EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings as of July 26, 2013

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 25, 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 Reponses (EL13-72)	Jul 5 Jul 15	FERC grants extension of compliance filing deadline to Aug 13, 2013 Dominion requests clarification and/or rehearing of the Jun 14 *Dominion Fuel Cost Recovery Order*
	2	NEPGA Complaint (EL13-66)	Jul 2 Jul 5	ISO responds to NEPGA Jun 20 answer Calpine answers ISO answers; HQ US moves to intervene out-of-time
	4	Base ROE Complaint (2011) (EL11-66)	Jun 28	Complainants, EMCOS, TOs, Trial Staff submit Reply Briefs; all briefing completed; initial decision expected by Sep 13, 2013
		II. Rate, ICR, FCA, Cost Recovery Filings		
	4	RCM Add'l Cost Recovery: Dominion (ER13-1291)	Jul 15	Dominion requests clarification and/or rehearing of the Jun 14 *Dominion Fuel Cost Recovery Order*
	5	2013 Capital Budget (ER13-192)	Jun 27	FERC approves Settlement Agreement resolving all issues in this proceeding
	5	2013 Administrative Costs Budget (ER13-185)	Jun 27	FERC approves Settlement Agreement resolving all issues in this proceeding
*	6	ISO Issuance of Securities: $39 Million to Refinance Capital Expenditures Financings (ES13-34)	Jul 1	ISO requests authorization for $11 million in Senior Unsecured Notes in order to support a higher-than-projected level of capital expenditures; comment date Aug 7
		III. Market Rule Changes, Interpretations and Waiver Requests		
*	6	FCA Objective Function (ER13-1880)	Jul 1 Jul 9-22	ISO and NEPOOL jointly file changes Calpine, EPSA, Exelon, NRG, and NU intervene
*	7	Energy Market Offer Flexibility Changes (ER13-1877)	Jul 1 Jul 2-23	ISO and NEPOOL jointly file changes; Brookfield, Calpine, Entergy, Exelon, GDF Suez, HQ US, NRG, NU, PSEG intervene; Capital Power, EPSA, MA DPU, NEPGA, NESCOE submits comments
*	7	Winter 2013/2014 Reliability Program (ER13-1851)	Jun 28 Jul 2-24	ISO and NEPOOL jointly file changes Brookfield, ConEd, Dominion, Entergy, EPSA, Exelon, Hess, HQ US, IECG, MPUC, New England Gas LDCs, NICC, NRG, NU, PPL, Repsol, Shell, VT PSB intervene; Algonquin, Capital Power, CLG, Exelon, GDF, Hess, IECG, MDPU, National Grid, NEPGA, PSEG, RESA, TransCanada, UI, and Vitol comment and/or protest
	7	PRD Full Integration Changes & FCM Net Supply Revisions (ER13-1742)	Jul 5-12 Jul 12	Exelon, NU intervene Verso submits comments
	8	RCPF for Replacement Reserve Requirement (ER13-1736)	Jul 5-18	Brookfield, Dominion, Exelon, NU intervene
	8	Forward Reserve Market (FRM) Incentives Proposal (ER13-1733)	Jul 5-18	Brookfield, Dominion, Exelon, NRG, NU, PSEG intervene

	8	CSO Termination: RI Genco (ER13-1516)	Jul 9	FERC accepts termination
	8	Regulation Market Clearing Price Inclusion of Opportunity Costs (ER13-1259)	Jun 27 Jul 1	FERC accepts changes, effective Jul 1, 2013 Changes become effective
	8	Revised Order 755 Compliance Filing (Regulation Market Changes) (ER12-1643)	Jul 19 Jul 22	ISO requests extension of the Dec 17, 2013 effective date directed in, or alternatively rehearing of, the Jun 20 order NESCOE moves to intervene out-of-time and answers in support of the requested extension and/or rehearing

IV. OATT Amendments / TOAs / Coordination Agreements

*	12	Order 1000 Interregional Compliance Filing (ER13-1960; ER13-1957)	Jul 10 Jul 18-25	ISO, NEPOOL, and PTO AC jointly file compliance changes; ISO files Amended Protocol; comment date Aug 26 Exelon, NEPOOL intervene
	12	Order 1000 Compliance Filing (ER13-193; ER13-196)	Jun 28 Jul 9 Jul 16 Jul 22	ISO answers LS Power's request for clarification of the *Order 1000 Compliance Order* ISO, NEPOOL, and PTO AC request extension of time, to Nov 15, 2013, to submit compliance filing; NESOCE submits comments supporting requested extension FERC issues tolling order affording additional time to consider requests for clarification and/or reh'g of May 17 order FERC grants extension of time, to Nov 15, 2013, to submit compliance filing

V. Financial Assurance/Billing Policy Amendments

*	13	CFTC Exemption Order Changes (ER13-1875)	Jul 1 Jul 22-23	ISO and NEPOOL jointly file Financial Assurance and Information Policy changes Exelon, NRG, NU intervene; Freedom Logistics files protest
*	14	Billing Policy Clarification: State Sales Tax Collections (ER13-1870)	Jul 1 Jul 22-23	ISO and NEPOOL jointly file Billing Policy changes Exelon, NRG intervene

VI. Schedule 20/21/22/23 Changes

*	15	Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)	Jun 28	NSTAR submits CWIP supplement to May 31 annual informational filing
*	15	Schedule 21-CMP Annual Informational Filing (ER09-938)	Jun 28	CMP files updated formula rates reflecting actual 2012 cost data and estimated 2013 cost data

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

*		LFTR Implementation: 19th Quarterly Status Report (ER07-476)	Jul 15	ISO files its 19th quarterly report

IX. Membership Filings

*	16	July 2013 Membership Filing (ER13-1867)	Jun 28	***New Members***: Dynasty Power; Mega Energy Holdings; Negawatt Business Solutions; Provider Power CT; and SBR Energy; ***Termination***: South Jersey Energy Solutions
	16	June 2013 Membership Filing (ER13-1616)	Jun 28	FERC accepts West Oaks termination

*	16	Suspension Notice: DownEast Power Company (not docketed)	Jul 24	ISO files notice that DownEast Power Company was suspended from the New England Markets on Jun 19 at 8:30 am

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

*	16	FFT Report: June 2013 (NP13-39)	Jun 28	NERC files Report
	16	NERC Glossary of Terms: Addition of Terms (RD13-10)	Jul 9	FERC approves addition of "Bulk-Power System," "Reliability Standard," and "Reliable Operation" to Glossary of Terms
	17	Revised VSLs/VRFs (RD13-5 et al.)	Jun 24	FERC approves modifications
	17	Interpretation: CIP-002-4 R3 (RD12-5)	Jun 25	FERC grants clarification requested by NERC and EEI; denies clarification/rehearing requested by ISO/RTO Council
	19	NOPR: Revised Reliability Standard: BAL-003-1 (RM13-11)	Jul 18	FERC issues NOPR; comment date [60 days after its publication in the *Federal Register*]
	20	NOPR: Revised Reliability Standard: PRC-005-2 (RM13-7)	Jul 18	FERC issues NOPR; comment date Sep 23, 2013
	20	NOPR: Remand of Interpretation of BAL-002-1a (RM13-6)	July 8	NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC file comments
	20	NOPR: Revised Reliability Standards: Version 5 CIP Standards (-002 through -011) (RM13-5)	Jul 18	Trade Associations request extension of deadline to comply with CIP Version 4 Standards pending outcome of this proceeding; comment date Aug 5
	21	*Order 779*: Geomagnetic Disturbance Reliability Standards (RM12-22)	Jul 16	FERC issues tolling order to permit it additional time to consider MISO rehearing request
	21	*Order 782*: Revised Reliability Standard: MOD-028-2 (RM12-19)	Jul 18	FERC issues Order 782
	21	NOPR: Revised Reliability Standards: FAC-001-1, FAC-003-3, PRC-004-2.1a, PRC-005-1.1b (RM12-16)	Jul 9	NERC files reply comments
	22	*Order 773-A*: Revised "Bulk Electric System" Definition and Procedures (RM12-7; RM12-6)	Jul 9	Pacific Northwest Generating Cooperative requests rehearing of Jun 13 order granting effective date extension to Jul 1, 2014
	23	NERC Rules of Procedure: Revisions to Standard Processes Manual (RR13-2)	Jun 26	FERC approves revisions,

