

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of November 6, 2013

The following activity, as more fully described in the attached litigation report, has occurred since the report dated October 1, 2013 was circulated. New matters/proceedings since the last report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints

* 1	FCM Administrative Pricing Rules Complaint (EL14-7)	Oct 31 Nov 6	NEPGA files complaint; comment date Nov 20 MA AG intervenes; ISO issues memo requesting feedback on issues raised in complaint
1	FERC-Directed Changes to Fuel Cost Recovery for Certain Reliability Reponses (EL13-72; ER13-2149)	Oct 3	ISO answers Sep 19 NEPOOL and Sep 24 NRG answers
3	NEPGA Resource Performance Obligations Complaint (EL13-66)	Oct 4 Oct 8 Oct 15 Oct 24	NEPGA protests Sep 26 informational filing Verso Paper supports NEPGA protest ISO answers NEPGA Sep 26 request for rehearing of <i>NEPGA Order</i> and Oct 4 protest of Sep 26 informational filing FERC issues tolling order affording it additional time to consider NEPGA request for rehearing of <i>NEPGA Order</i>
4	Base ROE Complaint (2011) (EL11-66)	Oct 24	Complainants, TOs, EMCOS, and FERC Staff file briefs opposing exceptions

II. Rate, ICR, FCA, Cost Recovery Filings

* 5	FCA8 Qualification Informational Filing (ER14-329)	Nov 5	ISO submits required informational filing for FCA8; comment date Nov 20
* 5	ICR, HQICCs and Related Values - 2017/2018 Power Year (ER14-328)	Nov 5	ISO and NEPOOL jointly file ICR, HQICCs, and related values for the 2017/2018 Capability Year; comment date Nov 26
* 6	2014 NESCOE Budget (ER14-91)	Oct 15 Oct 22 Nov 5	ISO files budget for funding NESCOE's 2014 operations NEPOOL intervenes NU intervenes; NEPOOL files comments supporting Budget
* 6	2014 ISO-NE Administrative Costs and Capital Budgets (ER14-90)	Oct 25	ISO files 2014 administrative costs and capital budgets; comment date Nov 15
7	2013/2014 Winter Reliability Program Bid Results Filing (ER13-2266)	Oct 7 Oct 15 Nov 4 Nov 6	FERC conditionally accepts filing ISO submits compliance filing NextEra submits comments supporting compliance filing TransCanada requests rehearing of <i>Bid Results Order</i>

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

* 8	National Grid Request for Limited Waiver of Capacity Qual. Deadlines (ER14-311)	Nov 5	National Grid requests limited waiver of Capacity Qualification deadlines for FCA8; comment date Nov 25
* 8	CSO Termination: Pawtucket (ER14-270)	Nov 1	ISO files to terminate a CSO for Resource 326 held by Pawtucket; comment date Nov 22
* 9	CSO Termination: Entergy (ER14-266)	Nov 1	ISO files to terminate a portion of the CSO for Resource 1630 held by Entergy; comment date Nov 22
* 9	eTariff Corrections: Sections I.2, III.1, and III.F (ER14-172)	Oct 24	ISO files corrections to eTariff; comment date Nov 14

* 9	CSO Terminations: EnerNOC (ER14-29)	Oct 4 Oct 7	ISO files to terminate 54 CSOs held by EnerNOC NEPOOL intervenes
9	Reliability Commitment Mitigation Revisions (ER13-2397)	Oct 2-8 Oct 3	Dominion, Exelon, Maxim Power, NU intervene NEPOOL submits supplemental comments regarding stakeholder consider of the Revisions
9	Shortage Event Triggers Jump Ball Filing (ER13-2313)	Oct 3 Oct 10 Nov 1 Nov 3	Brookfield intervenes NEPOOL, the ISO, NEPGA, and NextEra file answers As requested by the ISO, FERC accepts the Market Rule revisions, effective Nov 3, 2013 Shortage Event Trigger changes become effective
10	Energy Market Offer Flexibility Changes (ER13-1877)	Oct 3 Oct 21 Oct 30	FERC conditionally accepts changes, effective Dec 1, 2014 NEPOOL and ISO request extension of compliance deadline to and including Jan 17, 2014 FERC grants requested extension
11	Winter 2013/2014 Reliability Program (ER13-1851)	Oct 15 Oct 16	ISO and NEPOOL jointly file compliance changes EPSA and TransCanada request rehearing of Sep 16 order
12	Notice of Effective Date: CSO Bilateral Transaction Enhancements (ER13-585)	Oct 24	ISO provides notice that CSO bilateral transaction enhancements will become effective Dec 17, 2013
12	Revised Order 755 Compliance Filing (Regulation Market Changes) (ER12-1643)	Nov 1	FERC accepts compliance changes filed in response to the <i>Revised Order 755 Compliance Order</i>

