-2, PRC-001-2 (RM13-14)**

Also on April 16, 2013, NERC filed for approval changes to the following four Standards and their associated implementation plans: TOP-001-2 (Transmission Operations), TOP-002-3 (Operations Planning), TOP-003-2 (Operational Reliability Data); and PRC-001-2 (System Protection Coordination). NERC states that the changes upgrade the overall quality of the standards, eliminate gaps in the requirements, eliminate ambiguity, eliminate redundancies, and address Order 693 directives. The proposed TOP Standards are also more efficient than the currently-enforceable TOP Reliability Standards because they incorporate the necessary requirements from the eight currently-effective TOP Reliability Standards (TOP-001-1a, TOP-002-2.1b, TOP-003-1, TOP-004-2, TOP-005-2a,

TOP-006-2, TOP-007-0, TOP-008-1) and the PER-001-0.2 Reliability Standard into three cohesive, comprehensive Reliability Standards that are focused on achieving a specific result. The corresponding changes in proposed PRC-001-2 are administrative in nature and are limited to removal of three requirements in currently-effective PRC-001-1 that are now addressed in proposed TOP-003-2, included herein for approval. NERC requested that the revised Standards be approved concurrently with the TOP Standards filed in RM13-14 (*see* below) and become effective the first day of the first calendar quarter that is 12 months following the effective date of a Final Rule in this docket. As of the date of this report, a comment date has not been set.

- **Revised Reliability Standard: TOP-006-3 (RM13-12)**

On April 5, 2013, NERC filed for approval changes to TOP-006 (Monitoring System Conditions), as well as its associated implementation plan. NERC states that the changes are targeted to address the respective monitoring role and notification obligation of Reliability Coordinators (“RCs”), Balancing Authorities (“BAs”) and Transmission Operators (“TOPs”) by clarifying that TOPs are responsible for monitoring and reporting available transmission resources and that BAs are responsible for monitoring and reporting available generation resources. In addition, the changes confirm that RCs, TOPs, and BAs are required to supply their operating personnel with appropriate technical information concerning protective relays located within their respective areas. NERC requested an effective date that is the first day of the first calendar quarter following the effective date of an order in this proceeding. As of the date of this report, a comment date has not been set.

- **Revised Reliability Standard: BAL-003-1 (RM13-11)**

On March 29, 2013, NERC filed for approval changes to BAL-003 (Frequency Response and Frequency Bias Setting), as well as the associated definitions, implementation plan, VRFs, and VSLs. NERC states that the changes respond to FERC directives in Order 693<sup>72</sup> to develop modifications to BAL-003-0 that: (1) include Levels of Non-Compliance; (2) determine the appropriate periodicity of frequency response surveys necessary to ensure that Requirement R2 and other requirements of the Reliability Standard are being met, and to modify Measure M1 based on that determination and (3) define the necessary amount of Frequency Response needed for Reliable Operation for each balancing authority with methods of obtaining and measuring that the frequency response is achieved. Specifically, the Revised Standard is designed to ensure that each of the Interconnections have sufficient Frequency Response to guard against underfrequency load shedding (“UFLS”) due to an event in that Interconnection. NERC requested an effective date that is the first day of the first calendar quarter that is 12 months following the effective date of a Final Rule in this docket. As of the date of this report, a comment date has not been set.

- **Supplemental NOPR: TPL-001-4 (footnote ‘b’) (RM13-9; RM12-1)**

On May 16, the FERC issued a supplemental NOPR proposing to approve TPL-001-4, which changes the requirements and processes for planned load shed in the event of a single Contingency (identified in a revised footnote 10 included in TPL-001-4), and also consolidates all of the currently effective TPL Standards (including superseding proposed TPL-001-2, which NERC had proposed in a previous NOPR to remand).<sup>73</sup> As previously reported, NERC has long had a compliance obligation to address FERC concerns with the Footnote.<sup>74</sup> NERC’s February 28 filing addressed those concerns. Comments on the supplemental NOPR are due on or before June 24, 2013.<sup>75</sup>

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<sup>72</sup> *Order 693* at P 375.

<sup>73</sup> *Trans. Planning Rel. Standards*, 143 FERC ¶ 61,136 (2013) (“*TPL-001-4 NOPR*”).

<sup>74</sup> *See Trans. Planning Rel. Standards*, 139 FERC ¶ 61,059 (2012) (“*TPL-001-2 NOPR*”). The FERC found TPL-001-2 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.

<sup>75</sup> The NOPR was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 100) pp. 30,804-30,810.



- **Retirement of Reliability Standard Requirements: P 81 Project (RM13-8)**

Also on February 28, NERC filed for approval, consistent with the FERC's suggestion in its order approving NERC's FFT process,<sup>76</sup> the retirement of 34 requirements that NERC indicated were redundant and/or otherwise could be removed with little or no effect on reliability. NERC requested that the retirements become effective concurrent with issuance of a FERC order approving the retirements. NERC indicated that the requirements would be marked as retired, but would not cause the impacted Standards to be re-numbered/incremented. As of the date of this report, a comment date has not been set.

