EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings as of September 11, 2013

The following activity, as more fully described in the attached litigation report, has occurred since the report dated July 26, 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; ER13-2149)	Jul 30	NEPOOL submits answer to Dominion request for rehearing
			Aug 12	FERC issues tolling order affording additional time to consider Dominion request for clarification and/or reh'g of Jun 14 order
			Aug 13	ISO submits compliance filing in response to Jun 14 order
			Aug 20	NEPOOL submits comments and NEPOOL Alternative to Aug 13 ISO Proposal
			Aug 26 - Sep 5	Algonquin, ConEd, Maritimes & Northeast Pipeline, GDF, NU intervene; Dominion, NRG, PSEG file protests; NEPGA supports, but UI protests, the NEPOOL Alternative; ISO answers NEPOOL's Aug 20 filing
	2	NEPGA Resource Performance Obligations Complaint (EL13-66)	Aug 27	FERC grants in part and denies in part the NEPGA Complaint
	4	Base ROE Complaint (2011) (EL11-66)	Aug 6	Trial Judge Cianci issues Initial Decision; parties jointly request extension of time to file briefs on, and opposing, exceptions
			Aug 8	FERC grants extension of time to file briefs on exceptions (to Sep 20) and briefs opposing exceptions (to Oct 24)

II. Rate, ICR, FCA, Cost Recovery Filings

*	5	2013/2014 Winter Reliability Program Bid Results Filing (ER13-2266)	Aug 26	ISO-NE submits bid results
			Aug 3-9	NEPOOL, HQUS, MDPU, National Grid, NRG, NU, RESA, VT PSB, Vitol intervene; Essential Power identifies an overstatement of its total MWh; NESCOE file comments; Exelon supports the filing; MPUC, PSEG file protests; TransCanada requests consolidation with ER13-1851
	4	RCM Add'l Cost Recovery: Dominion (ER13-1291)	Aug 12	FERC issues tolling order affording additional time to consider Dominion request for clarification and/or rehearing of Jun 14 order
			Aug 16	Dominion submits regulatory costs compliance filing
*	5	2013/2014 Power Year Transmission Rate Filing (ER09-1532; RT04-2)	Jul 31	PTO AC submits informational filing identifying adjustments to regional transmission service charges for the Jun 1, 2013 to May 31, 2014 period; this filing will not be noticed for public comment
	6	ISO Issuance of Securities: $39 Million to Refinance Capital Expenditures Financings (ES13-34)	Jul 31	FERC authorizes ISO issuance of $39 million in Senior Unsecured Notes; effective for two years, beginning Aug 1, 2013

III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests

*	6	Shortage Event Triggers Jump Ball Filing (ER13-2313)	Sep 4	ISO and NEPOOL jointly submit jump ball filing; comment date Sep 25
			Sep 10	HQUS intervenes
*	6	CSO Termination: Comverge (ER13-2215)	Aug 21	ISO files to terminate Comverge's CSO for portions of resources 37917, 37918, 37919, 37920 and 37925
			Aug 23-26	NEPOOL, Exelon intervene

*	7	CSO Termination: TransCanada (ER13-2213)	Aug 21 Aug 23-26	ISO files to terminate TransCanada's CSO for resource 380 NEPOOL, Exelon intervene
*	7	CSO Termination: Waterbury Generation (ER13-2212)	Aug 21 Aug 23-26	ISO files to terminate Waterbury Generation's CSO for resource 12564; NEPOOL, Exelon intervene
*	7	CSO Termination: Constellation New Energy (ER13-2210)	Aug 21 Aug 23-26	ISO files to terminate Constellation's CSO for a number of its resources NEPOOL, Exelon intervene
*	7	eTariff Correction: Removal of Attachment A-1 (ER13-2161)	Aug 15	ISO submits filing to remove from its eTariff the Alternative MPSA, whose removal was previously accepted in a May 31 FERC order
*	7	Tie Line Name Changes (ER13-2113)	Aug 6 Aug 23	ISO and NEPOOL jointly file changes Exelon intervenes
*	7	Net-Metered Generator Auditing Revisions (ER13-2110)	Aug 5 Aug 23	ISO and NEPOOL jointly file changes Exelon intervenes
*	8	Information Policy: Minimum Power Value Revisions (ER13-2099)	Aug 2 Aug 23 Sep 5	ISO and NEPOOL jointly file changes Exelon intervenes FERC accepts changes, effective Oct 2, 2013
	8	FCA Objective Function (ER13-1880)	Aug 15	FERC accepts changes, effective Sep 2, 2013
	8	Energy Market Offer Flexibility Changes (ER13-1877)	Jul 31 Aug 6	ISO files answer to comments NEPOOL files answer to comments
	9	Winter 2013/2014 Reliability Program (ER13-1851-000)	Aug 1-5 Aug 6 Aug 8 Aug 15-16	TransCanada, RESA, and NEPOOL file answers ISO files answer GDF Suez files answers National Grid, Vitol submit answers
		Emergency Amendments (Exigent Circumstances Filing) (-001;-002)	Aug 9-12 Aug 19 Aug 23 Sep 9	ISO files Emergency Amendments NEPOOL, Exelon, NEPGA, NESCOE, NGA, PSEG, TransCanada file comments ISO files answer to Aug 19 comments TransCanada moves to consolidate this proceeding with the Bid Results proceeding
	9	PRD Full Integration Changes & FCM Net Supply Revisions (ER13-1742)	Aug 20	FERC accepts changes, effective Aug 21, 2013
	10	RCPF for Replacement Reserve Requirement (ER13-1736)	Aug 15	FERC accepts changes, effective Oct 1, 2013
	10	Forward Reserve Market FRM Incentives Proposal (ER13-1733)	Aug 15	FERC accepts changes, effective Oct 1, 2013
	10	Generator Audit Revisions (ER13-323)	Aug 15 Sep 1	ISO provides notice of Sep 1, 2013 effective date for the remaining portion of the Generator Audit Revisions Revisions become effective
	10	Revised *Order 755* Compliance Filing (Regulation Market Changes) (ER12-1643)	Jul 29 Aug 5	FERC grants extension of effective date for compliance filing changes to and including Oct 1, 2014 ISO and NEPOOL jointly file additional compliance changes
	12	Notice of Effective Date: Cancellation of Market Rule 1 Section 14 (ER12-1155)	Aug 7 Sep 4	ISO provides notice of the Aug 21, 2013 effective date for the cancellation of MR1 Section 14 (formerly the Intra-Hour Transaction Scheduling Pilot Program), as accepted in the CTS proceeding FERC accepts notice

	12	FCM Redesign Compliance Filing: FCA8 Revisions (ER12-953 et al.)	Jul 30	ISO files Compliance Report identifying schedule for addressing FCM Capacity Zones

IV. OATT Amendments / TOAs / Coordination Agreements

*	14	Order 676-G Compliance: Revisions to Schedule 24 (ER13-2123)	Aug 7 Aug 23 Sep 4	ISO and NEPOOL jointly file changes Exelon intervenes FERC accepts changes
	14	Order 1000 Interregional Compliance Filing (ER13-1960; ER13-1957)	Aug 7 Aug 22 Aug 26 Sep 9-10	FERC grants extension of comment date to and including Sep 9, 2013 Dominion intervenes NEPOOL submits comments supporting the Protocol Old Dominion Electric Coop, PJM, PPL, PSEG intervene; NESCOE submits comments

V. Financial Assurance/Billing Policy Amendments

	16	CFTC Exemption Order Changes (ER13-1875)	Aug 6 Aug 7 Aug 30	NEPOOL files answer to Freedom Logistics protest Easy Energy moves to intervene out-of-time and files comments FERC conditionally accepts Financial Assurance and Information Policy changes
	16	Billing Policy Clarification: State Sales Tax Collections (ER13-1870)	Jul 30 Aug 30	FERC accepts Billing Policy changes Billing Policy changes become effective

VI. Schedule 20/21/22/23 Changes

	16	Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)	Aug 13	Settlement Judge Johnson issues status report recommending settlement judge procedures be continued
	17	Schedule 21-FGE: Annual Informational Filing (ER09-1498)	Jul 31	FGE submits data and schedules for the Jun 1 - May 31, 2014 period used to calculate its annual transmission revenue requirement under Schedule 21-FGE

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

*	17	Capital Projects Report - 2013 Q2 (ER13-2145)	Aug 12 Aug 16 Sep 3	ISO files Report NEPOOL intervenes and files comments NU intervenes
*	18	Quarterly Markets Reports - 2013 Q2 (ZZ13-4)	Aug 9	Internal Market Monitor files report for Q2 2013

IX. Membership Filings

*	18	September 2013 Membership Filing (ER13-2292)	Aug 30	***Terminations***: DFC-ERG Milford; Cambridge Energy Alliance; comment date Sep 19
*	18	August 2013 Membership Filing (ER13-2079)	Aug 1 Aug 28	***New Members***: Clear Choice Energy; energy.me; Essential Power; Hess Energy Marketing; ***Terminations***: Iron Energy; BG Energy Merchants; and DownEast Power Co. FERC accepts filing
	18	July 2013 Membership Filing (ER13-1867)	Aug 19	FERC accepts filing
*	18	Suspension Notices: Vermont Marble. and Exelon New England Holdings (not docketed)	Aug 15	ISO files notice that Vermont Marble and Exelon New England Holdings were suspended from the New England Markets on Aug 14 at 8:30am