XI. Misc. - of Regional Interest

24	203 Application: Dominion / ECP (Brayton Point) (EC13-82)	Jul 5	Dominion renews request for expedited FERC action
24	203 Application: Maine Public Service/Bangor Hydro (EC13-81)	Jul 19 Jul 23	FERC authorizes MPS merger into Bangor Hydro Bangor Hydro submits report addressing MPUC action on ring-fencing provisions and other merger conditions
26	National Grid IAs (ER13-1618 et al.)	Jun 28 Jul 5 Jul 9	FERC accepts Thundermist, Brockton Agreements FERC accepts Highland Agreement FERC accepts Blackstone Hydro, Wheelabrator Saugus Agreements
26	Cost Allocation Agreement NGrid/NSTAR (Line D21 Upgrades) (ER13-1557)	Jun 28 Jul 18	NGrid supplements filing FERC accepts Agreement, effective Apr 30, 2013

26	Bangor Hydro Waiver Permitting 2 OATTs Post-MPS Merger (ER13-1125)	Jul 18	FERC grants requested waiver permitting BHE to have 2 OATTs post-MPS merger
28	FERC Enforcement Action: Barclays Bank et al. (IN08-8)	Jul 16	FERC finds Barclays and certain Individual Traders violated the Anti-Manipulation Rule and assesses a record amount of civil penalties -- $435 million against Barclays (plus disgorgement of $34.9 million, plus interest), $15 million against one Trader and $1 million the remaining 3 Traders

XII. Misc. - Administrative & Rulemaking Proceedings

29	RTO/ISO Centralized Capacity Markets (AD13-7)	Jul 19	FERC issues supplemental notice of Sep 25 technical conference
30	NOPR: Revisions to Pro Forma SGIA and SGIP (RM13-2)	Jun 27-28 July 3	DC Office of People’s Counsel, CA PUC submit comments Solar Energy Industries Association files reply comments
31	*Order 784*: 3rd-Party Provision of Ancillary Services etc. (RM11-24; AD10-13)	Jul 18	FERC issues *Order 784*; effective [120 days after publication in *Federal Register*]
* 32	NOPR: Incorporation of WEQ Version 003 Standards (RM05-5)	Jul 18	FERC issues NOPR; comment date Sep 24, 2013

XIII. Natural Gas Proceedings

34	NOPR: Gas/Electric Operational Info Sharing (RM13-17)	Jul 18	FERC issues NOPR; comment date Aug 26, 2013
34	Natural Gas and Electric Market Coordination (AD12-12)	Jul 5	ISO/RTOs, including ISO-NE, submit responses to follow-up questions from the May 16 meeting

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts (Appeals of FERC Decisions)

36	Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093))	Jun 25	Oral argument scheduled for Sep 23, 2013

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: July 26, 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 July 26, 2013. If you have questions, please contact us.[1]

I. Complaints

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

On June 14, the FERC initiated, in response to Dominion's fuel cost recovery filing summarized below (see ER13-1291 below), 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."[2] Accordingly, the FERC directed the ISO to submit, 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."[3]

On June 25, NEPOOL and the ISO jointly requested that the FERC extend the deadline for compliance with the June 14 Order to 60 days from the date of the June 14 Order, or until August 13, 2013, to permit the compliance filing to reflect the results of full stakeholder consideration of the proposed compliance changes, including consideration of those changes at the Participants Committee's regularly-scheduled

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

[2] *Dominion Energy Mktg., Inc. and ISO New England Inc.*, 143 FERC ¶ 61,233 (2013) ("*Dominion Fuel Cost Recovery Order*"), *reh'g requested*.

[3] *Id.* at P 28.

August meeting. The requested extension was granted on July 5, 2013. As previously reported, the refund effective date was set at June 25, 2013.[4]

On July 15, 2013, Dominion requested clarification and/or rehearing of the *Dominion Fuel Cost Recovery Order*. In its request, Dominion asked the FERC to clarify that the ISO "is required to revise its Tariff to provide a resource with an opportunity to submit a Section 205 fling to recover its costs "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," *regardless of how the ISO characterizes the reliability reason*. Dominion asserted that that the ISO's proposal to "limit the ability of a resource dispatched for reliability to seek recovery of its actual costs only where the ISO has declared a MLCC Alert" was an "unnecessarily narrow interpretation of the" compliance requirement set forth in the *Dominion Fuel Cost Recovery Order* as "ISO-NE calls units to run for "reliability reasons" beyond their day-ahead schedules without calling a MLCC Alert." Dominion sought clarification and/or rehearing "so that ISO-NE and interested stakeholders fully understand ISO-NE's compliance obligations." On July 18, the ISO asked the FERC to deny Dominion's request so that the Participant Processes could be allowed to take its full course and any substantive concerns addressed once all parties have had an opportunity to comment on the ISO's final proposal. Dominion's request is pending before the FERC, with FERC action required on or before August 14, 2013, or the request will be deemed denied. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

- **NEPGA Complaint (EL13-66)**

As previously reported, the New England Power Generators Association ("NEPGA") filed on May 17, 2013, 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 were new and unfiled with the FERC, and thereby violated FPA section 205 and were unenforceable. NEPGA asked 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 answered the NEPGA Complaint on June 6. Interventions were filed by Algonquin, BG Energy Merchants, Brookfield, Calpine, Capital Power, ConEd, CT OCC, Distrigas, Dynegy, EPSA, Exelon, GDF Suez, Hess, HQ US (out-of-time), Iriquois, MA AG, Maxim Power, Millennium, NESCOE, NextEra, NICC, New England LDCs,[5] NRECA, NRG, NU, Portland Natural Gas, Repsol, TN Gas, and Vitol. Comments on the Complaint were filed by: CT PURA, Entergy, IPPNY, INGA, MPUC, NEPOOL, New England Pipelines, PSEG, and TransCanada. In its comments, NEPOOL provided information about the stakeholder process that was followed with respect to the issues raised in the Complaint, and urged the FERC to enforce the ISO Tariff as filed. NEPOOL did not take any position on whether the ISO's interpretation of the Market Rules effects a change in the Tariff, nor did NEPOOL take any position on NEPGA's interpretation of the Tariff (a copy of NEPOOL's comments is available at http://www.nepool.com/FERC_Filings_-_2013.php). On June 20, NEPGA filed an answer to the ISO's June 6 answer. The ISO answered this answer on July 2, 2013. On July 5, Calpine answered the ISO answers, asserting that the ISO mischaracterized statements made by a Calpine VP at the FERC's April 25 Technical Conference on gas-electric market coordination. This matter is currently pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

[4] The notice of the initiation of the proceeding and refund effective date was published in the *Fed. Reg.* on June 25, 2013 (Vol. 78, No. 122) p. 38,027.

[5] The New England Local Distribution Companies ("New England LDCs") include: Bay State Gas (d/b/a Columbia Gas of MA), Berkshire Gas, Liberty Utilities, Connecticut Natural Gas, Fitchburg, City of Holyoke, NU/NSTAR, Southern Conn. Gas, Westfield, and Yankee Gas.

- **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[6] and is pending before the FERC. As previously reported, NESCOE instituted this complaint, on December 28, 2012 in response to the ISO's December 3, 2012 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.[7] 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),[8] 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), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; 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 ("NICC", and together, 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 EL11-66 if the evidence leads there; (4) to reset the New England Transmission Owners ("TOs")[9] 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.

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[6] *New England States Comm. on Electricity v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013), *reh'g requested.*

7 *Id.* at P 32.

8 *Id.* at P 30.

[9] 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.

Interventions were filed by NEPOOL, AIM, CT AG, CT OCC, CT PURA, EMCOS,[10] 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) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On June 28, Reply Briefs were filed by Complainants, EMCOS, TOs, and FERC Trial Staff. 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[11] following a complaint by a number of State, consumer, and consumer advocate parties (the "2011 Complainants")[12] seeking a FERC order reducing the 11.14% Base ROE used in calculating formula rates for transmission service in the ISO's OATT to 9.2%. 2011 Complainants stated that "due to changes in the capital markets since the *Bangor Hydro* proceeding,[13] 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) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

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

As previously reported, the FERC issued an order on June 14 (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) 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

[10] EMCOS or the "Eastern Massachusetts Consumer-Owned Systems" are Braintree, Hingham, Reading, and Taunton.

[11] *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.

[12] 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.