- **Revised Reliability Standard: PRC-005-2 (RM13-7)**

On February 26, 2013, NERC filed for approval changes to PRC-005 (Protection System Maintenance). NERC states that the changes respond to FERC directives in Order 693<sup>77</sup> by: (1) including maximum allowable intervals in PRC-005 for time-based, condition-based, and performance-based maintenance programs; (2) combining PRC-005, PRC-008, PRC-011, and PRC-017 into one Standard; and (3) clarifying that it is the equipment owner that will be responsible for completing required maintenance. NERC requested that PRC-005-2 become effective in accordance with the implementation plan filed with the revised Standard. As of the date of this report, a comment date has not been set.

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

On May 16, the FERC issued a NOPR proposing to remand NERC's proposed interpretation of BAL-002 (Disturbance Control Performance Reliability Standard) filed February 12, 2013, which would prevent Registered Entities from shedding load to avoid possible violations of BAL-002.<sup>78</sup> NERC asserted that 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 would clarify 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. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. Comments on the *BAL-002-1a Interpretation Remand NOPR* are due on or before July 24, 2013.<sup>79</sup>

- **NOPR: Revised Reliability Standards: Version 5 CIP Standards (-002 through -011) (RM13-5)**

On April 18, 2013, the FERC issued a NOPR proposing to approve the Version 5 Critical Infrastructure Protection ("CIP") Reliability Standards submitted by NERC, CIP-002-5 through CIP-011-1, which adopt new cyber security controls and extend the scope of the systems that are protected by the CIP Standards.<sup>80</sup> Noting a concern that "limited aspects of the proposed CIP version 5 Standards are potentially ambiguous and, ultimately, raise questions regarding the enforceability of the standards", the FERC proposes to direct NERC to develop certain modifications to

<sup>76</sup> *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 at P 81 (2012) ("*FFT Order*") ("If NERC believes that specific Reliability Standards or specific requirements within certain Standards should be revised or removed, we invite NERC to make specific proposals to the Commission identifying the Standards or requirements and setting forth in detail the technical basis for its belief.")

<sup>77</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 ("*Order No. 693*"), order on reh'g, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

<sup>78</sup> *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

<sup>79</sup> The NOPR was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 99) pp. 30,245-30,810.

<sup>80</sup> *Version 5 Critical Infrastructure Protection Reliability Standards*, 143 FERC ¶ 61,055 (2013) ("*CIP Version 5 NOPR*").

the CIP version 5 Standards to address those concerns. Comments on the *CIP Version 5 NOPR* are due June 24, 2013.<sup>81</sup> Thus far, comments were submitted by Encari, LLC [update].

- **Order 779: Geomagnetic Disturbance Reliability Standards (RM12-22)**

On May 16, the FERC issued *Order 779*,<sup>82</sup> which directed NERC to submit for approval Reliability Standards that address the impact of geomagnetic disturbances (“GMD”) on BPS reliability. The FERC directed a two-staged implementation plan. In the first stage, the FERC directed NERC to file, on or before January 22, 2014 (6 months from the July 22, 2013 effective date of *Order 779*),<sup>83</sup> 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 directed NERC to file, on or before January 22, 2015 (18 months from *Order 779*'s effective date), 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. Rehearing of *Order 779* was requested by MISO on June 17, 2013. That request is pending before the FERC, with FERC action required on or before July 17, 2013, or the request will be deemed denied.

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

On March 21, 2013, the FERC issued a NOPR proposing to approve the proposed revised standard, implementation plan and retirement of the currently-effective standard.<sup>84</sup> As previously reported, NERC filed for approval, on August 24, 2012, 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. In the NOPR, the FERC identified a concern regarding possible market implications of NERC's proposed modification to Requirement R3.1 of MOD-028-2. Although it acknowledged NERC's statutory functions are properly focused on the reliability of the Bulk-Power System, the FERC noted its determination that NERC should also attempt to develop Reliability Standards that have no undue negative effect on competition.<sup>85</sup> Specifically, the FERC asked for comments regarding any market-related concerns or the potential for undue discrimination in ATC calculations by asking whether a transmission operator could potentially use a load forecast assumption that is not applicable to the period being calculated to either purposefully or inadvertently suppress off-peak ATC used by generators that make off-peak sales, or other customers who purchase hourly service. Comments on the NOPR were due May 21, 2013<sup>86</sup> and received from NERC and Southern Companies, which supported and requested the FERC approve the revised standard. This matter is pending before the FERC.

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

On April 18, 2013, the FERC issued a NOPR<sup>87</sup> proposing to approve NERC's July 30, 2012 request for approval of 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). 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

<sup>81</sup> The *CIP Version 5 NOPR* was published in the *Fed. Reg.* on Apr. 24, 2013 (Vol. 78, No. 79) pp. 24,107-24,124.

<sup>82</sup> *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (2013) (“*Order 779*”).