IV. OATT Amendments / TOAs / Coordination Agreements

No Activity to Report

V. Financial Assurance/Billing Policy Amendments

17	CFTC Exemption Order Changes (ER13-1875)	Oct 16	FERC accepts compliance changes
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VI. Schedule 20/21/22/23 Changes

* 17	Schedule 21-NU: LCRAs (CTMEEC, Wallingford) (ER14-324 et al.)	Nov 5	NU files CTMEEC and Wallingford LCRAs; notice of cancellation of CMMEC LCRAs; new and amended CONVEX Agreements; comment date Nov 26
* 18	Schedule 21-NU: Elimination of Unreserved Use Penalties (ER14-258)	Nov 1	NUSCO and the ISO file changes to Schedule 21-NU to eliminate unreserved use penalties and the associated penalty distribution methodology; comment date Nov 22
* 18	Schedule 22: LGIA – BHE/Oakfield Wind Farm (ER14-63)	Oct 9 Oct 25	BHE files non-conforming LGIA Evergreen Wind Power II intervenes
18	Schedule 21-BHE: LSA (Orono “B” and Stillwater “B”) (ER13-2408)	Oct 31	FERC accepts LSAs; effective Sep 19, 2013
18	Schedule 21-BHE: Black Bear HVGW LSA Cancellation (ER13-2383)	Nov 4	FERC accepts notice of cancellation, effective Aug 1, 2013
18	Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)	Oct 16	Settlement Judge Johnson issues status report recommending settlement judge procedures be continued

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 19	Capital Projects Report - 2013 Q3 (ER14-85)	Oct 15 Oct 18 Nov 5	ISO files Report NEPOOL intervenes NU intervenes; NEPOOL files comments
* 19	Order 755 Regulation Market Progress Reports: 1st Quarterly Status Report (ER12-1643)	Nov 1	ISO files 1st quarterly report
* 20	LFTR Implementation: 20 th Quarterly Status Report (ER07-476)	Oct 15	ISO files its 20th quarterly report

IX. Membership Filings

* 20	November 2013 Membership Filing (ER14-247)	Oct 31	New Members: Footprint Power Salem Harbor Dev., Pioneer Hydro; Stetson Holdings; and Town Square Energy; Terminations: eKapital Investments; Reliable Power, LLC; and URI; comment date Nov 21
20	October 2013 Membership Filing (ER14-3)	Oct 24	FERC accepts Black Bear SO, Power Supply Services, Wallingford, CT DPU Electric Div. memberships; CPV, Freedom, Merchant's Plaza Companies, Maine Woods Pellet Companies terminations