[13] *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.

receive a Day-Ahead Market schedule).[14] 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.[15] 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 whose deadline has been extended to August 13, 2013.[16]

As noted in additional detail in Section I above, Dominion requested clarification and/or rehearing of the *Dominion Fuel Cost Recovery Order* on July 15, 2013. Dominion's request is pending before the FERC, with FERC action required on or before August 14, 2013, or the request will be deemed denied. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As announced at the Participants Committee Summer Meeting, the 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) was approved by the FERC on June 27.[17] If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

As noted immediately above, the uncontested settlement agreement to resolve the contested matters in this proceeding (as well as the 2013 Capital Budget proceeding) was approved by the FERC on June 27.[18] 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.
- 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).

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[14] *Fuel Cost Recovery Order; see* Note 2 *supra.*

[15] *Id.* at P 29.

[16] Notice of Extension of Time, *Dominion Energy Marketing, Inc. and ISO New England Inc.*, Docket Nos. ER13-1291 and EL13-72 (Jul. 5, 2013).

[17] *ISO New England Inc.*, 143 FERC ¶ 61,279 (2013) ("*2013 Budget Settlement Order*").

[18] *Id*.

- Costs for charitable contributions and golf tournaments will no longer be budgeted for or included in rates.

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

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order[19] that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding[20] 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). The ISO filed on October 31 an answer to PSEG's October 15 motion. On November 1, 2012, Connecticut Generators[21] 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.

- **ISO Issuance of Securities: $39 Million to Refinance Capital Expenditures Financings (ES13-34)**

On July 1, the ISO requested the necessary FERC authorization to issue up to $39 million in senior unsecured notes in order to refinance the aggregate principal amount of senior notes previously authorized and issued.[22] The ISO stated that the refinancing will allow it to reduce its interest costs funded through its operating budget. No comments on this filing were submitted on or before the July 22 comment date and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

III. Market Rule Changes, Interpretations and Waiver Requests

- **FCA Objective Function (ER13-1880)**

On July 1, the ISO and NEPOOL jointly filed revisions to Market Rule 1 to allow the FCA market clearing engine to select a final solution that maximizes social surplus[23] (rather than minimize total costs) ("FCA Objective Function Changes"). The filing indicates the Changes should have little effect on actual clearing outcomes, but will achieve those outcomes with less complexity and risk. A September 2, 2013 effective date was requested. The FCA Objective Function Changes were supported by the Participants

[19] *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).

[20] *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).

[21] "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.

[22] *See ISO New England Inc.*, 109 FERC ¶ 62,195 (2004); *ISO New England Inc.*, 140 FERC ¶ 62,173 (2012).

[23] "Social surplus" (sometimes called social welfare) is the sum of consumer surplus (the difference between the amount that consumers would be willing to pay and the amount they actually pay) and supplier surplus (the difference between the amount that suppliers are actually paid and the amount that they would have been willing to accept). Social Surplus is at its maximum when demand equals supply.

Committee by way of its June 27 Consent Agenda. Calpine, EPSA, Exelon, NRG, and NU submitted doc-less motions to intervene, but no comments on this filing were submitted. This matter is pending before the FEC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Energy Market Offer Flexibility Changes (ER13-1877)**

Also on July 1, the ISO and NEPOOL jointly filed energy market enhancements to provide Market Participants greater flexibility in structuring and modifying their Supply Offers in the Day-Ahead and Real-Time Energy Markets (the "Offer Flexibility Changes"). More specifically, the changes (1) will permit the cost-related parameters of a Supply Offer or a Demand Bid for a Dispatchable Asset Related Demand ("DARD") to be modified after the initial Reserve Adequacy Analysis ("RAA") process is completed; (2) will permit submission of cost-related parameters of a Supply Offer or a Demand Bid for a DARD that vary by hour; (3) modify self-schedule implementation to reflect the ability to submit hourly Supply Offers and change Supply Offers in Real-Time; (4) permit submission of negative offers as low as negative $150/MWh for External Transactions and the energy Blocks for a Supply Offer, Demand Bid, Increment Offer and Decrement Bid: (5) reflect conforming changes to Appendix A mitigation rules consistent with these changes; and (6) reflect clarification and clean-up changes. Although a December 3, 2014 effective date was requested, the ISO and NEPOOL asked for an order on the filing be issued on or before October 1, 2013 to inform the Committee's projected October 4 discussion on additional offer flexibility (NCPC-related) changes. The Offer Flexibility Changes were supported by the Participants Committee at its June 7 meeting. Interventions were filed by Brookfield, Calpine, Entergy, Exelon, GDF Suez, HQ US, NRG, NU, and PSEG. Comments were submitted by Capital Power, EPSA, MA DPU, NEPGA, and NESCOE. 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).

- **Winter 2013/2014 Reliability Program (ER13-1851)**

On June 28, the ISO and NEPOOL jointly filed a set of solutions intended to support reliability during the cold-weather months of December 2013 through February 2014 (the "Winter Reliability Program"). The Winter Reliability Program consists of four components: (1) a new demand response program, (2) an oil inventory service, (3) incentives for dual fuel units, and (4) market monitoring changes. An August 27, 2013 effective date was requested. The Winter Reliability Program changes were supported by the Participants Committee at its June 27 Summer Meeting. Interventions were filed by Brookfield, ConEd, Dominion, Entergy, EPSA, Exelon, Hess, HQ US, IECG, MPUC, New England Gas LDCs, NICC, NRG, NU, PPL, Repsol, Shell, and the VT PSB; comments and/or protests, by Algonquin, Capital Power, CLG, Exelon, GDF, Hess, IECG, MDPU, National Grid, NEPGA, PSEG, RESA, TransCanada, UI, and Vitol. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **PRD Full Integration Changes & FCM Net Supply Revisions (ER13-1742)**

On June 21, the ISO and NEPOOL jointly filed two sets of changes to the price-responsive demand ("PRD") full integration Market Rules: (1) clarifying and minor clean-up changes (the "PRD Full Integration Changes"), and (2) addressing the FCM treatment of Demand Resources that can produce "net supply" (i.e., the injection of energy into the electrical grid) (the "Net Supply Revisions"). An August 21, 2013 effective date was requested. These changes were unanimously supported by the Participants Committee by way of its June 7 Consent Agenda. Interventions were filed by Exelon and NU. Verso submitted comments on July 12 supporting the revisions, and noting that its proposal in Docket No. ER12-1627 for changing the "3 of last 10 days" baseline refreshment method is consistent with and can be accepted along with the various changes clarifying the calculation of the baseline proposed in this proceeding. 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).

- **RCPF for Replacement Reserve Requirement (ER13-1736)**

On June 20, the ISO and NEPOOL jointly filed changes to Market Rule 1 that establish a Reserve Constraint Penalty Factor ("RCPF") for the replacement reserve requirement at $250/MWh. An October 1, 2013 effective date, to coincide with the start of the Forward Reserve Procurement Period that begins on that date, was requested. The ISO and NEPOOL requested a FERC order within 60 days, however, to provide those participating in the August 2013 auction with some certainty as to the rules that will apply. These changes were unanimously supported by the Participants Committee by way of its June 7 Consent Agenda. Interventions were filed by Brookfield, Dominion, Exelon, NU. 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).

- **Forward Reserve Market (FRM) Incentives Proposal (ER13-1733)**

Also on June 20, the ISO and NEPOOL jointly filed changes to improve the performance incentives in the FRM. Specifically, the proposal (1) includes Real-Time Reserve Clearing Price (adjusted down from the FRM Payment Rate) in the calculation of the Failure-to-Reserve Penalty to allow the penalty for non-performance of Forward Reserve resources during periods of reserve scarcity to reflect the actual Real-Time replacement cost; and (2) adds an additional trigger when a Failure-to-Activate Penalty could be applied to non-performing Forward Reserve resources. An October 1, 2013 effective date was requested. These changes were supported by the Participants Committee at its June 7 meeting. Interventions were filed by Brookfield, Dominion, Exelon, NRG, NU, and PSEG, but no substantive comments 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).

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

On July 9, the FERC accepted the termination of the CSO held by Project Sponsor Rhode Island Engine Genco, LLC ("RI Genco") for Resource 14619. As indicated in the filing, the ISO will draw down the amount of financial assurance provided by RI Genco with respect to the CSO. Unless the July 9 letter order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 27, the FERC accepted changes jointly filed by the ISO and NEPOOL 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 changes became effective July 1, 2013, as requested. The changes accomplish a key objective of Order 755 while the ISO continues to work on implementation of the regulation market changes that are the subject of the proceedings in Docket No. ER12-1643 (*see* below). Unless the June 27 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).