<sup>83</sup> *Order 779* was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 100) pp. 30,747-30,762.

<sup>84</sup> *Revisions to Modeling, Data, and Analysis Reliability Standard*, 142 FERC ¶ 61,210 (2013).

<sup>85</sup> *Id.* at P 11.

<sup>86</sup> The NOPR was published in the *Fed. Reg.* on Mar. 29, 2013 (Vol. 78, No. 61) pp. 19,152-19,155.

<sup>87</sup> *Generator Requirements at the Transmission Interface*, 143 FERC ¶ 61,049 (2013).

with respect to generator interconnection Facilities, unless individual circumstances warrant otherwise. The FERC indicated that “the proposed modifications improve reliability either by extending their applicability to certain generator interconnection facilities, or by clarifying that the existing Reliability Standard is and remains applicable to generator interconnection facilities.” The revised 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. Comments on the NOPR are due June 24, 2013.<sup>88</sup>

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

On April 18, the FERC denied rehearing in part, granted rehearing in part and otherwise reaffirmed its determinations in *Order 773*. In addition, the FERC clarified certain provisions of *Order 773*. As previously reported, *Order 773*<sup>89</sup> 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” removed language allowing for regional discretion in the currently-effective bulk electric system definition. The revised definition established a bright-line threshold that includes all facilities operated at or above 100 kV. The modified definition also identified specific categories of facilities and configurations as inclusions and exclusions to provide clarity in the definition of “bulk electric system.” *Order 773* became effective March 5, 2013.<sup>90</sup>

In response to requests for rehearing of *Order 773* filed 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, as well as answers filed by Exelon, the ITC Companies, NERC, and Holland, the FERC, in *Order 773-A*, denied rehearing in part, granted rehearing in part, granted clarification of, and otherwise reaffirmed its determinations in *Order 773*. Of note, the FERC:

- denied rehearing and affirmed that approval of the 100 kV bright-line threshold was adequately supported with a technical justification (P 23);
- granted rehearing to the extent that, rather than direct NERC to implement exclusions E1 and E3 as described above, FERC directed NERC to modify the exclusions pursuant to FPA section 215(d)(5) to ensure that generator interconnection facilities at or above 100 kV connected to bulk electric system generators identified in inclusion I2 are not excluded from the bulk electric system, finding that the Phase 2 standard development process is an appropriate means to address its concerns (P 50);
- clarified that currently unregistered entities or entities with facilities that are included in the BES for the first time as a result of the new definition do not have to comply with newly relevant Reliability Standards during the pendency of their exception request (which the FERC expects to be decided during the two-year transition period);
- clarified that the exceptions process and the process for the FERC making local distribution determinations are separate, not concurrent, and result in different determinations;
- clarified that state regulators may participate in local distribution determinations, but the question of whether a facility is local distribution is a question of fact that will be decided by the FERC;

<sup>88</sup> This NOPR was published in the *Fed. Reg.* on Apr. 24, 2013 (Vol. 78, No. 79) pp. 24,101-24,107.

<sup>89</sup> *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) (“*Order 773*”).

<sup>90</sup> *Order 773* was published in the *Fed. Reg.* on Jan. 4, 2013 (Vol. 78, No. 3) pp. 804-851.

- clarified that, in the absence of bad faith, if a registered entity applies the BES definition and determines that an element no longer qualifies as part of the BES, upon notifying the appropriate Regional Entity the element should not be treated as part of the BES unless NERC makes a contrary determination in the exception process (P 110);
- clarified that the revised definition will become effective for NERC compliance purposes on July 1, 2013, and that the transition period discussed in the Final Rule will extend twenty-four months from that date (P117); and
- granted rehearing on the need to reassess the burden estimates relative to the Final Rule modifications regarding exclusions E1 and E3, but indicated that it would address such estimates after NERC submits its proposal to modify the BES definition pursuant to FPA section 215(d)(5) in the Phase 2 process (“Revised Information Collection Burden and RFA Analyses”) (P 123).

NRECA and APPA jointly requested rehearing and/or clarification of the revised Information Collection Burden and RFA Analyses contained in *Order 773-A* on May 17, 2013. On June 14, the FERC issued a tolling order affording it additional time to consider the rehearing request, which remains pending before the FERC.

**Compliance Filing.** On April 4, 2013, and in response to *Order 773*, NERC submitted a compliance filing outlining the schedule for how and when it will modify Exclusion E3 of the Bulk-Electric System definition (“BES Definition”) to remove the 100 kV minimum operating voltage in the local network definition. The schedule contemplates a filing approximately seven months from the date of *Order 773-A*, or late November 2013.

**Request for 1-Year Extension of Effective Date.** On May 23, 2013, in response to stakeholder feedback and concerns, NERC requested that the “Bulk Electric System” (“BES”) definition be made effective July 1, 2014, one year later than previously approved. The FERC requested that an order granting the extension be issued prior to June 30, 2013. Comments on that request were due on or before May 31, 2013. NERC’s request was supported by Alcola, Alameda Municipal Power, Anaheim, APPA and TAPS, Dow Chemical, Consumers Energy, ELCON, Exelon, and NARUC. The requested extension was request is pending before the FERC. On June 13, the FERC granted NERC’s request for extension of time. Accordingly, the effective date for the revised BES definition as approved in Order Nos. 773 and 773-A will be July 1, 2014 (rather than July 1, 2013)..