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

20	FFT Report: October 2013 (NP14-4)	Oct 30	NERC files Report
21	Notice of Penalty: ISO-NE (\$5,000) (NP13-52)	Oct 30	FERC issues notice that it will not further review the Notice of \$5,000 Penalty for ISO-NE Sep 2, 2010 violation of BAL-002-0 R4.1 and R4.2 – failure to recover ACE within 15 minutes
21	Revised Reliability Standard: BAL- 001-1 (RD13-11)	Oct 16	FERC approves revised Standard
23	NOPR: Revised Reliability Standard: BAL-003-1 (RM13-11)	Oct 16	NERC files reply comments
23	Order 786: TPL-001-4 (footnote 'b') (RM13-9; RM12-1)	Oct 17	FERC issues Order 786 conditionally approving TPL-001-4
24	NOPR: Revised Reliability Standard: PRC-005-2 (RM13-7)	Oct 30	NERC submits errata to implementation plan
24	NOPR: Revised Reliability Standards: Version 5 CIP Standards (-002 through -011) (RM13-5)	Oct 11	NERC submits informational filing describing pilot program to be conducted during the transition from CIP v. 3 to CIP v. 5 Standards
25	2014 NERC/NPCC Business Plans and Budgets (RR13-9)	Nov 1	FERC accepts 2014 NERC and Regional Entity budgets, subject to a compliance filing explaining \$3.8 million allocation under NERC Reserve Policy
* 26	Market Implications of Frequency Response and Frequency Bias Setting Requirements (AD13-8)	Oct 18	NERC, Arizona Public Service, BPA, EEI, EPSA, ESA, MISO and PJM, PG&E submit comments

XI. Misc. - of Regional Interest

* 27	203 Application: Edison Mission / NRG (EC14-14)	Oct 25	Applicants request authorization for the sale of EME and its related public utilities to NRG; comment date Dec 9
* 28	NSTAR/HQUS Use Rights Transfer Agreement (ER14-244)	Oct 31	NSTAR files agreement for the continued transfer of use rights on the HQ Interconnection; comment date Nov 21

* 28	Bangor Hydro (Emera Maine) Notice of Succession to MPS OATT (ER14-218)	Oct 29	Bangor Hydro files (i) a notice of intent to succeed to MPS' OATT and (ii) a revised OATT reflecting that succession; comment date Nov 19
* 28	SGIA – NGrid / Vuelta Solar (ER14-183)	Oct 25	NGrid files non-conforming SGIA to govern the interconnection of Vuelta's 5 MW photovoltaic East Brookfield, MA generating facility; comment date Nov 15
*	E&P Agreement CMP/Western Maine Renewables (ER14-35)	Oct 4	CMP files E&P Agreement
* 29	VELCO Floyd Project Cost Recovery Deferral (ER14-12)	Oct 2	VELCO requests authorization to defer for future recovery costs associated with the VELCO Floyd Project
29	E&P Agreement BHE/First Wind (ER13-2120)	Oct 3	BHE submits copy of executed Agreement
29	FERC Enforcement Action: Staff Notice of Alleged Violations (IN__-__)	Oct 4	Staff issues NoV concerning Constellation CAISO-related activities
30	Waiver of Transmission Standards of Conduct: Green Mountain Power Request (TS04-277)	Oct 17 Nov 1 Nov 6	FERC denies waiver GMP requests extension of time, to Dec 17, 2013, to comply with Standard of Conduct FERC grants requested extension
31	Burlington Elec. Dept. Termination of Mandatory PURPA QF Purchase Obligation from Chase Mill Hydro. Project (QM13-4)	Oct 11	Winooski One Partnership answers BED's Sep 27 answer

XII. Misc. - Administrative & Rulemaking Proceedings

31	Zero Rate Reactive Power Rate Schedules (AD14-1)	Oct 17	FERC issues notice that all generator-provided jurisdictional reactive power service must be provided pursuant to a FERC-filed rate schedule (even when there is to be no compensation for such service); a staff-led workshop will be held at a later date to-be-determined
31	RTO/ISO Centralized Capacity Markets (AD13-7)	Oct 25	FERC issues notice inviting post-tech conference comments on any or all of questions attached to the Notice regarding capacity markets in the three Northeast Control Areas; comment date Dec 9
32	WIRES Request for Policy Statement on ROE for Electric Transmission (RM13-18)	Oct 3 Oct 16 Nov 5	WIRES submits summary of the comments and analysis filed Organization of PJM States notes its position on the WIRES petition US Senator Angus King files comments
34	Order 764-A: Variable Energy Resources (RM10-11)	Oct 15	FERC issues notice of filing procedures for Order 764 eTariff filings

XIII. Natural Gas Proceedings

36	Natural Gas and Electric Market Coordination (AD12-12)	Oct 17	ISO/RTOs appear before FERC at its open meeting to report on efforts and progress toward improving industry coordination
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XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