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

As previously reported, the FERC issued an order on June 20, 2013 conditionally accepting the region's revised *Order 755* Compliance Filing ("Revised Compliance Filing") submitted in February.[24] The *Revised Order 755 Compliance Order* found that the February 2013 proposal satisfied the clearing price and payment directives of *Order 755*, but did not ensure that regulation resources are allowed to include inter-temporal opportunity costs in their ex ante bids. The FERC, therefore, required the ISO to submit, on or before August 5, 2013, a compliance filing that explains how regulation resources will be allowed to incorporate inter-temporal opportunity costs into their bids and how the ISO will verify those costs, and the associated modified tariff

[24] *ISO New England Inc. and New England Power Pool*, 143 FERC ¶ 61,250 (2013) ("Revised *Order 755 Compliance Order*").

revisions.[25] In addition, the FERC directed implementation of the changes within 6 months (mid-December 2013), rather than January 1, 2015, as requested. The FERC found it unreasonable to delay implementation, noting (i) the past and on-going market uncertainty for regulation market participants caused by delays in establishing an *Order 755*-compliant frequency regulation market in New England; (ii) the importance of ensuring that all frequency regulation resources receive just and reasonable and not unduly discriminatory compensation, and (iii) the fact that the interim changes proposed in ER13-1291 did not justify granting a delayed implementation date.[26]

At the Summer Meeting, the ISO described concerns that the FERC's direction to implement the changes by mid-December will either materially increase its implementation costs (and thereby require an increase in the 2013 budget) or require a substantial re-alignment of priorities. The Participants Committee then approved a motion to support a request by the ISO that the FERC reconsider the timing of the mid-December implementation directed in the *Order 755 Compliance Order*.

On July 19, the ISO requested an extension of the compliance filing effective date specified in the *Order 755 Compliance Order* to October 14, 2014, or in the alternative, rehearing of that requirement. On July 22, NESCOE filed a motion to intervene out-of-time and an answer in support of the requested extension and/or rehearing. NEPOOL's comments supporting the ISO's request will filed on or before August 5. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

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).[27] The FERC also accepted the proposed revisions to Appendix E of Market Rule 1 to become effective June 1, 2017, as requested, and granted the ISO's request to delay implementation of the Fully Integrated rules to June 1, 2017. The FERC found just and reasonable the "must-offer requirement for demand response resources with a capacity supply obligation in ISO-NE's FCM,"[28] agreed that "the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties,"[29] and found the "proposal will be beneficial to both demand response providers and wholesale electricity customers".[30] 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.[31] 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;[32]
- 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

[25] *Id. at* P 23.

[26] *Id.* at P 33.

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

[28] *Id.* at P 27.

[29] *Id.* at P 28.

[30] *Id.* at P 29.

[31] *Id.* at PP 44-46.

[32] *Id.* at P 36.

than under the current FCM market rules[33] (noting its concern about the interaction between the must-offer requirement and the need for demand response resources to refresh their baselines);[34]

- why the removal of using transmission losses in its calculation of demand resource capacity values is justified;[35]
- whether, and if so how, the ISO it will otherwise adjust the total capacity requirement to reflect avoided transmission losses when procuring capacity;[36] 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.[37]

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[38] and Verso Paper. DR Supporters protested 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 pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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.[39] 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;[40] unit specific offer review;[41] the ISO's proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports' treatment under MOPR;[42] no exemptions to MOPR for new Self-Supplied Resources;[43] the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;[44] $1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;[45] and a number of other additional

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[33] *Id.*

[34] *Id.* at P 35.

[35] *Id.* at P 57.

[36] *Id.*

[37] *Id.* at P 58.

[38] DR Supporters are Comverge, EnerNOC, NICC, Wal-Mart, and the IECG.

[39] *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013) ("*FCA8 Revisions Order*").

[40] *FCA8 Revisions Order* at PP 37-38.

[41] *Id.* at P 53.

[42] *Id.* at P 70.

[43] *Id.* at P 80.

[44] Id. at P 97.

[45] *Id.* at P 126.

revisions.[46] 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)[47]; 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.[48] 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."[49] 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."[50] 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 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.[51] The *FCA8 Compliance Order* was not challenged and is final and unappealable.

If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; 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[52] regarding the plan to study and develop proposals to resolve issues related to the modeling of internal transmission constraints and tie

46 *Id.* at P 127.

47 *Id.* at PP 63-64.

48 *ISO New England Inc.*, 143 FERC ¶ 61,198 (2013) ("*FCA8 Compliance Order*").

49 *Id.* at P 31.

50 *Id.* at P 35.

51 *Id.*

52 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).

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).

IV. OATT Amendments / TOAs / Coordination Agreements

- ***Order 1000* Interregional Compliance Filing (ER13-1960; ER13-1957)**

On July 10, the ISO, NEPOOL and the PTO AC jointly filed revisions to Sections I and II of the ISO Tariff to comply with the interregional coordination and cost allocation requirements of *Orders 1000* and *1000-A* (the "*Order 1000* Interregional Compliance Changes"). In addition, the ISO, on behalf of itself, NYISO and PJM, filed an Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol ("Amended Protocol") as part of its compliance changes. The *Order 1000 Interregional Compliance Changes* include (i) revisions to Attachment K to add provisions describing the interregional coordination provisions included in the Amended Protocol, as well as adding other provisions facilitating the consideration of interregional solutions to regional needs; (ii) a new Schedule 15 reflecting the methodology for allocation among ISO-NE and NYISO of the costs of approved interregional transmission projects; (iii) revisions to Schedule 12 describing the regional cost allocation within New England of the costs of approved interregional transmission projects; and (iv) conforming changes to Tariff Section I. The *Order 1000* Interregional Compliance Changes and the Amended Protocol were supported by the Participants Committee at its June 27 Summer Meeting. Comments on this filing will be due on or before August 26, 2013. Thus far, doc-less motions to intervene have been filed by Exelon and NEPOOL (in the Protocol proceeding). If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- ***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[53] (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 circulated to the Participants Committee on May 20, 2013. Although the

[53] *ISO New England Inc.*, 143 FERC ¶ 61,150 (2013) ("*Order 1000 Compliance Order*").

additional compliance filing would otherwise be due on or about September 16, 2013, on July 9, the ISO, NEPOOL, and PTO AC requested an extension of time, to November 15, to submit the required compliance filing. NESCOE filed a contemporaneous pleading supporting that request. The FERC granted the requested extension on July 22, 2013. Accordingly, the additional compliance filing will be considered at the November 8 Participants Committee meeting and filed on or before November 15, 2013.

On June 17, the ISO, LS Power, PTO AC and NESCOE each filed requests for clarification and/or rehearing of the *Order 1000 Compliance Order*. On June 28, the ISO answered LSP Power's request concerning the effective date for the *Order 1000* compliance changes. On July 16, 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 you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

Action on MMWEC's request for rehearing of the FERC's January 28, 2011 *Capability Clarifications Order*[54] 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,[55] 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).

V. Financial Assurance/Billing Policy Amendments

- **CFTC Exemption Order Changes (ER13-1875)**

On July 1, the ISO and NEPOOL jointly filed two sets of revisions in response to the CFTC's Exemption Order (*see* Section XI below). Changes to the Financial Assurance Policy address the requirement that all parties to agreements, contracts or transactions under the ISO Tariff be "appropriate persons," an "eligible contract participants," or "person[s] who actively participate in the generation, transmission or distribution of electric energy" ("FAP Changes"). Proposed Information Policy changes explicitly provided that the ISO is not required to notify Market Participants prior to providing information to the CFTC in response to a CFTC subpoena or other request for information or documentation. Both the FAP Changes and Information Policy changes were supported by the Participants Committee at the June 27 Summer Meeting. Exelon, NRG, and NU filed doc-less

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

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

motions to intervene. On July 22, Freedom Logistics filed a protest, challenging aspects of the FAP Changes. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Billing Policy Clarification: State Sales Tax Collections (ER13-1870)**

Also on July 1, the ISO and NEPOOL jointly filed a clarification to the Billing Policy to make clear that applicable state sales taxes related to purchases of electricity through the New England Markets[56] will be included in and collected as Non-Hourly Charges. Non-Hourly Charge-related Payment Defaults can result in the suspension or termination of a Market Participant, in accordance with the applicable Billing Policy provisions. These changes were supported by the Participants Committee at the June 27 Summer Meeting. Doc-less interventions were filed by Exelon and NRG, but no substantive comments were submitted on or before the July 22 comment date. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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.[57] In its September 24 order, the FERC stated that its "preliminary analysis indicates that Applicants' proposed Schedules 21-GMP and 20A-GMP and notices of cancellation have not been shown to be just and reasonable, and … raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures we order."[58] Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and WEC ("Cooperatives")[59] were denied on February 25, 2013.[60] 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.[61]

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)

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[56] Each of the New England states (other than New Hampshire) impose sales tax on the sale of electricity, which is deemed to be a retail sale of tangible personal. The ISO will collect and remit applicable state sales taxes in connection with purchases of electricity through the New England Markets, unless the purchase is made for subsequent resale (and a properly executed resale certificate is in place) or a state-specific sales tax exemption applies to the purchase and is properly claimed by the purchaser.