- **NERC Rules of Procedure: Revisions to Rules of Procedure Appendices 2 and 4D (RR13-3)**

On April 8, 2013, NERC requested FERC approval of revisions to its Rules of Procedure (“ROP”), Appendices 2 (Definitions Used in the Rules of Procedure) and 4D (Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Standards). NERC states that Appendix 4D revisions are the result of a collaborative process among NERC, the Regional Entities and industry stakeholders to review and revise the processes for submitting, reviewing and approving or disapproving Technical Feasibility Exceptions to NERC CIP Standards. The revisions to Appendix 2, which contains all the defined terms used in the ROP, reflect the deletion of two defined terms from Appendix 4D that are not used elsewhere in the ROP, the addition of two new defined terms, and a revision to an existing defined term. A doc-less intervention was filed by EEI. Comments on the revisions were due on or before April 29, 2013, but none were submitted and this matter is pending before the FERC.

- **NERC Rules of Procedure: Revisions to Standard Processes Manual (RR13-2)**

On February 28, 2013, NERC requested that the FERC approve proposed revisions to its Standard Processes Manual (“SPM”) set forth in Appendix 3A of the NERC Rules of Procedure (“ROP”), part of an overall package of Reliability Standards reforms developed by the NERC Standards Committee (“SC”) and approved by the NERC Board of Trustees. NERC states that the proposed SPM revisions, collectively, are a significant improvement to the NERC Reliability Standards development process, providing for more efficient and effective use of industry resources and necessary flexibility in Reliability Standards development. Comments on NERC’s request were filed by APPA and the City of Santa Clara California. NERC submitted reply comments on April 4. This matter is pending before the FERC.

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

- **CFTC Exemption Request**

On March 28, 2013, the Commodity Futures Trading Commission (“CFTC”) issued a 142-page final order in response to a February 7, 2012 petition by the RTO/ISOs, including ISO-NE,<sup>91</sup> that exempts from certain provisions of the Commodity Exchange Act (“CEA”) the purchase or sale of specifically defined “financial transmission rights,” “energy transactions,” “forward capacity transactions,” and “reserve or regulation transactions” that are offered or sold in a market administered by one of the petitioning RTOs or ISOs pursuant to a tariff or protocol that has been approved or permitted to take effect by FERC or PUCT, as applicable. To be eligible for the exemption, the specifically defined transactions are required to be entered to by persons who are: (1) “appropriate persons,” as defined in section 4(c)(3)(A) through (J) of the CEA; (2) “eligible contract participants,” as defined in section 1a(18) of the CEA and CFTC regulation 1.3(m); or (3) in the business of (i) generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system. The exemption is subject to the continued effectiveness of acceptable information sharing arrangements between the CFTC and the FERC. The exemption also requires the RTOs and ISOs to keep CFTC requests for information confidential. In addition, the CFTC’s anti-fraud and anti-manipulation authority, and scienter-based prohibitions will continue to apply, and the exemption is subject to certain additional conditions stated within the final order. A more detailed summary of the final order was circulated to the Committee and the Dodd-Frank Working Group on April 5, 2013.

Pursuant to its terms, the October 11, 2012 CFTC no-action letter that preserved 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” is no longer in place.

The April 30, 2012 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 to the same degree and extent as the already relief granted in the March 28 order remains pending.<sup>92</sup>

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; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)).

- **203 Application: Dominion / ECP (Brayton Point) (EC13-82)**

On March 21, 2013, Dominion (“Dominion”) and Brayton Point Holdings, LLC (“BPH”), an affiliate of Energy Capital Partners II (“ECP”), EquiPower Resources Management (“EquiPower”) and EquiPower’s Related Persons, requested FERC authorization of a transaction pursuant to which Dominion would sell to BPH 100% of the ownership interests in Brayton Point. Comments on this filing were due on or before May 20, 2013. Although an intervention was filed on March 28 by Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO, it was later withdrawn on April 12. CLF submitted comments on May 20, and Dominion answered those comments on May 22. On June 12, Local Union 464, Utility Workers Union of America, AFL-CIO moved to intervene. This application 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)).

- **203 Application: Maine Public Service/Bangor Hydro (EC13-81)**

On March 19, 2013, Maine Public Service (“MPS”) and Bangor Hydro requested authorization for the merger of MPS into Bangor Hydro. Applicants stated that the result of the transaction will be a single electric utility with operations in both central and northern Maine. However, applicants clarified that the Transaction will not result in the direct interconnection of the facilities currently owned by Bangor Hydro and MPS, which are currently only indirectly

<sup>91</sup> A copy of the 391-page “Consolidated Request” was circulated to the Committee by the ISO on Feb. 8, 2012, and is also available at <http://www.iso-ne.com/regulatory/ferc/fed/index.html>.