38	FCM Re-Design (12-1060)	Oct 30	Briefing parties jointly propose allocation of Nov 19 oral argument time
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- * 39 PPL EnergyPlus, LLC v. Nazarian (D. MD - MJG-12-1286) Sep 30 MD US District Court finds MD PSC order directing MD utilities to enter into 'contract for differences' for capacity and energy in the PJM control area with a MD PSC-selected gas-fired merchant generator violated the US Constitution's Supremacy Clause and cannot be enforced

- * 40 PPL EnergyPlus, LLC v. Hanna (D. NJ 11-745) Oct 11 NJ US District Court issues analogous decision declaring unconstitutional (and therefore null and void) NJ's Long Term Capacity Agreement Pilot Program Act

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: November 6, 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 November 6, 2013. If you have questions, please contact us.¹

I. Complaints

- **FCM Administrative Pricing Rules Complaint (EL14-7)**

On October 31, 2013, the New England Power Generators Association (“NEPGA”) filed a complaint asking the FERC (i) to determine that the Tariff provisions that set capacity prices during Insufficient Competition and Inadequate Supply and the Capacity Carry Forward Rule are creating unreasonable and unduly discriminatory price disparities between new and existing capacity resources; and (ii) to direct that the recommended revisions to the ISO Tariff be implemented. The substance of the Complaint (the Exelon Proposal) was considered, but not supported, at the October 4, 2013 Participants Committee meeting. NEPGA requested that the proposed Market Rule revisions be made effective so that they are in place prior to FCA8 (or February 3, 2014). The ISO’s answer to and any comments on the complaint are due on or before November 20, 2013.

Included with the additional materials for the November 8 meeting is a memo from the ISO indicating that it would like to undertake an expedited stakeholder process to inform its answer to the Complaint. The ISO notes that, “with non-price retirement requests for 3,135 MW of resources having been submitted or approved, the situation in the New England capacity market has changed significantly.” The Board has asked stakeholders to be prepared to discuss their views on the matter during the Sector meetings Friday morning, as well as at special Markets and Participants Committee meetings scheduled for later this month.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dttdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FERC-Directed Changes to Fuel Cost Recovery (EL13-72; ER13-2149)**

FERC-initiated 206 proceeding (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

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*.

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

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 filing 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. NEPOOL responded to that answer on September 19. The ISO also answered, on September 18, the protests filed by Dominion, NRG, and PSEG. NRG filed an answer to the ISO’s September 18 answer on September 24. Finally, the ISO answered on October 3, NEPOOL’s September 19 and NRG’s September 24 answers. 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).

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.

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

As previously reported, the FERC, on August 27, granted in part and denied in part this complaint by NEPGA.⁵ NEPGA filed its 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. On September 26, 2013, NEPGA challenged the *NEPGA Order*. The ISO answered the NEPGA request for rehearing on October 15. On October 24, the FERC issued a tolling order affording it additional time to consider the NEPGA rehearing request, which remains pending before the FERC.

Informational Filing (Factors in Tariff Violation Determination). 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. The ISO submitted that filing and posted that list⁶ on September 26. Although the informational filing was not noticed for public comment, NEPGA submitted a protest on October 4, asserting that the Informational Filing “goes against the substance of the *NEPGA Order* and “further underscores the need for a Tariff standard to be established on generator performance obligations”. NEPGA requested that the FERC order the ISO to “file the IMM’s written explanation of material factors under Section 205 of the Federal Power Act, subject to parties’ rights to notice and comment, and Commission approval.” On October 8, Verso Paper filed comments supporting NEPGA’s protest. The ISO answered the NEPGA protest on October 15. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

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

Rehearing of the FERC’s February 12, 2013 order denying NESCOE’s FCM Renewable Exemption Complaint⁷ 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.⁸ 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),⁹ 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

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

⁶ The list is posted on the ISO website under the Market Monitoring and Mitigation section: http://www.iso-ne.com/markets/mktmonmit/rpts/other/factors_imm_considers_in_eval_physical_avail_of_fuel_for_gen_res.pdf.

⁷ *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013), *reh’g requested*.

⁸ *Id.* at P 32.