[57] *ISO New England, Inc., Central Vt. Pub. Srvc. Corp. and Green Mountain Power Corp.*, 140 FERC ¶ 61,239 (2012) ("*GMP Merger Order*"), *reh'g denied*, 142 FERC ¶ 61,146 (2013).

[58] *Id.* at PP 21-22.

[59] 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.

[60] *ISO New England, Inc., Central Vt. Pub. Srvc. Corp. and Green Mountain Power Corp.*, 142 FERC ¶ 61,146 (2013).

[61] *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.

recommended that settlement judge procedures be continued. If there are questions on this matter, please contact Pat Gerity (860-275-0533; 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.[62] On June 28, 2013, NSTAR supplemented its May 31 annual informational filing with a "CWIP Supplement" in accordance with Section 4.1(i) and (ix) of Schedule 21-NSTAR as added and supplemented by Article 4.2 of the 2008 Settlement. The CWIP Supplement was provided primarily on a project-specific basis, and included NSTAR's 2013 long-range construction forecast. The FERC will not notice these filings for public comment, and absent further activity, no further FERC action is expected. No comments have been filed on either of these informational filings. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-CMP Annual Informational Filing (ER09-938)**

On June 28, CMP its submitted annual update to the formula rates contained in Schedule 21-CMP. CMP indicated that the informational filing reflected actual cost data for the 2011 calendar year plus estimated cost data for the 2013 calendar year associated with CMP's forecasted transmission plant additions and MPRP CWIP as well as the annual true-up and associated interest. CMP referred to Section 10.2 of Schedule 21-CMP for specific procedures for review and challenges to the informational report. 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).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

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

The ISO filed its 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.[63] In the 19th 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.

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[62] *See NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

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

- **LFTR Implementation: 19th Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the nineteenth of its Quarterly Status Reports regarding LFTR implementation on July 15. Subject to a number of qualifications, the ISO reported that if the third party clearing design begin vetted in the Participant Processes is supported, the third party clearing design could be implemented during Q4 2014 for the 2015 annual FTR auction, about six months later (mid-2015) for monthly auctions, and during Q4 2016 for an initial auction of LFTRs. The estimated 18-month LFTR implementation process, described in previous reports, would be initiated in 2015, presuming the third party clearing design is accepted and related FAP changes resolved. These status reports are not noticed for public comment and no comments have been filed.

IX. Membership Filings

- **July 2013 Membership Filing (ER13-1867)**

On June 28, NEPOOL requested that the FERC accept (i) effective July 1, 2013, the memberships of Dynasty Power (Supplier Sector); Mega Energy Holdings (Supplier Sector); Negawatt Business Solutions (AR Sector, Small LR Group Seat); Provider Power CT (Related Person to Electricity Maine, Supplier Sector); and SBR Energy (Supplier Sector); and (ii) effective June 1, 2013, the termination of the Participant status of South Jersey Energy Solutions. This matter is pending before the FERC.

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

On June 28, the FERC accepted the termination of the Participant status of West Oaks Energy (Supplier Sector), effective May 1, 2013.

- **Suspension Notice: DownEast Power Company (not docketed)**

On July 24, the ISO filed, pursuant to Section 2.3 of the Information Policy, a notice with the FERC that DownEast Power Company, LLC was suspended from the New England Markets on June 19, 2013 at 11:12 a.m. This notice was for the FERC's information only and will not be docketed or noticed for public comment.

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

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

- **FFT Report: June 2013 (NP13-41)**

NERC submitted on Jun 27, 2013, its Find, Fix, Track and Report ("FFT") informational filing for the month of June 2013. The May FFT resolves 45 possible violations of 9 Reliability Standards that posed a risk minimal risk to bulk power system ("BPS") reliability, but which have since been remediated.[64] The 20 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 July 9, the FERC approved NERC's addition to its Glossary of Terms the terms "Bulk-Power System," "Reliability Standard," and "Reliable Operation". Unless the July 9 letter order is challenged, this proceeding will be concluded.

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

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

On June 24, the FERC accepted the modifications and/or additional support for VSL and VRF assignments filed by NERC on February 15, 2013.[65] As previously reported, 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.[66] The June 24 order was not challenged and this proceeding has been concluded.

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

On June 25, the FERC granted the clarifications requested by NERC and EEI[67] of its March 21, 2013 order remanding NERC's proposed interpretation of Requirement R3 to Reliability Standard CIP-002-4 (Critical Cyber Asset Identification)[68]. However, the FERC denied the ISO/RTO Council's motion to intervene out-of-time and, consequently, denied its request for clarification and/or rehearing. 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.[69] 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.[70] Fearing that the proposed interpretation could, in effect, create a window into an EMS network that could be exploited, the FERC remanded the interpretation.

In its *Clarification Order*, NERC clarified that (i) the *CIP-002 Interpretation Order* did not state that "all laptops must be included in the scope of CIP-002-4, Requirement R2," rather, the FERC determined only that the proposed interpretation incorrectly excluded cyber assets actually used to control Critical Assets, and that determination was sufficient to warrant a remand (FERC did not reach the question of whether other cyber assets, such as those capable of controlling Critical Assets, were "essential," reserving judgment on that issue); and (ii) the *CIP-002 Interpretation Order's* reference to the NERC guidelines was intended to illustrate the FERC's concerns with the proposed interpretation (and did not remand the proposed interpretation based on the NERC guidelines nor did the *Order* state or imply that the NERC guidelines are mandatory and enforceable.)

- **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:

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[65] *N. Am. Elec. Reliability Corp.*, 143 FERC ¶ 61,269 (June 24, 2013).

[66] *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).

[67] *N. Am. Elec. Reliability Corp.*, 143 FERC ¶ 61,271 (2013) ("*Clarification Order*").

[68] *N. Am. Elec. Reliability Corp.*, 142 FERC ¶ 61,204 (2013) ("*CIP-002 Interpretation Order*"), *clarificaion granted*, 143 FERC ¶ 61,271 (2013).

[69] *Id.* at P 12.

[70] *Id.* at P 13.

- 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.

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

On July 18, the FERC issued a NOPR proposing to approve changes to BAL-003 (Frequency Response and Frequency Bias Setting), as well as the associated definitions, implementation plan, VRFs, and VSLs, submitted by NERC on March 19, 2013.[71] NERC stated that the changes respond to FERC directives in Order 693[72] 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. Comments on this NOPR are due [60 days after its publication in the *Federal Register*].

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

As previously reported, the FERC issued a supplemental NOPR on May 16 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 consolidate all of the currently effective TPL Standards (including superseding proposed TPL-001-2, which NERC had proposed in a previous NOPR to remand).[73] As previously reported, NERC has long had a compliance obligation to address FERC concerns with the Footnote.[74] NERC's February 28 filing addressed those concerns. Comments on the supplemental NOPR were due on or before June 24, 2013.[75] Comments were submitted by ITC, MISO, and NERC. This NOPR is pending before the FERC.

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

On June 20, the FERC issued a NOPR proposing to retire 34 requirements in 19 Standards that NERC indicated were redundant and/or otherwise could be removed with little or no effect on reliability. In addition, the FERC proposed to withdraw 41 outstanding FERC directives that NERC develop modifications to Reliability Standards as the identified outstanding directives have either been addressed in some other manner, are redundant

[71] *Frequency Response and Frequency Bias Setting Rel. Std.*, 144 FERC ¶ 61,057 (Jul. 18, 2013)

[72] *Order 693* at P 375.