<sup>92</sup> A copy of the supplemental request was circulated to the Committee on Apr. 30, 2012 and is also available at <http://www.iso-ne.com/regulatory/ferc/fed/2012/index.html>.

interconnected via transmission lines in Canada owned by unrelated entities. In addition, Bangor Hydro's current transmission system will remain under the functional control of the ISO, while that currently owned by MPS will not. Accordingly, in a companion filing, applicants have requested waiver of FERC regulations to the extent necessary to permit it to maintain two OATTs following consummation of the transaction – one for the transmission lines currently owned by Bangor Hydro and located in central Maine, and one for the lines currently owned by MPS and located in northern Maine. A doc-less intervention was filed by Houlton Water Company. On April 9, the Northern Maine Independent System Administrator (“NMISA”) filed comments indicating that, based on its understanding that Bangor Hydro will assume all of MPS' obligations to comply with the NMISA Tariff and Northern Maine Market Rules, including MPS' obligations as the Northern Maine Area Operator during hours when the NMISA is not staffed, the NMISA would not oppose the merger. On May 3, Bangor Hydro and MPS filed a limited answer to NMISA's comments. The March 19 application 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)).

- **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>93</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. 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)).

- **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 tenants of a large, mixed-use residential and commercial building now under construction in New Haven,

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<sup>93</sup> *Fore River Dev., LLC*, 133 FERC ¶ 61,248 (2010).



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>94</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)).

- **National Grid IAs (ER13-1618 et al.)**

Over the past several months, National Grid, on behalf of its affiliates New England Power Company (“NEP”), Massachusetts Electric Company (“MECO”), and Narragansett Electric Company (“Narragan”), has submitted for filing a number of existing Interconnection Agreements (“IAs”) following National Grid’s recent determinations that the IAs could well be jurisdictional. A summary of those IAs filed is as follows:

Docket No.	National Grid Affiliate	IA Customer (Facility Description)	Schedule 21 Designation	Date Filed	Date Accepted
ER13-1657	NEP	Wheelabrator Saugus Inc	21-NEP: IA-NEP-38-01 21-NEP: IA-NEP-44-01	Jun 11	Pending
ER13-1656	Narragan	Blackstone Hydro	21-NEP: IA-NECO-40-01	Jun 11	Pending
ER13-1618	Narragan	Thundermist (1.15 MW hydro, Woonsocket, RI)	21-NEP: IA-NECO-39-01	May 31	Pending
ER13-1555	NEP	Wheelabrator Millbury (40 MW landfill generating facility in Millbury, MA)	21 NEP: IA-NEP-37-01	May 24	Pending
ER13-1538	NEP	Lawrence Hydroelectric Assoc. (16.8 MW hydro)	21-NEP: IA-NEP-44	May 22	Jun 20
ER13-1526	MECO	Ice House Partners (330 kW hydro; Ayer, MA)	21-NEP: IA-MECO-43-01	May 20	Jun 17
ER13-1524	MECO	Lowell Energy (1.6 MW QF; Lowell, MA)	21-NEP: IA-MECO-33-01	May 17	Jun 17
ER13-1522	MECO	French River Land Co (<1 MW QF; Winchendon, MA)	21-NEP: IA-MECO-36-01	May 17	Jun 17
ER13-1517	MECO	Trigen Revere (6 MW QF; Revere, MA)	21-NEP: IA-MECO-41-01	May 17	Jun 17
ER13-1475	MECO	Highland (Attleboro Landfill)	21-NEP: IA-MECO-35-01	May 10	Pending
ER13-1468	MECO	Industrial Power Services (3.2 Granby Landfill)	21-NEP: IA-MECO-32-01	May 10	Jun 10
ER13-1425	MECO	Brockton (<1 MW photovoltaic)	21-NEP: IA-MECO-29-01	May 3	Pending

If there are questions on these matters, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Cost Allocation Agreement NGrid/NSTAR (Line D21 Upgrades) (ER13-1557)**

On May 24, New England Power (“NEP”) filed a Cost Allocation Agreement between NSTAR and itself, designated as Service Agreement No. CRA-NEP-05, that covers the allocation of costs for reliability upgrades to Line D21 from NEP’s Bell Rock Road Station to NSTAR Electric’s High Hill Station in southeast Massachusetts. NEP requested an April 30, 2013 effective date. No comments on this filing were submitted on or before the June 14 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)).