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

*	18	FFT Report: August 2013 (NP13-51)	Aug 30	NERC files Report
*	19	FFT Report: July 2013 (NP13-46)	Jul 31	NERC files Report
*	19	Revised Reliability Standard: BAL-001-1 (RD13-11)	Aug 20	NERC files revised Standard for approval; comment date Sep 17
	21	NOPR: Retirement of Reliability Standard Requirements: P 81 Project (RM13-8)	Aug 23-27	NERC, Canadian Electricity Association, Dominion, ITC, the ISO/RTO Council, NRECA, and jointly by APPA, EEI, ELCON, EPSA, LPPC and TAPS
	22	NOPR: Revised Reliability Standards: Version 5 CIP Standards (-002 through -011) (RM13-5)	Aug 5-6 Aug 12	Duke, ISO/RTO Council, ITC, NRG, Pepco Companies, PSEG submit comments supporting extension of CIP v.4 compliance deadline FERC grants extension of CIP v. 4 compliance deadline to Oct 1, 2014
	22	*Order 779*: Geomagnetic Disturbance Reliability Standards (RM12-22)	Aug 8	FERC denies MISO rehearing request
	23	*Order 773-A*: Revised "Bulk Electric System" Definition and Procedures (RM12-7; RM12-6)	Aug 30	FERC denies rehearing of *Order 773-A*
*	25	2014 NERC/NPCC Business Plans and Budgets (RR13-9)	Aug 23 Sep 6 Sep 9 Sep 10	NERC submits proposed 2014 Business Plan and Budget for itself and its Regional Entities, including NPCC EEI requests comment date be extended to Sep 20 NERC submits pleading which does not oppose EEI request FERC grants extension of comment deadline to Sep 20, 2013
	25	NERC Rules of Procedure: Revisions to Rules of Procedure Appendices 2 and 4D (RR13-3)	Sep 3	FERC approves revisions
*	25	NERC Board of Trustee Compensation Report (FA11-21)	Aug 23	NERC submits compliance report
	25	NERC Quarterly Spending Variance Reports (FA11-21)	Aug 14	NERC submits 2013 Q2 Report

XI. Misc. - of Regional Interest

*	26	203 Application: Hess/Direct Energy (EC13-135)	Aug 15	Applicants request authorization for transfer of Hess assets to Hess Energy Marketing ("HEM") and the sale of 100% of the equity interests in HEM to Direct Energy
	27	203 Application: Dominion/ECP (Brayton Point) (EC13-82)	Aug 20 Aug 30	FERC authorizes sale Applicants notify FERC of sale's Aug 29 consummation
*	28	National Grid/TransEnergie (Converter Station Upgrade Agreement) (ER13-2180)	Aug 16	National Grid files Converter Station Upgrade Agreement
*	33	E&P Agreement BHE/First Wind (ER13-2120)	Aug 7	BHE files E&P Agreement
	30	FERC Enforcement Action: Richard Silkman (IN12-13)	Aug 30	FERC finds Silkman violated FERC's Anti-Manipulation Rules by engaging in fraud in the ISO's DALRP; orders Silkman to pay a $1.25 million civil penalty
	29	FERC Enforcement Action: CES (IN12-12)	Aug 30	FERC finds CES violated FERC's Anti-Manipulation Rules by engaging in fraud in the ISO's DALRP; orders CES to pay a $7.5 million civil penalty and to disgorge $166,841

	30	FERC Enforcement Action: Lincoln Paper & Tissue (IN12-10)	Aug 30	FERC finds LP&T violated FERC's Anti-Manipulation Rules by engaging in fraud in the ISO's DALRP; orders LP&T to pay a $5 million civil penalty and to disgorge $379,016
*	30	FERC Enforcement Action: JP Morgan (IN08-11; IN13-5)	Jul 30	FERC approves an Agreement that settles allegations that JP Morgan violated FERC's Anti-Manipulation Rules; JP Morgan to pay $285 million civil penalty, to disgorge $125 million in profits, and to forego claims for additional Bid Cost Recovery and Exceptional Dispatch payments from CAISO
*	32	Burlington Elec. Dept. Termination of Mandatory PURPA QF Purchase Obligation from Chase Mill Hydro. Project (QM13-4)	Aug 15	Burlington seeks termination of its obligation to purchase the output of the Chase Mill Hydro Project, a 7.4 MW QF; comment date Sep 12

XII. Misc. - Administrative & Rulemaking Proceedings

	32	RTO/ISO Centralized Capacity Markets (AD13-7)	Sep 9-10	Parties, including Compete, ConEd, EnerNOC, EPSA, ESA, NESCOE, NRG, and PSEG, submit pre-conference comments; technical conference schedule for Sep 25
	32	Increasing Market and Planning Efficiency Through Improved Software (AD10-12)	Jul 31	Wisconsin Electric Power Co. files comments
	33	WIRES Request for Policy Statement on ROE for Electric Transmission (RM13-18)	Jul 26-Sep 10	Parties submit comments on WIRES' petition
	33	NOPR: Revisions to Pro Forma SGIA and SGIP (RM13-2)	Aug 12	NRECA, EEI, APPA file joint reply comments
	34	*Order 784*: 3rd-Party Provision of Ancillary Services etc. (RM11-24; AD10-13)	Aug 16-19	EEI, Powerex, SoCal Edison, WSPP file requests for clarification of *Order 784*

XIII. Natural Gas Proceedings

	36	NOPR: Gas/Electric Operational Info Sharing (RM13-17)	Aug 16-27	34 parties submit comments, including the ISO, NESCOE, NEPGA, MMWEC, NERC, AGA, APGA, APPA, EEI, ELCON, EPSA, INGA, the IRC, NRECA, and the New England Natural Gas Industry
*	38	Enforcement Actions (IN13-16; IN13-15)	Aug 5	FERC issues show cause order alleging BP manipulated the next-day, fixed-price gas market at Houston Ship Channel from mid-Sep 2008 through Nov 30, 2008; $315,000 (civil penalty); $7.235 million (disgorgement)
			Aug 26	FERC approves settlement agreement with Enterprise Texas Pipeline; $315,000 (civil penalty); $7.235 million (disgorgement)

XIV. State Proceedings & Federal Legislative Proceedings

	38	Maine: Lewiston Loop CPCN (MPUC 2011-420)	Aug 23	MPUC grants CMP CPCN for Lewiston Loop Project

XV. Federal Courts (Appeals of FERC Decisions)

	39	FCM Re-Design (12-1060 et al.)	Aug 23	Oral argument scheduled for Nov 19, 2013
	40	Vermont Yankee Complaint (2nd Circuit, 12-707)	Aug 14	2nd Circuit affirms the district court as to the Atomic Energy Act and Federal Power Act preemption claims; reverses district court as to the Dormant Commerce Clause claim

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: September 11, 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 September 10, 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] The refund effective date was set at June 25, 2013.[4]

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[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.

[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.

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. On July 30, NEPOOL filed an answer committing to fully describe the results of the August 2 votes in connection with the compliance filing. On August 12, the FERC issued a tolling order affording it additional time to consider the Dominion rehearing request, which remains pending before the FERC.

August 9 Compliance Filing (ISO Proposal) and NEPOOL Alternative (ER13-2149). The ISO (on August 13) and NEPOOL (on August 20) filed alternative proposals in response to the *Dominion Fuel Cost Recovery Order*. The NEPOOL alternative adds to the ISO Proposal an opportunity for Market Participants to seek cost recovery under FPA Section 205 for additional costs incurred as a result of the declaration of a *force majeure* event on the natural gas pipeline system after the time when a Market Participant has submitted its Day-Ahead Energy Market Supply Offers. Algonquin Gas Transmission and Maritimes & Northeast Pipeline, GDF, and NU filed interventions. Protests were filed by Dominion, NRG, PSEG, and UI. Dominion, NRG and PSEG each asserted that the ISO Proposal and NEPOOL Alternative (though better) each failed to fully correct the deficiencies in the Market Rules that the FERC found to be unjust and unreasonable. UI supported the ISO Proposal as fully compliant with the June 14 order, but protested the NEPOOL Alternative as overly broad. NEPGA filed comments supporting the NEPOOL Alternative. On September 4, the ISO answered the NEPOOL Alternative on both substantive and legal/procedural grounds. This matter is currently pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

- **NEPGA Resource Performance Obligations Complaint (EL13-66)**

On August 27, the FERC granted in part and denied in part this complaint by the New England Power Generators Association ("NEPGA").[5] As previously reported, NEPGA filed a formal complaint on May 17, 2013, alleging that the ISO impermissibly re-interpreted the Tariff to impose a firm fuel obligation on all capacity resources. In the *NEPGA Order*, the FERC found that the Tariff imposes a strict performance obligation on capacity resources and that capacity resources may not take economic outages, including outages based on economic decisions not to procure fuel or transportation. The *NEPGA Order* also found that "a demonstrated inability to obtain natural gas or transportation may legitimately affect whether a resource is physically available," where lack of physical availability is not a Tariff violation. Addressing related enforcement matters, the FERC indicated that it would not pursue any pending enforcement referrals from the ISO that are based solely on an alleged inability to procure natural gas. The *NEPGA Order* directed the ISO, on or before September 26, 2013, to submit in an informational filing and post on its website a non-exhaustive list of factors to be used in the determination of a Tariff violation. Any challenges to the *NEPGA Order* must also be submitted on or before September 26, 2013. 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).