[73] *Trans. Planning Rel. Standards*, 143 FERC ¶ 61,136 (2013) ("*TPL-001-4 NOPR*").

[74] *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.

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

with another directive or provide general guidance as opposed to a specific directive.[76] Comments on this NOPR are due on or before August 27, 2013.[77]

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

On July 18, the FERC issued a NOPR proposing to approve changes to PRC-005 (Protection System Maintenance) filed by NERC on February 26, 2013 that: (1) include maximum allowable intervals in PRC-005 for time-based, condition-based, and performance-based maintenance programs; (2) combine PRC-005, PRC-008, PRC-011, and PRC-017 into one Standard; and (3) clarify that it is the equipment owner that will be responsible for completing required maintenance.[78] In addition, the FERC seeks clarification and comment on three aspects of PRC-005-2 and proposes to modify one VSL. Comments on this NOPR are due on or before September 23, 2013.[79]

- **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.[80] 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* were due on or before July 8, 2013,[81] and were filed by NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. This NOPR is pending before the FERC.

- **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.[82] 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 proposed to direct NERC to develop certain modifications to the CIP version 5 Standards to address those concerns. Comments on the *CIP Version 5 NOPR* were due June 24, 2013.[83] Comments were submitted by over 60 parties, including, among others, the

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[76] *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, 143 FERC ¶ 61,251 (Jun. 20, 2013).

[77] The NOPR was published in the *Fed. Reg.* on June 28, 2013 (Vol. 78, No. 125) pp. 38,851-38,867.

[78] *Protection System Maintenance Reliability Standard*, 144 FERC ¶ 61,055 (July 18, 2013) ("*PRC-005-2 NOPR*").

[79] The *PRC-005-2 NOPR* was published in the *Fed. Reg.* on July 24, 2013 (Vol. 78, No. 142) pp. 44,475-44,483.

[80] *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

[81] The *BAL-002-1a Interpretation Remand NOPR* was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 99) pp. 30,245-30,810.

[82] *Version 5 Critical Infrastructure Protection Reliability Standards*, 143 FERC ¶ 61,055 (2013) ("*CIP Version 5 NOPR*").

[83] The *CIP Version 5 NOPR* was published in the *Fed. Reg.* on Apr. 24, 2013 (Vol. 78, No. 79) pp. 24,107-24,124.

following New England parties: the ISO, Dominion, Exelon, NextEra, NRG, NU, and PPL. This NOPR is pending before the FERC. On July 18, a number of Trade Associations[84] filed a request that the FERC delay the April 1, 2014 CIP Version 4 compliance deadline pending action in this rulemaking proceeding on the CIP Version 5 Standards. Comments on that request are due on or before August 5, 2013.

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

On May 16, the FERC issued *Order 779*,[85] 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)*,[86] 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. On July 16, the FERC issued a tolling order affording it additional time to consider the MISO rehearing request, which remains pending before the FERC.

- ***Order 782*: Revised Reliability Standard: MOD-028-2 (RM12-19)**

On July 18, the FERC approved clarifications to NERC's Area Interchange Methodology (MOD-028-2) Standard, as well as the proposed implementation plan and retirement of the currently-effective standard.[87] The revisions clarify the timing and frequency of Total Transfer Capability ("TTC") calculations needed for Available Transfer Capability ("ATC") calculations. The revised Standard will become effective September 1, 2013 (the first day of the first calendar quarter following FERC approval). Unless *Order 782* is challenged, with any challenges due on or before August 19, this proceeding will be concluded.

- **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[88] 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 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

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[84] "Trade Associations" were APPA, EEI, ELCON, EPSA, Large Public Power Council ("LPPC"), NRECA, and the Transmission Access Policy Study Group ("TAPS").

[85] *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (2013) ("*Order 779*").

[86] *Order 779* was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 100) pp. 30,747-30,762.

[87] *Revisions to Modeling, Data, and Analysis Reliability Standard*, Order No. 782, 144 FERC ¶ 61,027 (July 18, 2013) ("*Order 782*").

[88] *Generator Requirements at the Transmission Interface*, 143 FERC ¶ 61,049 (2013).

of the revisions. Comments were filed by 13 parties on the June 24, 2013 comment date.[89] On July 9, NERC submitted reply comments. This matter is pending before the FERC.

- ***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*[90] 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.[91]

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;
- 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);

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[89] This NOPR was published in the *Fed. Reg.* on Apr. 24, 2013 (Vol. 78, No. 79) pp. 24,101-24,107.

[90] *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) ("*Order 773*").

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

- 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, Almeda Municipal Power, Anaheim, APPA and TAPS, Dow Chemical, Consumers Energy, ELCON, Exelon, and NARUC. 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). The Pacific Northwest Generating Cooperative requested rehearing of the June 13 order on Jul 9, 2013, and that request is pending before the FERC.

- **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 June 26, 2013, FERC approved proposed revisions to NERC's Standard Processes Manual ("SPM") set forth in Appendix 3A of the NERC Rules of Procedure ("ROP"),[92] 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 stated that the proposed SPM revisions, collectively, were 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. The June 26 order was not challenged and is final and unappealable.

[92] *N. Am. Elec. Reliability Corp.*, 143 FERC ¶ 61,273 (June 26, 2013).

XI. Misc. - of Regional Interest

- **CFTC Exemption**

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,[93] 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.

Changes to the FAP and Information policy required to comport with the CFTC Order were filed July 1, 2013 (*see* ER13-1875, Section V above). 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.[94] If there are questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

- **203 Application: 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. On July 5, Dominion renewed its requested for expedited FERC authorization of the transaction. As of the date of this report, this application remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On July 18, the FERC authorized the merger of Maine Public Service ("MPS") into Bangor Hydro ("Applicants").[95] As previously reported, Applicants indicated that the result of the transaction will be a single electric utility with operations in both central and northern Maine, but without resulting in the direct interconnection of the facilities currently owned by Bangor Hydro and MPS (which are currently only indirectly interconnected via transmission lines in Canada owned by unrelated entities). Bangor Hydro's current transmission system will remain under the functional control of the ISO, while that currently owned by MPS will

[93] 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.

[94] 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.

[95] *Bangor Hydro Elec. Co. and Me. Pub. Serv. Co.*, 144 FERC ¶ 61,030 (2013) ("*BHE/MPS Merger Order*").

not. In a companion order (ER13-1125),[96] the FERC waived its regulations to permit Bangor Hydro to maintain two OATTs following consummation of the transaction – one for the central Maine transmission lines currently owned by Bangor Hydro, and one for the northern Maine lines currently owned by MPS. Applicants committed to hold harmless transmission and wholesale customers from transaction-related costs for five years. Among other conditions, the FERC required Applicants to notify it within 10 days of the consummation of the merger, which has not yet occurred. On July 23, Applicants submitted a report notifying the FERC of the MPUC's approval of Applicants' proposed changes to ring-fencing provisions and other conditions. Unless the July 18 order is challenged, and pending notice that the merger has been consummated, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Rehearing remains pending of FERC's December 22, 2010 order authorizing Fore River Development, LLC, Mystic I, LLC, Mystic Development, LLC, and Boston Generating, LLC (together, "Boston Gen") and Constellation Mystic Power, LLC ("Mystic Power") to sell five of Boston Gen's generating facilities (Fore River, Mystic 7, 8, and 9, and Mystic Jet) and certain other assets to Constellation Holdings, Inc. or its designee (in this case, its wholly-owned affiliate Mystic Power).[97] 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).

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

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

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

As noted below, these proceedings have been stayed pending CT DPUC action on an agreement before it that would resolve the dispute in this proceeding. As previously reported, on May 12, 2010, the United Illuminating Company ("UI") filed a petition for a declaratory order ("Petition") that its sales to Elm Electric Cooperative ("Elm"), for resale to Elm's members, is a transaction at wholesale subject to FERC jurisdiction. As indicated by UI in the Petition, Elm is a Connecticut electric cooperative formed to sell and distribute electricity to its members, who will be tenants of a large, mixed-use residential and commercial building now under construction in New Haven, Connecticut. Elm will serve its members in part by using a

[96] *Bangor Hydro Elec. Co.*, 144 FERC ¶ 61,031 (2013) ("*BHE OATT Waiver Order*").

[97] *Fore River Dev., LLC*, 133 FERC ¶ 61,248 (2010).

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.[98] 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).