- **Bangor Hydro Request for Permission to Have 2 OATTs Post-MPS Merger (ER13-1125)**

On March 19, in connection with its Section 203 application for authorization to merge MPS with and into Bangor Hydro, Bangor Hydro submitted a companion request for waiver of FERC regulations, as necessary, to permit it to maintain two OATTs following its merger with MPS, which it anticipates occurring January 1, 2014. Comments

<sup>94</sup> See *PacifiCorp*, 92 FERC ¶ 61,032 (2000); *Ala. Power Co.*, 95 FERC ¶ 61,002 (2001);     , 114 FERC ¶ 61,175 (2006).

supporting the Bangor Hydro request were filed by NMISA on April 9. This matter is now 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>95</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)?	1. There is no customer or contractual relationship between the Joint Applicants and PJM or NYISO that justifies the proposed cost allocation, as required by FPA section 205. 2. The FER has rejected unilateral filings by a utility to impose loop flow costs on neighboring utilities, requiring instead consensual resolution, which is absent here. 3. Orders 1000 and 1000-A do not apply, but the policy contained therein predates issuance of those Orders and precludes this filing.
2: Whether the JOA between MISO and PJM precludes allocation of costs associated with the ITC PARs to PJM?	1. The ITC PARs are like-kind replacement facilities, not new transmission facilities. 2. The cost allocation provisions of the JOA apply to the ITC PARs. 3. The ITC PARS are not eligible for cross-border cost allocation because they do not qualify as either a Cross-Border Baseline Reliability Project or a Cross-Border Market Efficiency Project. 4. The JOA is not the exclusive agreement to address interregional cost allocation between MISO and PJM. 5. Although the JOA is not the exclusive vehicle for interregional cost allocation, it is the only relevant customer or contractual relationship in this proceeding and the only one that provides for cross-border cost allocation. 6. The Joint Applicants do not meet the <i>Mobile-Sierra</i> criteria
3: Whether there are any other customer or contractual relationships or interregional plans, or lack thereof, that are relevant to the proposed cost allocation?	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. 2. The lack of a customer or contractual relationship is relevant. 3. The lack of an interregional plan is relevant. 4. The Joint Applicants’ pre-existing contract obligations are relevant. 5. The MISO Tariff and applicable policy are relevant 6. The MISO-IESO Operating Instruction is relevant.
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)?	1. The Joint Applicants’ filing violates the FPA and FERC policy. 2. The proposed cost allocation violates postage stamp rate and sunken cost recovery policies. 3. The Joint Applicants have not met their burden of proving that the proposed rate treatment is just and reasonable. 4. The Joint Applicants have not met their burden of proving that the proposed cost allocation is not unduly discriminatory or preferential.
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	1. The Joint Applicants have failed to show that NYISO or PJM caused the harm that resulted in the Joint Applicants’ need to install the ITC PARs 2. The Joint Applicants have failed to show that NYISO or PJM will be benefitted by the operation of the ITC PARs

<sup>95</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. On February 25, Joint Applicants moved to strike a portion of the PJM Brief Opposing Exceptions. On March 12, PJM answered Joint Applicants February 25 motion. Since the last report, MISO (now called “Midcontinent Independent System Operator, Inc.”) moved to lodge a portion of OE’s 2012 State of the Markets Report, presented to the FERC on May 16, 2013, which addressed “Phase Angle Regulators Between Michigan & Ontario Enter Service.” Oppositions to that motion to lodge were filed by FERC Staff, NYISO, NY TOs, PJM, PJM TOs. This matter

remains 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: Enerwise (IN13-15)**

On June 7, 2013, the FERC approved a Stipulation and Consent Agreement between OE and Enerwise Global Technologies, a wholly-owned subsidiary of Comverge Inc. (“Enerwise”) that, among other things, levied a **\$780,000 civil penalty**, required Enerwise to **disgorge \$20,726** in unjust profits and interest, and (iii) requires Enerwise to make \$500,000 in demand response metering and automatic load control technology improvements for PJM customers during calendar year 2013.<sup>96</sup> OE determined that Enerwise registered a demand response asset at a level it knew could not be achieved, undertook or directed actions that resulted in an artificially inflated baseline for that asset, and ultimately received payment for load reductions that could not have been reliably provided if called. Considerations that influenced the civil penalties included: the fact that the violations caused less than \$200,000 of market harm; a member of Enerwise’s senior management was involved in the violations; Enerwise’s violation lasted less than 250 days; Enerwise had no prior history of such violations; Enerwise did not have a documented compliance program at the time of its violations; and Enerwise cooperated fully during all aspects of the investigation.

- **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>97</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>98</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. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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>99</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

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<sup>96</sup> *Enerwise Global Technologies, Inc.*, 143 FERC ¶ 61,218 (2012).

<sup>97</sup> 18 CFR § 1c.2 (2011).

<sup>98</sup> *Richard Silkman*, 140 FERC ¶ 61,033 (2012).

<sup>99</sup> *Competitive Energy Services, LLC*, 140 FERC ¶ 61,032 (2012).

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

- **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>100</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>101</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. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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>102</sup> Bangor Hydro requested a limited waiver from the FERC’s Standards of Conduct requirements,<sup>103</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 cannot 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

<sup>100</sup> *Lincoln Paper and Tissue, LLC*, 140 FERC ¶ 61,031 (2012).

<sup>101</sup> *Energy Spectrum, Inc. v. New York Indep. Sys. Operator Inc.*, 141 FERC ¶ 61,197 (2012) (“*Energy Spectrum*”).