[5] *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,157 (2013) ("*NEPGA Order*").

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

Rehearing of the FERC's February 12, 2013 order denying NESCOE's FCM Renewable Exemption Complaint[6] was requested and remains pending before the FERC. As previously reported, NESCOE instituted this December 28, 2012 complaint 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 Minimum Offer Price Rule ("MOPR") 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)**

This Complaint, as well as all of the and comments submitted in this proceeding, 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.

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

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[6] *New England States Comm. on Elec. 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.

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

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. 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 August 6, 2013, Trial Judge Cianci issued his initial decision finding unjust and unreasonable the 11.14% ROE currently used in calculating formula rates for transmission service in the OATT, and finding that the ROE should be 10.6% for the October 2011 through December 2012 "locked in/refund period" and 9.7% from January 2013 forward, subject to further updating or modification by the FERC.[11] By way of reminder, the FERC established hearing and settlement judge procedures[12] following a complaint by a number of State, consumer, and consumer advocate parties (the "2011 Complainants")[13] seeking a FERC order reducing the 11.14% Base ROE to 9.2% "due to changes in the capital markets since the *Bangor Hydro* proceeding."[14] After settlement judge procedures before Judge Judith A. Dowd were ultimately unsuccessful and terminated, these proceedings proceeded to now-completed hearings before Judge Cianci. As extended pursuant to an August 6 joint request of the parties, briefs on exceptions must be filed on or before September 20, 2013; briefs opposing exceptions, on or before October 24, 2013. 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)**

On August 16, Dominion submitted a compliance filing, as directed in the *Fuel Cost Recovery Order*,[15] that identified the regulatory costs incurred by Dominion in connection with this proceeding, costs totaling $30,392.20. Dominion asked that it be authorized to recover those costs. No comments on the filing were submitted by the September 6 comment deadline, and this request is pending before the FERC.

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. On August 12, the FERC issued a tolling order affording it additional time to consider the Dominion rehearing request, which remains pending before the FERC. The additional compliance filing containing changes to Market Rule 1 Appendix A was submitted by the ISO on

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[11] *Martha Coakley, Mass. Att'y Gen. et al.*, 144 FERC ¶ 61,012 (2013) ("*2011 Base ROE Initial Decision*").

[12] *Martha Coakley, Mass. Att'y Gen et al.*, 139 FERC ¶ 61,090 (2012) ("*Base ROE Complaint Order*"). The *Base ROE Complaint Order* was not challenged and is final.

[13] 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.

[14] *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.

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

August 13, and will be summarized in Section III below (ER13-2149). 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).

- **2013/2014 Winter Reliability Program Bid Results Filing (ER13-2266)**

On August 26, the ISO submitted, pursuant to Section III.K.2 of the Tariff, a list of the Market Participants selected to provide demand response ("DR") and oil inventory services in the 2013.2014 Winter Reliability Program and the prices they will be paid. As summarized by the ISO, "the ISO received bids that nearly met the target procurement at a total price of $114.3 million. In approximate numbers, the ISO proposes to accept 83% of the targeted MWh at a price of $79 million. This procurement is intended to balance fuel security for the region against the costs to consumers." Comments on the filing were due September 9, 2013. Interventions were filed by NEPOOL, HQUS, MA DPU, National Grid, NRG, NU, RESA, VT PSB, and Vitol. Essential Power filed comments identifying an overstatement of its total MWh by 50% (the tank capacity for a shared fuel tank was not pro-rated when reflected in the units' awards). NESCOE filed comments. Exelon submitted supporting comments. Protests were filed by the MPUC (asserting that there were flaws in the needs determination process, the resulting rate was not shown to be just and reasonable, and the ISO should be required to re-determine that the Winter Reliability Program is necessary in light of the *NEPGA Order* (see EL13-66, Section I above)) and PSEG (asserting that the selection process was based solely on economics and, as such, the ISO should be directed to modify Attachment K to provide for, and to use in this proceeding, a uniform clearing price compensation methodology). TransCanada, raising concerns with the information provided and implications of the results as they relate to the Market Rule changes filed in the 2013/2014 Winter Reliability Program Filing (*see* ER13-1851 below), requested that this proceeding be consolidated with ER13-1851. This matter is now pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **2013/2014 Power Year Transmission Rate Filing (ER09-1532; RT04-2)**

On July 31, 2013, the Participating Transmission Owners ("PTOs") Administrative Committee ("PTO AC") submitted a filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2013 through May 31, 2014. The filing reflected the charges to be assessed under annual transmission formula rates, reflecting actual 2012 cost data, Forecasted Annual Transmission Revenue Requirements associated with projected PTF additions for the 2012 Forecast Period, and the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of $86.95 /kW-year effective June 1, 2013, an increase of $11.70 /kW-year from the charges that went into effect on June 1, 2012. In addition, the annual update to the Schedule 1 formula rate results in a charge of $1.70 kW-year, a $0.09/kW-year decrease over the Schedule 1 charge that last went into effect on June 1, 2012. This filing will not noticed for public comment. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order[16] that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding[17] 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

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[16] *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).

[17] *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).

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, 2012 an answer to PSEG's October 15 motion. On November 1, 2012, Connecticut Generators[18] 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 31, the FERC issued an order authorizing the ISO to issue up to $39 million in senior unsecured notes[19] in order to refinance the aggregate principal amount of senior notes previously authorized and issued.[20] As previously reported, 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. The authorization was effective as of August 1, 2013 and terminates in two years, or August 1, 2015. The July 31 order was challenged and is final and unappealable. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests

- **Shortage Event Triggers Jump Ball Filing (ER13-2313)**

On September 4, the ISO and NEPOOL jointly submitted a jump ball filing asking the FERC to choose between alternative NEPOOL and ISO changes to the definition of a Shortage Event in the FCM. Under either alternative, the definition of Shortage Event is being expanded[21] and the Shortage Event trigger specific to import-constrained Capacity Zones is being improved. Where the alternatives differ, and where the FERC was asked to choose, was in the implementation date proposed for the changes – June 1, 2017 for NEPOOL's; November 3, 2013 for the ISO's. The NEPOOL Alternative was supported by the Participants Committee at its August 2, 2013 meeting. Comments on this filing are due on or before September 25, 2013. Thus far, an intervention has been filed by HQUS. 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).

- **CSO Termination: Comverge (ER13-2215)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on August 21 to terminate portions of the CSOs held by Project Sponsor Comverge for Resources 37917, 37918, 37919, 37920 and 37925. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Comverge with respect to the portions of the CSOs that are to be terminated. Interventions were filed by NEPOOL and Exelon. No comments on this filing were submitted on or before the September 11 comment date and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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[18] "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.

[19] *ISO New England Inc.*, 144 FERC ¶ 62,087 (2013).

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

[21] The changes provide that, in addition to the current trigger, a Shortage Event will also be declared in any Capacity Zone when the 30-minute operating reserve requirement has not been satisfied for 30 or more contiguous minutes.

- **CSO Termination: TransCanada (ER13-2213)**

Also pursuant to Market Rule 1 § 13.3.4(c) and on August 21, the ISO filed to terminate portions of the CSO held by Project Sponsor TransCanada for Resource 380. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by TransCanada with respect to the portion of the CSO that is to be terminated. Interventions were filed by NEPOOL and Exelon. No comments on this filing were submitted on or before the September 11 comment date and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Termination: Waterbury Generation (ER13-2212)**

Also pursuant to Market Rule 1 § 13.3.4(c) and on August 21, the ISO filed to terminate portions of the CSO held by Project Sponsor Waterbury Generation for Resource 12564. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Waterbury Generation with respect to the portion of the CSO that is to be terminated. Interventions were filed by NEPOOL and Exelon. No comments on this filing were submitted on or before the September 11 comment date and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Termination: Constellation New Energy (ER13-2210)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on August 21 to terminate portions of the CSOs held by Project Sponsor Constellation New Energy for Resources 12779, 12835, 12843, 37991, 37994, 37997, 38008, 38121, 38123, 38124, 38126, 38127, 38128, 38130, 38133, 38134, 38137, and 38142. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Constellation New Energy with respect to the portions of the CSOs that are to be terminated. Interventions were filed by NEPOOL and Exelon. No comments on this filing were submitted on or before the September 11 comment date and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **eTariff Correction: Removal of Attachment A-1 (ER13-2161)**

On August 15, the ISO submitted a correction to its eTariff to remove the Alternative MPSA, formerly Tariff Attachment A-1, from its Tariff, as intended and inadvertently not accomplished in its filing in ER13-1149, which was accepted on May 31, 2013. No comments were submitted by the September 5 comment date and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Tie-Line Name Changes (ER13-2113)**

On August 6, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 and Appendix F to update the following tie line references to be consistent with the references used by the Energy Management System: Orrington-LePreau (changed to 390/3016); LePreau-Orrington (changed to 390/3016); K-37 Line (changed to K-7 Line); 1385 Cable (changed to NY NNC); Northport-Norwalk Harbor (changed to Northport-Norwalk Harbor 601, 602 &603 Lines); and Cross Sound Cable (changed to NY-CSC). An October 6, 2013 effective date was requested. The tie line changes were supported by the Participants Committee by way of the August 2, 2013 Consent Agenda. Comments on this filing were due on or before August 27, 2013; no substantive comments were received and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Net-Metered Generator Auditing Revisions (ER13-2110)**

On August 5, the ISO and NEPOOL jointly submitted revisions to Section 1 of Market Rule 1 to provide an alternative methodology for establishing the Seasonal Claimed Capability of non-intermittent, net-metered generators (generators for which a portion of its output is used by a load located behind the meter with the generator). The revisions also clarified and made minor modifications to the audit rules for the determination of Seasonal Claimed Capability. An October 7, 2013 effective date was requested. These auditing revisions were

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supported by the Participants Committee by way of the Consent Agenda at its August 2, 2013 meeting. Comments on this filing were due on or before August 26, 2013; no substantive comments were received and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Information Policy: Minimum Power Value Revisions (ER13-2099)**

On August 2, the ISO and NEPOOL jointly filed revisions to the Information Policy to allow the inclusion of minimum power values[22] in the transmission system models that are made available to the public, rather than continuing treatment of this information as confidential. These changes were supported by the Participants Committee by way of its August 2 Consent Agenda. Exelon submitted a doc-less motion to intervene, but no comments on this filing were submitted. The FERC accepted the changes on September 5, 2013, effective October 2, 2013, as requested. Unless the September 5 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).