⁹ *Id.* at P 30.

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 answers 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")¹⁰ 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,¹¹ MA AG, MOPA, MPUC, TEC, and the VT DPS. On January 16, the TOs filed their answer, asserting that the FERC should dismiss the Complaint as contrary to Section 206's 15-month refund limitation and that the Complaint failed to show that the TOs' Base ROE is unjust and unreasonable. 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, 2013, 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)**

As previously reported, Trial Judge Cianci issued his initial decision on August 6, 2013 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.¹² By way of reminder, the FERC established hearing and settlement judge procedures¹³ following a

¹⁰ 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.

¹¹ EMCOS or the "Eastern Massachusetts Consumer-Owned Systems" are Braintree, Hingham, Reading, and Taunton.

¹² *Martha Coakley, Mass. Att'y Gen. et al.*, 144 FERC ¶ 61,012 (2013) ("2011 Base ROE Initial Decision").

complaint by a number of State, consumer, and consumer advocate parties (the “2011 Complainants”)¹⁴ 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.”¹⁵ After settlement judge procedures before Judge Judith A. Dowd were ultimately unsuccessful and terminated, these proceedings proceeded to now-completed hearings before Judge Cianci. Briefs on exceptions to the initial decision were filed by Complainants, TOs, EMCOS, and FERC Trial Staff on September 20. Briefs opposing exceptions were filed by the same parties on October 24, 2013.¹⁶ 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

- **FCA8 Qualification Informational Filing (ER14-329)**

On November 5, 2013, the ISO submitted its informational filing (the “FCA8 Informational Filing”) for qualification in FCA8. The ISO is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by the ISO for the upcoming Forward Capacity Auction (“FCA”) at least 90 days prior to each auction. FCA8 is scheduled to begin February 3, 2014. The Informational Filing contained the ISO’s determinations that four Capacity Zones, Maine, Connecticut, NEMA, and Rest of Pool, will be modeled for FCA8. The Informational Filing reported that there will be 35,877 MW of existing capacity in FCA8 competing with 2,126 MW of new capacity under a procurement limit of 33,855 MW (ICR minus HQICCs). The ISO reported also that there were a total of 7,851 MW of de-list bids, 1,907 MW of which were later converted into Non-Price Retirement Requests. A list of the 98 Resources for which a Non-Price Retirement Request was submitted, and the status of the associated reliability review, is included in the transmittal letter. The identity of the de-list bids accepted and those rejected for reliability purposes was included in a privileged Attachment E. Comments on the FCA8 Informational Filing will be due November 20, 2013. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ICR-Related Values and HQICCs - 2017/2018 Power Year (ER14-328)**

On November 5, 2013, the ISO and NEPOOL jointly filed ICRs, Hydro Quebec Interconnection Capability Credits (“HQICCs”) and related values (Local Sourcing Requirements (“LSR”), Maximum Capacity Limit “MCL”) for the 2017/2018 Capability Year. The values will be used in FCA8 to be held in February 2014. With a 2017/2018 ICR of 34,923 MW (reflecting tie benefits of 1,870 MW) and HQICCs of 1,068/mo., the net amount of capacity to be purchased in FCA8 to meet the ICR will be 33,855 MW. The LSR for the Connecticut and NEMA/Boston Load Zones are 7,319 MW and 3,428 MW, respectively; the MCL for the Maine export-constrained Load Zone is 3,960 MW. The Participants Committee supported the ICR, HQICCs and related values at its October 4, 2013 meeting by way of the Consent Agenda. Comments on this filing are due November 26. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

¹³ *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.

¹⁴ 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. Srv. (“VT DPS”), MMWEC, AIM, TEC, Power Options, and the IECG.

¹⁵ 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.

¹⁶ Errata to the Table of Authorities were filed by Complainants and the TOs on Oct. 25 and 29, respectively.