- **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. The remaining IAs were accepted since the last report. A summary of those IAs accepted since the last report 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	Jul 9
ER13-1656	Narragan	Blackstone Hydro	21-NEP: IA-NECO-40-01	Jun 11	Jul 9
ER13-1618	Narragan	Thundermist (1.15 MW hydro, Woonsocket, RI)	21-NEP: IA-NECO-39-01	May 31	Jun 28
ER13-1475	MECO	Highland (Attleboro Landfill)	21-NEP: IA-MECO-35-01	May 10	Jul 5
ER13-1425	MECO	Brockton (<1 MW photovoltaic)	21-NEP: IA-MECO-29-01	May 3	Jun 28

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

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

On July 18, the FERC accepted a Cost Allocation Agreement between NSTAR and NEP, 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. On June 28, NEP supplemented its May 24 filing noting that (i) the project estimate is $5.5 million for the National Grid side of the line and $1.53 million for the NSTAR Electric portion of the line; (ii) construction has been completed; and (iii) no charges have been or will be collected under the Line D21 Upgrades Agreement until it is accepted for filing. The Agreement was accepted effective April 30, 2013, as requested. Unless the July 18 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Bangor Hydro Waiver Permitting 2 OATTs Post-MPS Merger (ER13-1125)**

On July 18, the FERC the FERC waived its regulations to permit Bangor Hydro to maintain two OATTs (one for the central Maine transmission lines its currently owns, and one for the northern Maine lines

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

that it will own upon consummation of its merger with MPS).[99] If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 18, 2012, Judge Sterner issued his 374-page initial decision which, following hearings described in previous reports, found at its core that "it is unjust, unreasonable, and unduly discriminatory to allocate costs of Phase Angle Regulating Transformers ("PARs") of the International Transmission Company ("ITC") to NYISO and PJM",[100] 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. For a summary of specific findings, please refer to any of the January to June 2013 Reports.

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).

- **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[101] 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***.[102] 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).

- **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

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[99] *Bangor Hydro Elec. Co.*, 144 FERC ¶ 61,031 (2013) ("*BHE OATT Waiver Order*").

[100] *Midwest Indep. Trans. Sys.Op., Inc.*, 141 FERC ¶ 63,021 (2012) ("*MISO Initial Decision*") at P 923.

[101] 18 CFR § 1c.2 (2011).

[102] *Richard Silkman*, 140 FERC ¶ 61,033 (2012).

DALRP (plus interest).[103] As previously reported, OE Staff alleges that, from approximately July 2007 through February 2008, CES advised an industrial load response participant in Rumford, Maine to engage in a fraudulent practice to collect payments in the DALRP. Specifically, staff alleges that CES advised the participant to curtail on-site generation during DALRP program hours when it enrolled in the DALRP, which Staff believes artificially inflated the participant's baseline load and misrepresented the participant's load profile. Staff also alleges that CES advised and assisted the participant to ensure that its baseline did not appreciably change. The participant was paid for the difference between its inflated baseline load and its normal operational load as a "load reduction" even though no load reduction actually occurred.

On September 14, CES answered and opposed the Show Cause Order. On September 21, FERC Staff filed an unopposed motion for a 30-day extension of time, to November 13, 2012, to reply to the CES answer. That request was granted on September 26, and Staff's reply was filed on November 13, 2012. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; 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).[104] 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[105] 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).

- **FERC Enforcement Action: Barclays Bank et al. (IN08-8)**

On July 16, 2013, the FERC issued an order finding Barclays Bank PLC ("Barclays"), Daniel Brin, Scott Connelly, Karen Levine, and Ryan Smith ("Individual Traders", and collectively with Barclays, "Respondents") violated the FERC's Anti-Manipulation Rule by engaging over a two-year period in a deliberate and coordinated strategy of trading physical electricity at an economic loss at four trading points in the Western United States in order to boost its financial positions at those same trading points. FERC found that Respondents' conduct resulted in an estimated $139 million in financial losses to other market participants with positions settling off of the allegedly manipulated trading points. Accordingly, the FERC assessed a record amount of civil penalties -- ***$435 million against Barclays (plus disgorgement of $34.9 million, plus interest), $15 million against Connelly, and***

[103] *Competitive Energy Services, LLC*, 140 FERC ¶ 61,032 (2012).

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

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

$1 million against each of Brin, Levine, and Smith. FERC walked through its analysis of why the penalties were well within permitted ranges. The amount disgorged is to be divvied up among the Low Income Home Energy Assistance Program (LIHEAP) of the states of Arizona (19%), California (63%), Oregon and Washington (9% each) for the benefit of their respective electric energy consumers. While the order addresses conduct in the Western markets, the lessons for New England Market Participants are no less relevant -- uneconomic transactions that intentionally impact the price or value of other related transactions are impermissible and will subject those involved, institutions and individuals, to severe penalties. Barclays is expected to challenge the order.

- **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.[106] Bangor Hydro requested a limited waiver from the FERC's Standards of Conduct requirements,[107] 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 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 remains 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. Comments supporting Green Mountain's request were file June 2 by the Vermont Department of Public Service and June 3 by Vermont Senators Leahy and Sanders, and Representative Welch. This matter is pending before the FERC.

XII. Misc. - Administrative & Rulemaking Proceedings

- **RTO/ISO Centralized Capacity Markets (AD13-7)**

On July 19, the FERC issued a supplemental notice of its September 25, 2013 technical conference on centralized capacity markets. As previously reported and announced, the purpose of the technical conference is to consider how current capacity market rules and structures are supporting the procurement and retention

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

[107] *See* 18 C.F.R. § 358 (2011) *et seq*.

of resources necessary to meet future reliability and operational needs. The FERC noted that the technical conference will provide an opportunity to review the market rules and structures at a high level and examine how they are accomplishing their intended goals and objectives. The technical conference will focus on the goals and objectives of existing centralized capacity markets (e.g., resource adequacy, long-term price signals, fixed-cost recovery, etc.) and examine how specific design elements are accomplishing existing and emerging goals and objectives. The supplemental notice included a preliminary agenda. Those interested in speaking at the technical conference should notify the FERC by August 9, 2013. Those interested in attending the technical conference are encouraged to register. Link to speaker and attendee registration, as well as other technical conference information is available at: http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=6944&CalType=%20&CalendarID=116&Date=09/25/2013&View=Listview .

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

As previously reported, 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)**

The FERC held its fourth annual technical conference to discuss opportunities for increasing Real-Time and Day-Ahead market efficiency through improved software June 24-26, 2013, which sadly conflicted with the Participants Committee's Summer Meeting. This conference was intended to build on the discussions initiated in the FERC's June 2010, 2011, and 2012 technical conferences. This year, FERC staff facilitated discussions to explore research and steps needed to implement approaches to market modeling which appear to have significant promise for potential efficiency improvements in stochastic modeling, optimal transmission switching, AC optimal power flow modeling, and the use of active and dynamic transmission ratings. Speaker materials from the 3-day conference were posted July 10-11 in the FERC's eLibrary. Post-technical conference comments will be accepted, with a deadline of July 31, 2013.

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

On January 17, 2013, the FERC issued a NOPR[108] 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 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

[108] *Small Generator Interconnection Agreements and Procedures*, 142 FERC ¶ 61,049 (2013) ("*SGIA/SGIP NOPR*").

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 were 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.[109] Over 30 parties submitted comments, including ISO-NE (both individually and with the ISO/RTO Council), NRECA/EEI/APPA, NARUC, NRG, and UCS. Since the last report, comments were submitted by the DC Office of the People's Counsel and the California PUC. Reply comments were filed by the Solar Energy Industries Association. This matter is pending before the FERC.

- ***Order 784*: 3rd-Party Provision of Ancillary Services; New Electric Storage Technology Accounting and Financial Reporting (RM11-24; AD10-13)**

On July 18, 2013, the FERC issued Order 784,[110] which revises certain aspects of the FERC's current market-based rate regulations, ancillary services requirements under the *pro forma* OATT, and accounting and reporting requirements in order to foster competition and transparency in ancillary services markets. Specifically, Order 784 (i) reforms the FERC's policies governing the sale of ancillary services at market-based rates to public utility transmission providers; (ii) requires each public utility transmission provider to add to its OATT Schedule 3 a statement that it will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response service; (iii) requires each public utility transmission provider to post and update yearly certain Area Control Error ("ACE") data; and (iv) revises FERC accounting and reporting requirements to better account for and report transactions associated with the use of energy storage devices in public utility operations. The FERC found that the record in this proceeding was insufficient for it to relieve restrictions for Reactive Supply and Voltage Control service and Regulation and Frequency Response service in the same manner as Imbalance and Operating reserves, but indicated that it intends to gather further information regarding the provision of Reactive Supply and Voltage Control service and Regulation and Frequency Response service in a separate, new proceeding. *Order 784* will become effective [120 days after publication in the *Federal Register*].[111] Compliance filings implementing the changes to OATT Schedule 3 must be submitted on or before [150 days after publication in the *Federal Register*]. *Order 784* will become final and unappealable unless challenged on or before August 19, 2013.