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

On August 15, the FERC accepted 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"). As previously reported, the filing indicated that the Changes should have little effect on actual clearing outcomes, but would achieve those outcomes with less complexity and risk. The FCA Objective Function Changes were accepted effective September 2, 2013, as requested. Unless the August 15 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).

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

As previously reported, the ISO and NEPOOL jointly filed on July 1 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. Answers to the comments submitted were filed by the ISO (July 31) and NEPOOL (August 6). 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).

[22] "Minimum power values", for transmission modeling purposes, are the minimum output level at which a resource would typically operate when it has been committed and dispatched.

[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.

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

As previously reported, the ISO and NEPOOL jointly filed, on June 28, 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 DR 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. Answers were filed by the ISO, NEPOOL, GDF Suez, National Grid, RESA, TransCanada, and Vitol.

Emergency Amendments (Exigent Circumstances) Filing (-001 and -002). On August 9, 2013, as corrected on August 12, 2013, the ISO proposed for FERC consideration, on an expedited basis, amendments to its June 28, 2013 Winter Reliability Program filing (the "Emergency Amendments"). The ISO reported that it did not receive enough bids to meet the objectives of the Winter Reliability Program under the Program as initially proposed, and, accordingly, filed changes to the oil inventory service portion of the Program to improve the bid response. The ISO explained that the changes were intended to reduce the risks attendant to the commitment to provide oil inventory, with the stated desire of attracting more bids at lower prices so as to ensure ultimately that oil-fired (or dual-fuel) generators increase their fuel oil inventory. The ISO also proposed a compressed regulatory process intended to provide earlier regulatory certainty to Market Participants. The ISO filed the Emergency Amendments ahead of presenting them to the stakeholders, citing its authority in Section 11.2 of the Participants Agreement to file changes in "Exigent Circumstances" before full consultation with NEPOOL. The Committee considered the ISO's Emergency Amendments Filing at a special August 16 meeting.

Based on the direction received at that meeting, NEPOOL filed comments on August 19 taking no position on the Emergency Amendments themselves, but requested that the FERC consider its comments and the Emergency Amendments in light of the fact that (i) the circumstances described prevented consideration of the Emergency Amendments through the Participant Processes, and (ii) NEPOOL supported expedited FERC action on the Emergency Amendments. Comments on the Emergency Amendments were also filed by Exelon, NEPGA, NESCOE, NGA, PSEG, RESA, and TransCanada. The ISO answered the PSEG and NEPGA comments on August 23, 2013. As noted above, TransCanada has requested that this proceeding be consolidated with the Bid Results proceeding.

These matters remain pending before the FERC. If you have any questions concerning these matters, 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 August 20, the FERC accepted two sets of changes (1) clarifying and including minor clean-up changes to the price-responsive demand ("PRD") full integration Market Rules (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").[24] The order found the concerns raised by Verso regarding the existing baseline refreshment methodology as "beyond the scope of this proceeding".[25] The changes were accepted August 21, 2013, as requested. Unless the August 20 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).

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[24] *ISO New England Inc.*, 144 FERC ¶ 61,140 (2013).

[25] *Id.* at P 19.

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

On August 15, the FERC accepted changes to Market Rule 1 that establish a Reserve Constraint Penalty Factor ("RCPF") for the replacement reserve requirement at $250/MWh, effective October 1, 2013, as requested. Unless the August 15 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).

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

Also on August 15, the FERC accepted Market Rule changes to improve FRM performance incentives. Specifically, the changes (1) include 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) add an additional trigger when a Failure-to-Activate Penalty could be applied to non-performing Forward Reserve resources. The changes were accepted effective October 1, 2013, as requested. Unless the August 15 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).

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

On August 15, the ISO provided notice that the remaining portion of the revised the auditing requirements and procedures for generators participating in the New England Markets ("Audit Revisions"), accepted earlier this year,[26] would become effective September 1, 2013. Specifically, the remaining tariff revisions included: (i) all the revisions in Market Rule 1 Section 1.5, which address generator claimed capability and operating parameter auditing requirements; (ii) all the revisions in Market Rule Section 1.7.11, which address generator Seasonal Claimed Capability values; and (iii) the definition changes to Notification Time, Start-Up Time, Manual Response Rate, Capability Demonstration Year, Claimed Capability Audit, Establish Claimed Capability Audit, Seasonal Claimed Capability Audit and ISO-Initiated Claimed Capability Audit. This will conclude reporting on this proceeding. 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.[27] 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 revisions.[28] 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

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[26] *ISO New England Inc. and New England Power Pool*, 142 FERC ¶ 61,024 (2012) ("*Gen Audit Revisions Order*"). The *Gen Audit Revisions Order* was not challenged and is final and unappealable.

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

[28] *Id. at* P 23.

compensation, and (iii) the fact that the interim changes proposed in ER13-1291 did not justify granting a delayed implementation date.[29]

Extension of Time to Implement the Regulation Market Rule Changes. As announced at the August 2 Participants Committee meeting, the FERC, on July 29, granted an extension of time, to and including October 14, 2014, for the ISO to implement the Regulation Market Rule Changes. The ISO described at the Summer Meeting concerns that the FERC's direction to implement the changes by mid-December, 2013 would 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 supported a request by the ISO that the FERC reconsider the timing of the mid-December implementation directed in the *Order 755 Compliance Order*. The ISO requested an extension to October 14, 2014, or in the alternative, rehearing of that requirement, on July 19. On July 22, NESCOE filed a motion to intervene out-of-time and an answer in support of the requested extension and/or rehearing. Per its commitment in its July 19 request, the ISO will submit informational quarterly progress reports detailing the efforts made and milestones achieved in implementing the regulation market changes (which will be reported, as appropriate, in Section VIII below).

Regulation Market Compliance Changes. On August 5, 2013, the ISO and NEPOOL jointly filed limited regulation market changes in response to the requirements of the *Revised Order 755 Compliance Changes Order*. The changes address how inter-temporal opportunity costs may be included in offers to provide regulation service. The ISO indicated that no tariff changes were required to address the requirement of the *Revised Order 755 Compliance Changes Order* that inter-temporal opportunity costs be verifiable. The Compliance Changes were unanimously supported by the Participants Committee at its August 2, 2013 meeting. Comments on this filing were due on or before August 26, 2013, but none were filed, and this filing is pending before the FERC.

If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

The ISO's March 15, 2013 compliance filing in this proceeding remains pending before the FERC. 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 PRD full integration rules (currently scheduled to become effective on June 1, 2017).[30] 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,"[31] agreed that "the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties,"[32] and found the "proposal will be beneficial to both demand response providers and wholesale electricity customers".[33] 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 DR resources that provide capacity through both demand reductions and behind-the-meter generation.[34] Noting its concerns with other aspects of the filing, the FERC conditioned its acceptance of certain changes subject to explanations to be included in the 60-day compliance filing.

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[29] *Id.* at P 33.

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

[31] *Id.* at P 27.

[32] *Id.* at P 28.

[33] *Id.* at P 29.

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

60-Day Compliance Filing. The ISO submitted a compliance filing providing the directed explanations and addressing the changes rejected in the *January 14 Order* on March 15, 2013. Protests on that compliance filing were submitted on April 5 by DR Supporters[35] 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 remain 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).

- **Notice of Effective Date: Cancellation of Market Rule 1 Section 14 (ER12-1155)**

On September 4, the FERC accepted the notice provided by the ISO on August 7 that the effective date for the cancellation of Section 14 of Market Rule 1 (the former Intra-Hour Transaction Scheduling Pilot Program), as previously accepted in the Coordinated Transaction Scheduling ("CTS") proceeding subject to 2 weeks' notice of its effectiveness,[36] would be August 21, 2013. The cancellation of Section 14, ahead of the remaining substantive provisions of the CTS filing, permits the ISO to use Section 14 for Regulation Market Rules. The ISO affirmed that it would submit at a later date the required prior two weeks' notice of the effective date of the remaining CTS changes. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@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.[37] 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;[38] unit specific offer review;[39] the ISO's proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports' treatment under MOPR;[40] no exemptions to MOPR for new Self-Supplied Resources;[41] the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;[42] \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;[43] and a number of other additional revisions.[44] 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

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

[36] *ISO New England Inc. and New England Power Pool*, 139 FERC ¶ 61,047 (2012) ("*CTS Order*").