- **2014 NESCOE Budget (ER14-91)**

This proceeding was initiated by the ISO's October 15 filing of the budget for funding NESCOE's 2014 operations. The 2014 Operating Expense Budget for NESCOE is \$2,158,421. The amount to be recovered reflects true-ups for a 2012 over-collection of \$770,714. Accordingly, if accepted, the NESCOE budget will result in a charge of \$.00553 per kilowatt of Monthly Network Load. The 2014 NESCOE budget was supported by the Participants Committee at its October 4, 2013 meeting. NU intervened. On November 5, NEPOOL filed comments supporting the filing. This matter is pending before the FERC. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2014 ISO-NE Administrative Costs and Capital Budgets (ER14-90)**

Also on October 15, the ISO filed for recovery of its 2014 administrative costs (the "2014 Revenue Requirement") and submitted its capital budget and supporting materials for calendar year 2014 ("2014 Capital Budget", and together with the 2014 Revenue Requirement, the "2014 ISO Budgets"). The 2014 ISO Budgets were filed together pursuant to the Settlement Agreement entered into to resolve challenges to the 2013 ISO Budgets. In the October 15 filing, the ISO reported that the 2014 Revenue Requirement (allowing for measured growth from 2013 levels), after true-up for 2012, is \$171.2 million. Of that total, the ISO's administrative costs (i.e., the 2014 Core Operating Budget) comprise \$140.9 million; depreciation and amortization of regulatory assets, \$28.4 million; and 2012 true-up, \$1.9 million.

The ISO further reported that the 2014 Capital Budget is \$28 million and is comprised of the following (with 2014 projected costs and target completion dates, if available, in parentheses):

▶ Intra-day Offers (Q4 2014)	(\$6 million)	▶ FCM Terminations and Retirements (Sep 2014)	(\$570,100)
▶ CTS (Nov 2015)	(\$3.8 million)	▶ Cyber Security (TBD)	(\$550,000)
▶ Gen. Control Application (GCA) Production Part I (Mar 2015)	(\$2.4 million)	▶ Business Continuity Plan Infrastructure Enhancements Phase III (Q2 2015)	(\$500,000)
▶ Non-Project Capital Expenditures	(\$3.7 million)	▶ Capitalized Interest	(\$500,000)
▶ Other Emerging Work Including Strategic Planning Initiatives	(\$1.57 million)	▶ Quarterly Release Projects 2014 (Quarterly)	(\$500,000)
▶ 2014 Issues Resolution Project (Q4 2014)	(\$1.5 million)	▶ Wind Integration Phase II (Q4 2015)	(\$300,000)
▶ Divisional Accounting (Nov 2015)	(\$1.23 million)	▶ Simultaneous Feasibility Test and Market Sys. Upgrade (Apr 2014)	(\$280,000)
▶ FCM Performance Incentives (FCA 9) (Q1 2015)	(\$1 million)	▶ FCA8 (Feb 2014)	(\$200,000)
▶ Alt. Technologies and Regulation Market (ATRM) (June 2014)	(\$1 million)	▶ Web Enhancements Phase II (May 2014)	(\$150,000)
▶ Business Intelligence Phase IV (Q4 2014)	(\$750,000)	▶ Wind Integration Phase I (Jan 2014)	(\$105,000)
▶ BCC Data Center Transition (Mar 2014)	(\$611,000)	▶ Prerequisite Unit Dispatch and Scheduling Changes for GCA (March 2014)	(\$100,000)
▶ Third-Party FTR Administration (Q4 2015)	(\$600,000)	▶ Control Room Visualization Project (May 2014)	(\$80,800)

The 2014 ISO Budgets were supported by the Participants Committee at its October 4, 2013 meeting. Comments on this filing were due November 5, 2013. A doc-less intervention was filed by NU. NEPOOL filed comments supporting the 2014 Budgets. CT PURA and CT OCC (the "Connecticut State Agencies")

filed a limited protest, asserting that the ISO's proposed increase in and funding for additional full-time employees ("FTEs") does not comply with the 2013 Budgets Settlement Agreement and suggesting that the proposed increase and funding for additional FTEs should be postponed until the next budget cycle. This matter is pending before the FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