<sup>102</sup> *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (2011) (“*BHE Standards of Conduct Order*”).

<sup>103</sup> See 18 C.F.R. § 358 (2011) *et seq.*



under Maine laws and/or regulations or orders of the MPUC. The MPUC filed comments supporting Bangor Hydro's amended waiver request on November 15, 2011. This matter is pending before the FERC.

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

As previously reported, Green Mountain Power requested on July 27, 2012, a continued waiver of the FERC's Standards of Conduct requirements notwithstanding the material change in facts (its merger with CVPS) upon which the FERC relied in granting Green Mountain a waiver of those requirements. Green Mountain stated that it continues to satisfy the FERC's waiver standards because its control over transmission facilities is limited to small, discrete, stand-alone transmission facilities that are not part of the high voltage grid and are not operated by the ISO and there was no material change in these facts as a result of its merger with CVPS. A notice of this filing was finally issued on January 17, 2013, with comments due on or before February 7, 2013. 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". That supplemental filing was submitted on May 2, 2013, and comments on that filing were due June 3, 2013. On June 2, the Vermont Department of Public Service filed comments supporting Green Mountain's request. This matter is pending before the FERC.

## XII. Misc. - Administrative & Rulemaking Proceedings

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

As previously report, the FERC issued a notice of inquiry ("NOI"), on April 19, 2012, 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 reported that it had, 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. Specifically, 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 has granted 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 25 parties filed comments on options for addressing priority rights on interconnection facilities, and this matter remains pending before the FERC.

- **Increasing Market and Planning Efficiency Through Improved Software (AD10-12)**

On May 20, 2013, the FERC issued a supplemental notice of its June 24-26 technical conference to be convened to discuss opportunities for increasing Real-Time and Day-Ahead market efficiency through improved software. This conference is intended to build on the discussions initiated in the FERC's June 2010, 2011, and 2012 technical conferences. A detailed agenda with the list of and times for the selected speakers is available on the FERC's Increasing Market and Planning Efficiency website (<http://www.ferc.gov/industries/electric/indus-act/market-planning/2013-conference.asp>).

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

On January 17, 2013, the FERC issued a NOPR<sup>104</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 proposed modifications to the SGIP to: (1) incorporate provisions that would provide an Interconnection Customer with the option of requesting from the Transmission Provider a pre-application report providing existing information about system conditions at a possible

<sup>104</sup> *Small Generator Interconnection Agreements and Procedures*, 142 FERC ¶ 61,049 (2013) ("SGIA/SGIP NOPR").



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 proposed 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. The FERC convened a workshop on Wednesday, March 27, 2013 to discuss certain topics related to the proposals in the NOPR. Those roundtable discussions addressed: fast track process eligibility; pre-application reports; supplemental review screens; and interconnection of storage devices. Speaker materials are available in eLibrary. Comments on the *SGIA/SGIP NOPR* were due June 3, 2013.<sup>105</sup> Over 30 parties submitted comments, including ISO-NE (both individually and with the ISO/RTO Council), NRECA/EEI/APPA, NARUC, NRG, and UCS. This matter is pending before the FERC.

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

This NOPR remains pending before the FERC. As previously reported, the FERC issued, on June 22, 2012, a NOPR that proposed to revise FERC policies governing the sale of ancillary services at market-based rates (“MBR”). The NOPR also proposed 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 proposed 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 sought 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 made 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 did not mandate a method for meeting this requirement, but proposed that the FERC evaluate those determinations on a case-specific basis. Comments on the NOPR were due on or before September 7, 2012.<sup>106</sup> Comments were submitted by, among others, APPA, Beacon Power, EEI, EPSA, Indicated Suppliers,<sup>107</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)**

Rehearing of portions of *Order 771* has been requested and remains pending. As previously reported, the FERC issued *Order 771* on December 20, 2012.<sup>108</sup> *Order 771* granted 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* requires 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* requires 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

<sup>105</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>106</sup> The NOPR was published in the *Fed. Reg.* on Jul 9, 2012 (Vol. 77, No. 131) pp. 40,414-40,458.

<sup>107</sup> “Indicated Suppliers” are Exelon, Calpine, Dynegy, GenOn and Tenaska.

<sup>108</sup> *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012) (“*Order 771*”), *order on reh’g and clarification*, 142 FERC ¶ 61,181 (2013).

appropriate confidentiality restrictions. *Order 771* became effective February 26, 2013.<sup>109</sup> In response to requests for clarification and/or rehearing of *Order 771* filed by EEI/NRECA, Open Access Technology International, Inc., NRECA (separately), and Southern Companies (collectively, the “Rehearing Requests”), the FERC issued, on March 8, 2013, *Order 771-A*.<sup>110</sup> *Order 771-A* addressed only those issues that needed to be answered on an expedited basis to allow affected entities to comply with the requirement to ensure FERC access in a timely manner to the e-Tags covered by *Order 771*.<sup>111</sup> The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which remain pending before the FERC.