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

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

[39] *Id.* at P 53.

[40] *Id.* at P 70.

[41] *Id.* at P 80.

[42] *Id.* at P 97.

[43] *Id.* at P 126.

[44] *Id.* at P 127.

submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market)[45]; 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 MMWEC 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.[46] 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."[47] 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."[48] 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.[49] The *FCA8 Compliance Order* was not challenged and is final and unappealable.

Compliance Report on FCM Capacity Zones. On July 30, the ISO submitted a schedule for the completion of the tasks outlined in the *FCA8 Compliance Order*. Under that schedule, the ISO committed to file proposed Tariff changes in March 2014, seeking a FERC order by May2014, ahead of the New Capacity Qualification Deadline and the de-list bid deadlines for FCA9.

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[50] regarding the plan to

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45 *Id.* at PP 63-64.

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

47 *Id.* at P 31.

48 *Id.* at P 35.

49 *Id.*

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

study and develop proposals to resolve issues related to the modeling of internal transmission constraints and tie benefits associated with individual lines. In the January 14, 2010 Update, the ISO proposed to comprehensively review and attempt to resolve during 2010 all outstanding and identified tie benefits issues (including the so-called "Reserved Issues", issues raised during 2009 stakeholder meetings, and tie benefits-related issues raised in Docket No. ER10-438) through a NEPOOL stakeholder process and to make a filing with the FERC on or before a date that will allow any related Market Rule or Tariff changes to be effective in time for FCA5 (covering the 2014/2015 Capacity Commitment Period). At its February 5, 2010 meeting, the Participants Committee considered and voted on the ISO's January 14 proposal. The ISO's Proposal received 43.25% support from the Participants Committee. On February 8, 2010, NEPOOL filed comments reflecting the results of that consideration and vote. NESCOE submitted a motion to intervene out-of-time and comments on February 12, 2010. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- ***Order 676-G* Compliance: Revisions to Schedule 24 (ER13-2123)**

On August 7, the ISO and NEPOOL jointly filed changes to Schedule 24 to incorporate by reference NAESB Wholesale Electric Quadrant business practice standards categorizing various DR and energy efficiency products and services and supporting the measurement and verification of those products and services in response to the requirements of *Order 676-G*. Exelon filed a doc-less intervention, but no substantive comments were submitted on or before the August 28 comment date. The *Order 676-G* changes were accepted on September 4, 2013. Unless the September 4 order is challenged, this proceeding will be concluded. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- ***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") (ER13-1960). 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 (ER13-1957). 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. On August 7, the FERC extended the comment deadline on these filings to and including September 9, 2013. Doc-less motions to intervene were filed by a number of New England parties in both proceedings, including Dominion, Exelon, PPL, PSEG, and NEPOOL (in the Protocol proceeding (in which it was not a filing party)). On August 26, NEPOOL filed comments supporting the Protocol. On September 9, NESCOE submitted comments generally supporting the filings, but reserving the right to further comment on these filings should the substance of the changes be modified as a result of further FERC (*see* ER13-193 and ER13-196 below) or federal court proceedings. These matters are now pending before the FERC. 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 of the FERC's May 17, 2013 order on the region's Order 1000 compliance filing[51] (described in previous Reports) remains pending. As previously reported, the *Order 1000 Compliance Order*

[51] *ISO New England Inc.*, 143 FERC ¶ 61,150 (2013) ("*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 was 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* required 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 additional compliance filing would have otherwise been 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*[52] 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,[53] 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

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

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

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 August 30, the FERC conditionally accepted two sets of Tariff revisions[54] proposed in response to the CFTC's Exemption Order (*see* Section XI below). As previously reported, one set of changes, to the Financial Assurance Policy, addressed 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"). The other set, to the Information Policy, 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 ("Information Policy Changes"). Both sets of Changes were supported by the Participants Committee at the June 27 Summer Meeting. Freedom Logistics, supported August 7 by Easy Energy of Massachusetts, protested aspects of the FAP Changes. NEPOOL answered the Freedom protest on August 6. In accepting the FAP and Information Policy Changes, the FERC rejected much of the protests, but did direct the ISO, in a 30-day compliance filing, to explain the role of physical asset ownership and letter of credit requirements in the determination of Market Participant eligibility requirements. As further described in materials posted for the September 13 meeting, the Participants Committee will be asked at that meeting to support ISO-proposed changes to the Financial Assurance Policy to address the letter of credit requirements ("Compliance Changes"). No modifications to the Financial Assurance Policy are needed to address physical asset ownership issue, which we understand will be explained by the ISO in the Compliance Changes filing letter. 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)**

On July 30, the FERC accepted a clarification to the Billing Policy to make clear that applicable state sales taxes related to purchases of electricity through the New England Markets[55] 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 became effective August 30. The July 30 order was not challenged and is final and unappealable. 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.[56] In its September 24 order, the FERC stated

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[54] *ISO New England Inc. and New England Power Pool Participants Comm.*, 144 FERC ¶ 61,169 (2013). Challenges, if any, to this order will be due on or before Sep. 30, 2013.

[55] 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.

[56] *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).

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."[57] Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and WEC ("Cooperatives")[58] were denied on February 25, 2013.[59] 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.[60]

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 August 13, 2013) (i) indicates that the participants continue to negotiate and exchange documents and were optimistic that they will be able to reach a settlement in the near future; and (ii) recommended that settlement judge procedures be continued. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-FGE: Annual Informational Filing (ER09-1498)**

On July 31, 2013, FGE submitted data and schedules used to calculate its annual transmission revenue requirement under the formula rates contained in Schedule 21-FGE for the June 1, 2013 through May 31, 2014 period. 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

- **Capital Projects Report - 2013 Q2 (ER13-2145)**

In a new matter since the last report, the ISO filed on August 12 its Capital Projects Report and Unamortized Cost Schedule covering the second quarter ("Q2") of calendar year 2013 (the "Report"). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the ISO Tariff. Highlights include the following new projects: CTS ($5,780,000); Generation Control Application ("GCA") Production Part 1 ($5,049,900); Generation Auditing – Claimed Capability Application ("CCA") ($400,000); and 2013 Issue Resolution Project – Phase II ($300,000).[61] Projects reported to have significant changes include (i) Intra Day Offers ($1.14 million *increase*); (ii) Wind Integration ($158,000 *increase*); (iii)

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

[58] 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.

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

[60] *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.

[61] The ISO reported that improvements for this project include markets & financial applications development, corporate and enterprise support applications development, and improvements and enhancements for Day-Ahead and Real-Time Energy Market applications.

Strategic Initiatives ($1.684 *decrease*); and (iv) 2013 Issue Resolution Project ($489,900 *decrease*). NEPOOL filed comments supporting the filing on August 16. NU filed a doc-less motion to intervene on September 3. 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).

- **Quarterly Markets Reports - 2013 Q2 (ZZ13-4)**

On August 9, 2013, the Internal Market Monitor ("IMM") filed with the FERC its report for the second quarter of 2013 of "market data regularly collected by [it] in the course of carrying out its functions under … Appendix A and analysis of such market data," as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. A report on the 2013 Q2 Report was presented at the August 2, 2013 Participants Committee meeting. These filings are not noticed for public comment by the FERC.

IX. Membership Filings

- **September 2013 Membership Filing (ER13-2292)**

On August 30, NEPOOL requested that the FERC accept the termination of the Participant status of DFC-ERG Milford, LLC (August 1, 2013, Related Person to DFC-ERG CT, LLC, RG Sub-Sector); and Cambridge Energy Alliance (September 1, 2013, DG Small Group Member). Comments, if any, on this filing are due September 19, 2013.

- **August 2013 Membership Filing (ER13-2079)**

On August 29, the FERC accepted (i) the memberships of Clear Choice Energy, LLC (Supplier Sector); Energy.Me Midwest, LLC d/b/a energy.me (Supplier Sector); Essential Power, LLC (Generation Sector); and Hess Energy Marketing, LLC (Supplier Sector), each effective August 1, 2013; and (ii) the termination of the Participant status of Iron Energy (July 1, 2013); BG Energy Merchants (August 1, 2013); and DownEast Power Company (August 1, 2013).

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

On August 19, 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.

- **Suspension Notices: Vermont Marble Co. and Exelon New England Holdings (not docketed)**

On August 15, the ISO filed, pursuant to Section 2.3 of the Information Policy, notices with the FERC that Vermont Marble Company and Exelon New England Holdings had been suspended from the New England Markets, each on August 14, 2013 at 8:30 a.m. The notices were for the FERC's information only and were not docketed or noticed for public comment. Exelon New England Holdings underlying Financial Assurance Default has since been cured and its access to the Markets restored.

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: August 2013 (NP13-51)**

NERC submitted on August 30, 2013, its Find, Fix, Track and Report ("FFT") informational filing for the month of August 2013. The August FFT resolves 29 possible violations of 12 Reliability Standards that posed a risk minimal risk to bulk power system ("BPS") reliability, but which have since been remediated.[62] The 18 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.