On October 7, the FERC conditionally accepted the 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.¹⁷ As previously reported, the procurement "is intended to balance fuel security for the region against the costs to consumers."¹⁸ In accepting the filing, The FERC was not persuaded by protests pointing to the disparity between the estimated costs and actual costs in challenging the entire Program, which it viewed as a novel approach to addressing reliability concerns manifested last winter and which does not lend itself to precise cost predictions. Nonetheless, the ISO was directed the ISO to submit a compliance filing further detailing its evaluation process in selecting winning bids,¹⁹ as well as to reflect the corrections identified by Essential Power and Exelon.²⁰ The FERC indicated the MPUC's arguments concerning the need for the Winter Reliability Program were more appropriately raised in a request for rehearing of the *2013/2014 Winter Reliability Program Order* (see ER13-1851 in Section III below). On November 6, 2013, TransCanada challenged the *Bid Results Order*.²¹ The TransCanada request for rehearing is pending before the FERC, with FERC action required on or before December 6, 2013, or the request will be deemed denied.

Compliance Filing. On October 15, the ISO submitted the compliance filing directed by the *Bid Results Order*. Comments on that filing were submitted by NextEra Resources, which urged the FERC promptly issue an order accepting the filing to provide regulatory certainty to those Participants whose bids were accepted. The compliance filing is pending before the FERC.

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

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

On August 16, Dominion submitted a compliance filing, as directed in the *Fuel Cost Recovery Order*,²² 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

¹⁷ *ISO New England Inc.*, 145 FERC ¶ 61,023 (Oct. 7, 2013) ("*Bid Results Order*")

¹⁸ The ISO received bids that nearly met its targeted procurement at a total price of \$114.3 million. In approximate numbers, the ISO proposed to accept 83% of the targeted MWh at a price of \$79 million.

¹⁹ *Bid Results Order* at PP 23, 26-30.

²⁰ *Id.* at P 31. Essential Power identified 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); Exelon inadvertently miscalculated the usable portion of its oil storage tanks.

²¹ TransCanada asserts that the FERC erred in: (1) failing to determine whether the costs and resulting bid prices are just and reasonable; (2) accepting the bidding results because the ISO failed to comply with its Tariff criteria; and (3) rejecting arguments re: the "excessive disparity" between the Analysis Group's estimated cost range and the actual price of the program.

²² *Fuel Cost Recovery Order*; see Note 2 *supra*.

the ISO on August 13, and is summarized in Section I above (ER13-2149). If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtodoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the Participating Transmission Owners (“PTOs”) Administrative Committee (“PTO AC”) supplemented its July 31 filing, on October 1, 2013, with revised information from MMWEC, National Grid, and NU. These revisions decrease the RNS rate to \$85.32/kW-year and the Schedule 1 rate to \$1.69/kW-yr. These filings are 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* order²³ that PSEG’s May 2010 petition for review be granted, remanding the FERC’s orders in this proceeding²⁴ for further consideration. In particular, the FERC must (i) determine whether PSEG’s position (that it should receive the full (unprorated) floor price for all its resources that it could not prorate) would be an appropriate way to interpret the then-existing Market Rules and, if not, (ii) respond to PSEG’s objections that any contrary result would result in “undue discrimination” and would be “inconsistent with the fundamental policy goals” of FCM. On October 15, 2012, PSEG filed a motion requesting that the FERC issue an order on remand directing the ISO to pay PSEG the full FCA floor price without further delay (for PSEG, the difference totaling \$2.8 million plus interest). The ISO filed on October 31, 2012 an answer to PSEG’s October 15 motion. On November 1, 2012, Connecticut Generators²⁵ submitted comments supporting PSEG’s request and a few of the Connecticut Generators moved to intervene out-of-time. This matter remains pending before the FERC.

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

- **National Grid Request for Limited Waiver of Capacity Qualification Deadlines (ER14-311)**

On November 5, National Grid requested a limited waiver of the Capacity Qualification Deadlines for FCA8 to enable the IMM to consider the additional data submitted by National Grid after the relevant deadlines which it believes will support its position that two Combined Heat & Power (“CHP”) projects, one in Rhode Island and one in Massachusetts, should be qualified for a New Resource Offer Floor Price below the FCA8 \$15.819/kW-month Offer Review Trigger Price. Comments on this waiver request are due on or before November 25, 2013. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Pawtucket (ER14-270)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on November 1 to terminate a CSO for Resource No. 326 held by Project Sponsor Pawtucket Power Holding Company LLC (“Pawtucket”). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by

²³ *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).