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

Requests for rehearing and/or clarification of *Order 764-A* remain pending before the FERC. As previously reported, the FERC, in *Order 764-A*,<sup>112</sup> affirmed its basic *Order 764* determinations,<sup>113</sup> provided clarification, and granted EEI’s request to extend the period for compliance filings. Specifically, *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>114</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>115</sup> and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.<sup>116</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, which 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 21, 2013, the FERC issued *Order 676-G*,<sup>117</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

<sup>109</sup> *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

<sup>110</sup> *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (2013).

<sup>111</sup> *Order 771-A* clarified that: (1) Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of *Order 771*; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the FERC in the CC field; (3) the requirement for the FERC to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the FERC will deem all e-Tag information made available to the FERC pursuant to *Order 771* as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the FERC is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure FERC access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

<sup>112</sup> *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (2012) (“*Order 764-A*”), *reh’g requested*.

<sup>113</sup> *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) (“*Order 764*”), *order on reh’g*, 141 FERC ¶ 61,232 (2012), *reh’g requested*..

<sup>114</sup> *Id.* at P 15.

<sup>115</sup> *Id.* at P 19.

<sup>116</sup> *Id.* at P 23.

<sup>117</sup> *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-G, 142 FERC ¶ 61,131 (2013) (“*Order 676-G*”).

transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market”<sup>118</sup> and “represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F.”<sup>119</sup> *Order 676-G* became effective May 6, 2013.<sup>120</sup> The PSEG Companies requested rehearing of *Order 676-G* on March 25, 2013. The FERC issued a tolling order on April 22, 2013 to allow it additional time to consider the PSEG Companies’ request, which remains pending before the FERC. With respect to implementation, compliance was required beginning May 6, 2013, 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>121</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 it has obtained a waiver or has pending a request for waiver.<sup>122</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>123</sup> Based on the issues raised during the regional technical conferences in August, the *November 15 Order* directed 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 required 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, and 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 has held two technical conferences, one on February 13, 2013 to elicit input pertaining to information sharing and communications issues between the natural gas and electric power industries, and one on April 25, 2013 focused on natural gas and electric scheduling, and issues related to whether and how natural gas and electric industry schedules could be harmonized in order to achieve the most efficient scheduling systems for both industries. On May 16, the FERC convened, as planned, together with representatives from each RTO/ISO who shared experiences from the winter and spring and described progress towards refining existing practices to provide better coordination between the natural gas and electric industries and ensure adequate fuel supplies. Concerns with natural gas transportation that emerged during the winter heating season were addressed and fuel-related generator outages during the winter and spring were identified. Kevin Kirby

<sup>118</sup> *Id.* at P 1.

<sup>119</sup> *Id.* at P 33.

<sup>120</sup> *Order 676-G* was published in the *Fed. Reg.* on Mar 7, 2012 (Vol. 78, No. 45) pp. 14,654-14,664.

<sup>121</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>122</sup> *Id.* at PP 54-57.

<sup>123</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.

presented “ISO New England Winter Operational Experiences and Regional Actions”, which, together with the materials of each of the other speakers, is posted in the FERC’s eLibrary.

New England Gas-Electric focus group meetings are on-going, with the last meeting held on May 29 (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).

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

Comments on the FERC’s November 15, 2012 NOI seeking input 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”) are pending before the FERC. As previously reported, 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.

- **Natural Gas-Related Enforcement Actions (IN13-10)**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines. Following the issuance of Staff Notices of Alleged Violations (described in previous reports), the following companies agreed since the last report to settlements resolving the OE investigations into potential violations of the FERC’s natural gas regulations:

<u>Company</u>	<u>Alleged Violation(s)</u>	<u>Civil Penalty/Disgorgement</u>
DTE Gas Company (f/k/a 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)	\$15,000 (civil penalty)
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)	\$725,000 (civil penalty) \$2.5 million (disgorgement)

**XIV. State Proceedings & Federal Legislative Proceedings**

- **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 was suspended pending the MPUC’s decision in its Transmission Planning Standards case, 2011-494, which was issued in late February. 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>124</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>125</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. 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. Since the last report, on March 5, the Court adopted a briefing schedule which calls for Petitioners' briefs to be filed by March 28; Respondent's briefs by September 25, Intervenor in Support of Respondent's Brief, October 16; Reply Briefs, November 15; Final Briefs, December 13, 2013. The parties will be notified by separate order of the oral argument date and composition of the merits panel.

- **FCM Re-Design (12-1060 consolidated with 12-1074, 12-1085, and 12-1149) \*\***

**Underlying FERC Proceedings: ER10-787; EL10-57; EL10-50<sup>126</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 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

<sup>124</sup> 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

<sup>125</sup> 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

<sup>126</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).

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. Final Briefs were submitted on 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>127</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.

- **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>128</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>127</sup> 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

<sup>128</sup> *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 2012 U.S. Dist. LEXIS 6894 (VT Cir. Jan. 19, 2012).



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