- **FFT Report: July 2013 (NP13-46)**

NERC submitted on July 31, 2013, its FFT informational filing for the month of July 2013. The July FFT resolves 46 possible violations of 11 Reliability Standards that posed a risk minimal risk to BPS reliability, but which have since been remediated. The 18 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.

- **Revised Reliability Standard: BAL-001-1 (RD13-11)**

On August 20, 2013, NERC filed for approval changes to Resource and Demand Balancing ("BAL") Reliability Standard BAL-001-1 (Real Power Balancing Control Performance) and its associated VRFs, VSLs, and implementation plan. NERC states that the revised Standard will contain a revised definition of Automatic Time Error Correction ("ATEC") Area Control Error ("ACE"), reflecting a Western Electricity Coordinating Council ("WECC")-specific regional variance, and thereby locating all of the definitions of ACE for all Interconnections in a single Reliability Standard, with the equations for ATEC ACE using terminology and variables common to the other Interconnections (a WECC regional reliability standard was also submitted for approval). NERC requested that the revised Standards become effective the first day of the second quarter after regulatory approval. Comments on this filing are due on or before September 19, 2013.

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

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

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

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

[62] 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 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.[63] NERC stated that the changes respond to FERC directives in Order 693[64] 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

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

[64] *Order 693* at P 375.

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 September 27, 2013.[65]

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

The FERC's supplemental NOPR, issued May 16, proposing to approve TPL-001-4, remains pending.[66] As previously reported, NERC has long had a compliance obligation to address FERC concerns with the Footnote.[67] NERC's February 28 filing addressed those concerns (by changing 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)). The supplemental NOPR would 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) into one Standard. Comments on the supplemental NOPR were due on or before June 24, 2013.[68] Comments were submitted by ITC, MISO, and NERC. The Supplemental 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 with another directive or provide general guidance as opposed to a specific directive.[69] Comments on this NOPR were due on or before August 27, 2013[70] and were filed by NERC, Canadian Electricity Association, Dominion, ITC, the ISO/RTO Council ("IRC"), NRECA, and jointly by APPA, EEI, ELCON, EPSA, LPPC and TAPS. The NOPR is currently pending before the FERC.

- **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.[71] 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.[72]

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[65] The NOPR was published in the *Fed. Reg.* on July 29, 2013 (Vol. 78, No. 145) pp. 45,479-45,490.

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

[67] *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.

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

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

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

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

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

- **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.[73] 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,[74] 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.[75] 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.[76] Comments were submitted by over 60 parties, including, among others, the 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[77] 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 were due on or before August 5, 2013. Comments supporting the request were filed by Duke, the ISO/RTO Council, ITC, NRG, Pepco and PSEG. On August 12, the FERC granted an extension of the compliance deadline for the Version 4 CIP Reliability Standards from April 1, 2014 to October 1, 2014.[78]

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

MISO's challenge to *Order 779* was denied on August 8, 2013. As previously reported, *Order 779*[79] directed NERC to submit for approval in two stages Reliability Standards that address the impact of geomagnetic

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

[74] 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.

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

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

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

[78] *Version 4 Critical Infrastructure Protection Reliability Standards and Version 5 Critical Infrastructure Protection Reliability Standards*, 144 FERC ¶ 61,123 (2013).

[79] *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (2013) ("*Order 779*"), *reh'g denied*, 144 FERC ¶ 61,113 (2013).

disturbances ("GMD") on BPS reliability. 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)*,[80] 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, but denied by the FERC on August 8, 2013.[81] Unless *Order 779* is challenged in federal court, reporting on this proceeding will pick back up with the first stage filing in January 2014.

- **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[82] 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 of the revisions. Comments were filed by 13 parties on the June 24, 2013 comment date.[83] On July 9, NERC submitted reply comments. This NOPR 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*.[84] In addition, the FERC clarified certain provisions of *Order 773*. As previously reported, *Order 773*[85] 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.

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

[81] *Reliability Standards for Geomagnetic Disturbances*, 144 FERC ¶ 61,113 (2013).

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

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

[84] *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, Order No. 773-A, 143 FERC ¶ 61,053 (2013) ("*Order 773-A*"), *order denying reh'g*, 144 FERC ¶ 61,174 (2013).

[85] *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) ("*Order 773*"), *order on reh'g and clarification*, 143 FERC ¶ 61,053 (2013), *order denying reh'g*, 144 FERC ¶ 61,174 (2013).

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.[86]

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);
- 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. The FERC denied the NRECA/APPA request on August 30, 2013.[87]

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.

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

[87] *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, 144 FERC ¶ 61,174 (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 ("PNGC") requested rehearing of the June 13 order on July 9, 2013. On August 7, the FERC issued a tolling order affording it additional time to consider the PNGC rehearing request, which remains pending before the FERC.

- **2014 NERC/NPCC Business Plans and Budgets (RR13-9)**

On August 23, 2013, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2014. FERC regulations[88] require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reports that its proposed 2014 Funding requirement is approximately $52.3 million, representing an overall increase of approximately $2.1 million (3.9%) over NERC's 2013 Funding requirement. The NPCC U.S. allocation of NERC's net funding requirement is $3,440,461. NPCC has requested $14.1 million in statutory funding (a U.S. assessment per kWh (2011 NEL) of $0.0000409) and $1.065 million for non-statutory functions. Comments on this filing are due on or before September 20, 2013. On September 6, EEI asked for an additional two weeks, to September 20, to submit comments. On September 9, NERC responded that it did not object to the extension requested by EEI, and the FERC granted the requested extension on September 10, 2013.

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

On September 3, 2013, the FERC approved NERC's revisions to its Rules of Procedure ("ROP"), and Appendices 2 (Definitions Used in the Rules of Procedure) and 4D (Procedure for Requesting and Receiving Technical Feasibility Exceptions ("TFE") to NERC's CIP Standards).[89] The revisions streamline the TFE approval process, reflecting NERC, Regional Entity and industry experience processing TFE requests over the last three years. The FERC also directed NERC to submit a compliance filing on or before December 2, 2013 (i) to revise the TFE Procedure to require the annual report to the FERC to include data and information regarding Material Change Reports;[90] and (ii) to include in its annual TFE report additional information regarding TFEs and their expiration dates, including the number of TFEs by expiration year and CIP Standard requirement, the percentage of currently approved TFEs without expiration dates, and the number of new TFEs approved without expiration dates annually.[91] Any challenges to the September 3 order will be due on or before October 3, 2013.

- **NERC Board of Trustee Compensation Report (FA11-21)**

On August 23, pursuant to Section II.11(a) of the *NERC Audit Settlement Agreement*, NERC filed a report containing the results of the independent study of its Board of Trustees compensation and the actions taken by the Board in connection with that report. This filing was not noticed for public comment.

- **NERC Quarterly Spending Variance Reports (FA11-21)**

On August 14, NERC filed its second quarterly report of budget-to-actual variance information for Q2 2013 as required under the Settlement Agreement between the Office of Enforcement ("OE") and approved by the

[88] 18 CFR § 39.4(b) (2013).

[89] *N. Am. Elec. Reliability Corp.*, 144 FERC ¶ 61,180 (Sep. 3, 2013).

[90] *Id.* at P 17.

[91] *Id.* at P 18.

FERC ("*NERC Audit Settlement Agreement*").[92] Under the Settlement Agreement, NERC is required to file within 45 days of the end of each quarter an unaudited report of its budget-to-actual spending variances during the preceding quarter, including information regarding sources and uses of operating and working capital reserves. This filings will not be noticed for public comment.

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 conditionally accepted August 30, 2013 (*see* ER13-1875, Section V. above). Additional compliance changes to the FAP will be considered at the September 13 meeting, with a compliance report scheduled for submission that same day (*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: Hess/Direct Energy (EC13-135)**

On August 15, 2013, Direct Energy Business, LLC ("Direct Energy"), Hess Corporation ("Hess"), Hess Energy Marketing, LLC ("HEM") and Hess Small Business Services LLC ("HSB") (collectively, the Applicants"), requested FERC authorization of a two-step transaction pursuant to which Hess will transfer to HEM all of its jurisdictional assets and Direct Energy will then immediately acquire 100% of the equity interests in HEM. Comments on this filing were due on or before September 5, 2013; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

[92] *N. Am. Elec. Reliability Corp.*, 142 FERC ¶ 61,042 (2013) ("*NERC 2012 Audit Settlement Order*") (resolving all issues related to OE's 2012 performance audit of NERC).

[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.

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

On August 20, the FERC authorized a transaction pursuant to which Dominion ("Dominion") would sell 100% of the ownership interests in Brayton Point to Brayton Point Holdings, LLC ("BPH"), an affiliate of Energy Capital Partners II ("ECP") and EquiPower Resources Management ("EquiPower").[95] The transaction was consummated on August 29, 2013, concluding this proceeding. 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)**

Pending notice that this merger has been consummated, this proceeding has been completed. As previously reported, the FERC authorized the merger of Maine Public Service ("MPS") into Bangor Hydro ("Applicants") on July 18, 2013.[96] The merger will result in 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 not. In a companion order (ER13-1125),[97] 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 *BHE/MPS Merger Order* required Applicants to notify the FERC within 10 days of the consummation of the merger, which has not yet occurred. 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).[98] 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

[95] *Dominion Energy Brayton Point, LLC et al.*, 144 FERC ¶ 61,139 (2013).