- ***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 o*n December 20, 2012.[112] *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 appropriate confidentiality restrictions. *Order 771* became effective

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

[110] *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056 (Jul. 18, 2013) ("*Order 784*").

[111] *Order 784* was published in the *Fed. Reg.* on July [ ], 2013 (Vol. 78, No. [ ]) pp. [ ].

[112] *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).

February 26, 2013.[113] 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*.[114] *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*.[115] The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore 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*,[116] affirmed its basic *Order 764* determinations,[117] 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;[118] (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;[119] and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.[120] 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 Powerex and Iberdrola requests, which remain pending before the FERC. The region's *Order 764/764-A* compliance revisions will be considered and voted during discussion agenda item 2A at the August 2, 2013 meeting. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NOPR: Incorporation of WEQ Version 003 Standards (RM05-5)**

On July 18, the FERC issued a NOPR[121] which proposes to amend FERC regulations by incorporating by reference ***Version 003*** of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB"). The Version 003 Standards update earlier versions of these standards previously incorporated by reference into FERC regulations at 18 CFR 38.2. The Version 003 standards include modifications to support Order Nos. 890, 890-A, 890-B and 890-C, including the standards to support Network Integration Transmission

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

[114] *Availability of E-Tag Info. to Comm'n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (2013) ("*Order 771-A*").

[115] *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.

[116] *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (2012) ("*Order 764-A*"), *reh'g requested*.

[117] *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) ("*Order 764*"), *order on reh'g*, 141 FERC ¶ 61,232 (2012), *reh'g requested.*

[118] *Id.* at P 15.

[119] *Id.* at P 19.

[120] *Id.* at P 23.

[121] *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 144 FERC ¶ 61,026 (Jul. 18, 2013) ("*WEQ Version 003 Standards NOPR*").

Service on an Open Access Same-Time Information System ("OASIS"), Service Across Multiple Transmission Systems ("SAMTS"), standards to support FERC policy regarding rollover rights for redirects on a firm basis, standards that incorporate the functionality for transmission providers to credit redirect requests with the capacity of the parent reservation and standards modifications to support consistency across the OASIS-related standards. The Version 003 Standards also include modifications to the OASIS-related standards that NAESB states support Order Nos. 676, 676-A, 676-E and 717 and add consistency. In addition, there are modifications to the Coordinate Interchange standards to compliment recent updates to e-Tag specifications, modifications to the Gas/Electric Coordination standards to provide consistency between the two markets, and re-organized and revised definitions to create a standard set of terms, definitions and acronyms applicable to all NAESB WEQ standards. The Version 003 Standards include the Standards addressed in *Order 676-G* below and the recent Smart Grid Standards. Comments on the WEQ Version 003 Standards NOPR are due on or before September 24, 2013.[122]

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

On February 21, 2013, the FERC issued *Order 676-G*,[123] which amends FERC regulations to incorporate by reference the business practice standards adopted by the NAESB Wholesale Electric Quadrant ("WEQ") to categorize various demand response ("DR") and energy efficiency ("EE") products and services and to support the measurement and verification ("M&V") of those products and services in RTO/ISOs (collectively, the "Phase II M&V Standards"). The standards provide common definitions and processes regarding DR and EE products in organized wholesale electric markets where such products are offered. The Phase II M&V Standards also require each RTO/ISO to address in its governing documents the performance evaluation methods to be used for DR products. The FERC stated that the Phase II M&V Standards facilitate the ability of DR and EE providers to participate in RTO/ISOs, "reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market"[124] and "represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F."[125] *Order 676-G* became effective May 6, 2013.[126] 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.[127] 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.[128] New England's *Order 676-G* compliance changes were considered and supported at the Summer Meeting.

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[122] The *WEQ Version 003 Standards NOPR* was published in the *Fed. Reg.* on July 26, 2013 (Vol. 78, No. 144) pp. 45,096-45,104.

[123] *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-G, 142 FERC ¶ 61,131 (2013) ("*Order 676-G*").

[124] *Id.* at P 1.

[125] *Id.* at P 33.

[126] *Order 676-G* was published in the *Fed. Reg.* on Mar 7, 2012 (Vol. 78, No. 45) pp. 14,654-14,664.

[127] 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), Mar. 21, 2011)".

[128] Id. at PP 54-57.

XIII. Natural Gas Proceedings

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

- **NOPR: Gas/Electric Operational Info Sharing (RM13-17)**

On July 18, 2013, the FERC issued a NOPR proposing to revise its regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to share nonpublic, operational information with each other for the purpose of promoting reliable service or operational planning on either the public utility's or pipeline's system.[129] Recipients of the non-public, operational information would be subject to a No-Conduit Rule that prohibits subsequent disclosure of that information to an affiliate or third party. The approach to the sharing of non-public information proposed by the FERC is intentionally permissive, but the FERC noted that should this voluntary approach proves inadequate to promote reliable service or operational planning on natural gas pipelines and electric transmission systems, it may revisit the need to require certain communications or information sharing between transmission operators in the future. Comments on this NOPR are due August 26, 2013.[130]

- **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.[131] 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, 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 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. In follow-up to the May 16 presentation, the FERC, on June 6, requested that Mr. Kirby and each of the ISO/RTO presenters respond to a series of questions posed by no later than July 5, 2013. The questions to New England can be found at http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13274467. Each of the ISO/RTOs submitted their

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[129] *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, 144 FERC ¶ 61,043 (July 18, 2013) ("*Gas/Electric Operational Info Sharing NOPR*").

[130] The *Gas/Electric Operational Info Sharing NOPR* was published in the *Fed. Reg.* on July 25, 2013 (Vol. 78, No. 143) pp. 44,901-44,909.

[131] *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.

responses, as requested, by the July 5 deadline. ISO-NE's responses are available at http://www.iso-ne.com/regulatory/ferc/filings/2013/jul/ad12-12-000_7-5-13_response_to%20ferc_ltr.pdf.

New England Gas-Electric focus group meetings continue. The last meeting was held on May 29 and the next, after a summer break, is expected to take place either at the end of August or in September. (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**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines. There has been no gas-related enforcement activity since the last report.

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).

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

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

- **New England's Order 745 Compliance Filing (12-1306)**
  Underlying FERC Proceedings: ER11-4336[132]
  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

[132] 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

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 7th Cir. 12-2248)**
  Underlying FERC Proceedings: RM10-23[133]
  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 in the consolidated proceedings identified above. Petitioners briefs were filed on May 28, 2013. The briefing schedule calls for Respondent's briefs by September 25, Intervenors in Support of Respondent's Brief, October 16; Reply Briefs, November 15; and Final Briefs, December 13, 2013. The date for oral arguments and the composition of the merits panel has not yet been ordered.

- **FCM Re-Design (12-1060 consolidated with 12-1074, 12-1085, and 12-1149) ****
  Underlying FERC Proceedings: ER10-787; EL10-57; EL10-50[134]
  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 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[135]
  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. Oral argument in this case is scheduled for September 23, 2013.

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[133] 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

[134] 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).

[135] 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

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

On February 24, 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.[136] Appellant and amicus briefs were filed and oral argument was held on January 14, 2013. This matter is currently pending before the 2nd Circuit.

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

INDEX
Status Report of Current Regulatory and Legal Proceedings as of July 26, 2013

I. Complaints

II. Rate, ICR, FCA, Cost Recovery Filings

III. Market Rule 1 Changes, Interpretations and Waiver Requests

IV. OATT Amendments/Coordination Agreements

V. Financial Assurance/Billing Policy Amendments

VI. Schedule 20/21/22/23 Updates

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

IX. Membership Filings

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

XI. Misc. Regional Interest

XII. Misc: Administrative & Rulemaking Proceedings

XIII. Natural Gas Proceedings

XIV. State Proceedings & Federal Legislative Proceedings

XV. Federal Courts