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

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

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

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 PURA action on an agreement before it that would resolve the dispute in this proceeding. As previously reported, on May 12, 2010, the United Illuminating Company ("UI") filed a petition for a declaratory order ("Petition") that its sales to Elm Electric Cooperative ("Elm"), for resale to Elm's members, is a transaction at wholesale subject to FERC jurisdiction. As indicated by UI in the Petition, Elm is a Connecticut electric cooperative formed to sell and distribute electricity to its members, who will be tenants of a large, mixed-use residential and commercial building now under construction in New Haven, Connecticut. Elm will serve its members in part by using a 400 kW fuel cell located at the site, and to the extent the fuel cell production is insufficient to meet the building's load, Elm will purchase electricity from UI that will be re-sold and distributed to its members. Elm also expects to sell the excess power generated by the fuel cell in the New England Market, netting the excess against its UI bill. Elm will install four meters that will handle the building's load and engage a third party to supply sub-meters to each of Elm's members. UI reports that Elm has asserted in CT proceedings that the FERC either does not have jurisdiction or that it would likely disclaim jurisdiction over the matter.[99] 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 PURA, 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/TransEnergie (Converter Station Upgrade Agreement) (ER13-2180)**

On August 16, 2013, New England Hydro-Transmission Electric Company, Inc. ("National Grid") filed an agreement regarding the replacement of the Phase II High Voltage Direct Current ("HVDC") Controls and Protection Systems at the Radisson, Nicolet, and Sandy Pond Converter Stations which serve Phase II of the HVDC Interconnection Facilities (the "Converter Station Upgrade Agreement"). A July 29, 2013 effective date was requested. Comments on this filing were due on or before September 6, and none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **E&P Agreement BHE/First Wind (ER13-2120)**

On August 7, BHE filed a Design Engineering & Procurement Agreement ("E&P Agreement") with First Wind Energy, LLC (designated as service agreement BHE-2 under BHE's eTariff files). First Wind is planning elective transmission upgrades to certain facilities located where the generation lead line owned by its subsidiary Evergreen Gen Lead, LLC, interconnects with Bangor Hydro's Keene Road substation and requested that BHE begin certain design, engineering and procurement activities. The E&P Agreement sets forth the terms and conditions under which BHE will provide such services. BHE requested that the E&P Agreement be accepted for filing, conditioned on submission of an executed agreement following MPUC approval (as described in prior filings, the MPUC must approve any agreement between Bangor Hydro and First Wind prior to its execution, in light of the affiliate relationship between Bangor Hydro and certain subsidiaries of First Wind). BHE has requested an August 8, 2013 effective date. Comments on this filing were due on or before August 28, 2013, and none were filed. This matter is pending before the FERC.

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

- **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: Richard H. Silkman (IN12-13)**

On August 29, 2013, the FERC issued an order finding that Dr. Silkman 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 ordering Dr. Silkman to pay a ***$1.25 million civil penalty***.[102] The *Silkman Order* largely affirms the allegations set forth in the July 17, 2012 *Show Cause Order*,[103] summarized in previous reports, that from approximately July 2007 through February 2008, Dr. Silkman advised a DALRP participant to engage in a fraudulent practice to collect payments in the DALRP (by advising that participant to curtail on-site generation during DALRP program hours when it enrolled in the DALRP, artificially inflating the participant's baseline load and misrepresenting the participant's load profile). 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. The *Silkman Order* is not subject to rehearing. If Dr. Silkman does not agree to a payment plan with OE Staff by September 30 or pay the civil penalty by October 30, the FERC will commence an action in U.S. district court for an order affirming the penalty, in which the district court may review the assessment of the civil penalty *de novo*.[104] If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FERC Enforcement Action: Competitive Energy Services ("CES") (IN12-12)**

Also on August 29, 2013, the FERC issued an order finding that CES violated the FERC's Anti-Manipulation Rules by engaging in fraud in the ISO's DALRP.[105] The FERC assessed a ***$7.5 million civil penalty*** and required CES to ***disgorge $166,841*** of payments received as a result of participation in the DALRP (plus interest). The *CES Order* largely affirms the allegations set forth in the July 17, 2012 *CES Show Cause Order*,[106] summarized in previous reports, that from approximately July 2007 through February 2008, CES advised a DALRP participant to engage in a fraudulent practice (to curtail on-site generation during DALRP

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

[101] 18 CFR § 1c.2 (2013).

[102] *Richard Silkman*, 144 FERC ¶ 61,164 (2013) ("*Silkman Order*").

[103] *Richard Silkman*, 140 FERC ¶ 61,033 (2012) ("*Silkman Show Cause Order*").

[104] *Silkman Order* at P 95.

[105] *Competitive Energy Services, LLC*, 144 FERC ¶ 61,163 (2013) ("*CES Order*").

[106] *Competitive Energy Services, LLC*, 140 FERC ¶ 61,032 (2012) ("*CES Show Cause Order*").

program hours when it enrolled in the DALRP, artificially inflating the participant's baseline load and misrepresenting the participant's load profile) to collect payments in the DALRP. 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. The *CES Order* is not subject to rehearing. If CES does not agree to a payment plan with OE Staff by September 30, or pay the civil penalty by October 30, the FERC will commence an action in U.S. district court for an order affirming the penalty, in which the district court may review the assessment of the civil penalty *de novo*.[107] If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FERC Enforcement Action: Lincoln Paper & Tissue ("LP&T") (IN12-10)**

The Commission issued a third August 29 order finding that, like Silkman and CES, LP&T violated the FERC's Anti-Manipulation Rules by engaging in fraud in the ISO's DALRP.[108] LP&T was directed to pay a ***$5 million civil penalty*** and required LP&T to ***disgorge $379,016*** of payments received as a result of participation in the DALRP (plus interest). The *LP&T Order* largely affirms the allegations set forth in the July 17, 2012 *LP&T Show Cause Order*,[109] summarized in previous reports, that, from approximately July 2007 through February 2008, LP&T engaged in a fraudulent practice (curtailing on-site generation during DALRP program hours when it enrolled in the DALRP, artificially inflating its' baseline load and misrepresenting its' load profile) to collect payments in the DALRP. 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. Because the FERC denied that cooperation credit proposed by OE Staff, the final penalty represents a $600,000 increase over the proposed penalty identified *LP&T Show Cause Order*.[110] The *LP&T Order* is not subject to rehearing. If LP&T does not agree to a payment plan with OE Staff by September 30, or pay the civil penalty by October 30, the FERC will commence an action in U.S. district court for an order affirming the penalty, in which the district court may review the assessment of the civil penalty *de novo*.[111] If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FERC Enforcement Action: JP Morgan (IN08-11; IN13-5)**

On July 30, 2013, the FERC issued an order approving a Stipulation and Consent Agreement ("*JP Morgan Agreement*") between OE and JP Morgan Ventures Energy Corporation ("JP Morgan").[112] The *JP Morgan Agreement* settles allegations that, through 12 strategies investigated by OE, JP Morgan violated the FERC's Anti-Manipulation Rule by intentionally submitting bids to CAISO and MISO that falsely appeared economic to CAISO and MISO's market software but that were intended to, and in almost all cases did, lead CAISO and MISO to pay JP Morgan at rates far above market prices.[113] JP Morgan agreed to pay a civil penalty of ***$285 million*** *(gasp)*, ***disgorge alleged unjust profits of $125 million***, and waive claims for additional Bid Cost Recovery and Exceptional Dispatch payments from CAISO.[114]

- **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

[107] *CES Order* at P 103.

[108] *Lincoln Paper and Tissue, LLC*, 144 FERC ¶ 61,162 (2013) ("*LP&T Order*").

[109] *Lincoln Paper and Tissue, LLC*, 140 FERC ¶ 61,031 (2012) ("*LP&T Show Cause Order*").

[110] *LP&T Order* at P 77.

[111] *Id.* at P 79.

[112] *In Re Make-Whole Payments and Related Bidding Strategies*, 144 FERC ¶ 61,068 (Jul. 30, 2013) ("*JP Morgan Order*").

[113] *Id.* at P 4.

[114] *Id.* at P 3.

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 $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.[115] Bangor Hydro requested a limited waiver from the FERC's Standards of Conduct requirements,[116] 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.

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

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

- **Burlington Elec. Dept. Termination of Mandatory PURPA QF Purchase Obligation from Chase Mill Hydro. Project (QM13-4)**

On August 15, 2013, Burlington Electric Department ("BED") filed to terminate its mandatory purchase obligation with respect to the output of a single qualifying facility ("QF"), the Chace Mill Hydroelectric Project, interconnected to its system and owned by Winooski One Partnership. In its petition, BED asserts that the small QF has nondiscriminatory access to the New England Markets (through its affiliates GDF Suez and FirstLight Power Resources Management) and BED should not be obligated to purchase its output, particularly pursuant to a new PURPA contract. BED stated that did not advocate terminating the PURPA requirement with respect to any other Vermont QF. Comments on BED's petition are due on or before September 12, 2013.

XII. Misc. - Administrative & Rulemaking Proceedings

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

As previously reported, the FERC will hold, on September 25, 2013, a technical conference on centralized capacity markets. The purpose of the technical conference is to consider how current capacity market rules and structures are supporting the procurement and retention 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. 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. Since the last report, more than 15 parties have submitted pre-conference comments, including from representatives of: Compete, ConEd, EnerNOC, EPSA, ESA, NESCOE, NRG, and PSEG.

- **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 in the FERC's eLibrary under this docket. On set of post-technical conference comments, from Wisconsin Electric Power Company, was filed on July 31, 2013.

- **WIRES Request for Policy Statement on ROE for Electric Transmission (RM13-18)**

On June 26, WIRES[117] petitioned the FERC to institute an expedited generic proceeding and to provide such policy and clarifications as necessary to provide "greater stability and predictability regarding regulated rates of return on equity for existing and future investments in high voltage electric transmission infrastructure." Specifically, WIRES recommended a new policy that (1) standardizes selection of proxy groups; (2) denies complainants a hearing on rates of return for existing facilities unless it is shown that existing returns are at the extremes of the zone of reasonableness; (3) allows consideration of competing infrastructure investments of other industries; (4) permits use of other rate of return methodologies; and (5) supports use of more forward-looking data and modeling. In addition, WIRES urged the FERC to support consideration of a project's actual and anticipated benefits when a complaint is filed against the ROE for an existing project. Although the WIRES petition has not been noticed for public comments, 15 sets of comments have been filed.

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

On January 17, 2013, the FERC issued a NOPR[118] 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 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.[119] 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, joint reply comments were filed by NRECA/EEI/APPA. This matter is pending before the FERC.

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[117] WIRES, the Working group for Investment in Reliable and Economic electric Systems, describes itself as a national non-profit association of investor-, member-, and publicly-owned entities dedicated to promoting investment in a strong, well-planned, and environmentally beneficial high voltage electric transmission grid. Information about its principles and members is available on its website www.wiresgroup.com.

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

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

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

As previously reported, the FERC issued Order 784[120] on July 18, 2013, revising 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 November 27, 2013.[121] Compliance filings implementing the changes to OATT Schedule 3 must be submitted on or before December 27, 2013. Requests for clarification of *Order 784* were filed by EEI, Powerex, SoCal Edison, and WSPP. The requests for clarification are pending before the FERC, with FERC action required on or before September 16, 2013, or the requests will be deemed denied.

- ***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.[122] *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 February 26, 2013.[123] 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*.[124] *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*.[125] The

[120] *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*").

[121] *Order 784* was published in the *Fed. Reg.* on July 30, 2013 (Vol. 78, No. 146) pp. 46,178-46,237.

[122] *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).

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

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

[125] *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

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,*[126] affirmed its basic *Order 764* determinations,[127] 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;[128] (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;[129] and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.[130] 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 were considered and supported 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[131] 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 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

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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.

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

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

[128] *Id.* at P 15.

[129] *Id.* at P 19.

[130] *Id.* at P 23.

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

Smart Grid Standards. Comments on the WEQ Version 003 Standards NOPR are due on or before September 24, 2013.[132]

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

On February 21, 2013, the FERC issued *Order 676-G*,[133] which amends FERC regulations to incorporate by reference the business practice standards adopted by the NAESB Wholesale Electric Quadrant ("WEQ") to categorize various 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"[134] and "represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F."[135] *Order 676-G* became effective May 6, 2013.[136] 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.[137] New England's *Order 676-G* compliance changes were filed on August 7, 2013 and accepted September 4, 2013 (*see* ER13-2123 in Section IV above).

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.[138] 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

[132] 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.

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

[134] *Id.* at P 1.

[135] *Id.* at P 33.

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

[137] 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)".

[138] *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*").

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 were due August 26, 2013[139] and were filed by 34 parties. New England parties submitting comments included the ISO, NESCOE, NEPGA, and MMWEC. In addition to NERC, trade associations filing comments included: AGA, American Public Gas Association, APPA, EEI, ELCON, EPSA, INGA, ISO/RTO Council, NRECA, and the New England Natural Gas Industry.[140]

- **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.[141] 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 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, after a summer break, the next meeting is expected to take place either at the end of September or in early October. (Anyone interested in participating directly that has not already done so, should let us know, so that they can be added to the focus group distribution list).

[139] 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.

[140] The members of the New England Natural Gas Industry are Algonquin Gas Trans., Iroquois Gas Trans. Sys., Maritimes & Northeast Pipeline, Portland Natural Gas Trans. Sys., Tennessee Gas Pipeline Co.; National Grid; Northeast Gas Assoc.; New England Local Distribution Cos. (Bay State Gas; The Berkshire Gas Co.; Liberty Utilities; Conn. Natural Gas Corp.; Fitchburg Gas and Electric Light Co.; City of Holyoke, Mass. Gas & Electric Dept.; Northern Utilities; NSTAR Gas Co.; The Southern Conn. Gas Co.; Westfield Gas & Electric Dept.; and Yankee Gas Services Co.) .

[141] *Coordination Between Natural Gas and Elec. Markets*, 141 FERC ¶ 61,125 (2012) ("*November 15 Order*"). FERC Staff's report detailing the discussions that took place at the five regional technical conferences during summer 2012, including the Aug 20, 2012 conference in Boston, is available on the FERC's eLibrary.

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

Comments on the FERC's November 15, 2012 NOI seeking input on what changes, if any, should be made to the regulations under the natural gas market transparency provisions of section 23 of the Natural Gas Act ("NGA") are pending before the FERC. As previously reported, the FERC is considering the extent to which quarterly reporting of every jurisdictional natural gas transaction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas) would provide useful information for improving natural gas market transparency. Comments were received from over 40 parties.

- **Natural Gas-Related Enforcement Actions (IN13-16; IN13-15)**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines. Since the last report, there was gas-related enforcement activity in the following two proceedings:

Company	***Alleged Violation(s)***	***Civil Penalty/Disgorgement***
Enterprise Texas Pipeline LLC (IN13-16)	for charging its shippers a title transfer and tracking ("TTT") fee for over 7 years without seeking FERC authorization and without posting the fee in the company's FERC-approved Statement of Operating Conditions	Settlement Agreement[142] $315,000 (civil penalty) $7.235 million (disgorgement)
BP America Inc. BP Corp. N. Amer. BP Amer. Production BP Energy Co. (together, "BP") (IN13-15)	for trading physical natural gas at Houston Ship Channel ("HSC") to increase the value of BP's financial position at HSC, uneconomically using BP's transportation capacity, making repeated early uneconomic sales at HSC, taking steps to increase BP's market concentration at HSC. In doing so, OE staff alleges, BP suppressed the HSC Gas Daily index with the goal of increasing the value of BP's financial position at HSC. The activity occurred from mid-September 2008 through November 2008.	Show Cause Order[143] $25 million (civil penalty) $800,000 (disgorgement)

XIV. State Proceedings & Federal Legislative Proceedings

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

On August 23, 2013, the MPUC granted Central Maine Power Company ("CMP") a Certificate of Public Convenience and Necessity ("CPCN") for the Lewiston Loop Project.[144] The August 23 order approved a February 8, 2013 stipulation filed by CPM and the Maine Office of the Public Advocate ("MOPA"), the City of Lewiston, the Lewiston-Auburn Economic Growth Council, the Androscoggin County Chamber of Commerce, State Representative Margaret Rotundo, and State Senator Margaret Craven. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

[142] *Enterprise Texas Pipeline LLC*, 144 FERC ¶ 61,156 (Aug. 26, 2013).

[143] *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

[144] Central Maine Power Co., Docket No. 2011-240 (Aug 23, 2013).

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[145]
  Appellants: EPSA and NEPGA

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

- **Orders 1000 and 1000-A ((12-1232 consolidated with 12-1233, 12-1250, 12-1276, 12-1279, 12-1280, 12-1285, 12-1292, 12-1293, 12-1296, 12-1299, 12-1300, 12-1304, 12-1448, 12-1478, and 7th Cir. 12-2248)**
  Underlying FERC Proceedings: RM10-23[146]
  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[147]
  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

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[145] 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

[146] 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

[147] 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).

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. On August 23, 2013, the court scheduled oral arguments for November 19, 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[148]
  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.

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

On August 14, 2013, the 2nd Circuit issued an order on an appeal by Vermont Parties of a 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.[149] The August 14 order:[150]

- Affirmed the district court as to the Atomic Energy Act and Federal Power Act preemption claims (upholding (i) the declaratory judgment that the Vermont State Acts (74 and 160) are facially preempted by the Atomic Energy Act; (ii) the determination that Entergy's challenge under the Federal Power Act was not ripe; (iii) the granting of a permanent injunction enjoining VT from enforcing sections 6522(c)(2) or 6522(c)(4) of title 10 of VT's statutes), and
- Reversed the district court as to the dormant Commerce Clause claim (that Vermont's efforts to condition a new Certificate of Public Good for VY on the execution of a favorable power purchase agreement violate the dormant Commerce Clause), finding that the district court erred in issuing an injunction on the basis of its finding mere intent on the part VT to seek a favorable PPA, and that the issue was therefore not ripe for judicial review.
- The court also vacated the district court's permanent injunction enjoining the defendants from conditioning the issuance of a Certificate of Public Good on the execution of a below-wholesale-market power purchase agreement between Entergy and Vermont utilities or otherwise requiring VY to sell power to Vermont utilities at preferential rates.

[148] 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

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

[150] *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 2013 U.S. App. LEXIS 16810 (2d Cir. 2013).

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