²⁴ *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).

²⁵ “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.

Pawtucket with respect to the CSO. Comments on this filing are due on or before November 22. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Entergy (ER14-266)**

Also on November 1, the ISO filed to terminate a portion of the CSO for Resource No. 1630 held by Project Sponsor Entergy Nuclear Power Marketing LLC (“Entergy”). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Entergy with respect to the portion of the CSO terminated. Comments on this filing are also due on or before November 22. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **eTariff Corrections: Sections I.2, III.1, and III.F (ER14-172)**

On October 24, the ISO submitted various corrections to its eTariff. The corrections revise Section I.2 (to restore terms accepted in ER13-1742), the Section III Table of Contents, Section III.1 (fixing a typographical error), and Section III Appendix F (to restore auditing revisions from ER13-323). Comments, if any, on this filing are due on or before November 14. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: EnerNOC (ER14-29)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on October 3 to terminate 54 CSOs held by Project Sponsor EnerNOC. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by EnerNOC with respect to the CSOs that are to be terminated. NEPOOL intervened on October 23. No further interventions or comments were submitted and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Reliability Commitment Mitigation Revisions (ER13-2397)**

On September 17, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 Appendix A to modify the market power mitigation rules that apply to Supply Offers for resources that are committed out-of-merit to address a local reliability need (the “Reliability Commitment Mitigation Revisions”). The Reliability Commitment Mitigation Revisions were proposed in response to the IMM’s determination that the current mitigation test for local reliability commitments had resulted in conduct that the IMM viewed as manipulation. A September 18, 2013 effective date was requested. The Reliability Commitment Mitigation Revisions were supported by the Participants Committee at its September 13 meeting. Interventions were filed by Dominion, Exelon, Maxim Power, NRG, and NU. NEPOOL filed supplemental comments providing additional information on stakeholder consideration of the Reliability Commitment Mitigation Revisions on October 3, but no further comments were submitted, and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On November 1, the FERC accepted the changes to the definition of a Shortage Event in the FCM proposed by the ISO and NEPOOL, but with the ISO’s, rather than NEPOOL’s, proposed effective date – November 3, 2013.²⁶ As previously reported, 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 was expanded²⁷ and the Shortage Event trigger specific to import-constrained Capacity Zones modified, but where the alternatives differed, and where the FERC

²⁶ *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,095 (Nov. 1, 2013) (“*Shortage Event Triggers Order*”).

²⁷ 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.

was asked to choose, was in the implementation date proposed for the changes (NEPOOL asked for a June 1, 2017 effective date). The NEPOOL Alternative was supported by the Participants Committee at its August 2, 2013 meeting. Interventions were filed by Exelon, HQUS, and NU. Protests were filed by the ISO (to NEPOOL's Alternative), NRG (to the ISO's Proposal), and Footprint Power (seeking a limited exemption to the imposition of the new definition, if the ISO Proposal is accepted, from November 3, 2013 – May 31, 2014). Comments were filed by Dominion and NextEra (each supporting the NEPOOL Alternative and opposing the ISO Proposal), PSEG (supporting the NEPOOL Alternative and requesting that DR resources be made eligible to provide operating reserves prior to the triggering of a Shortage Event), NESCOE (supporting the ISO Proposal), and NEPGA (requesting FERC approval of the NEPOOL proposal as preferable to the ISO's, but also asking that the FERC to order the IMM to re-evaluate, and increase as necessary, the \$1.00/kw-month dynamic de-list bid threshold to reflect the increased risk of the new Shortage Event definition, starting with FCA8). Since the last report, answers were filed by NEPOOL, the ISO, NEPGA, and NextEra.

In accepting the filing with the ISO's proposed effective date, the FERC found that, "[c]onsidering the important benefits expected to result here, this case is distinguishable from those where the [FERC] was reticent to disrupt settled expectations ... Here, NEPOOL supports the substance of the proposed tariff revisions as necessary and beneficial. Moreover, while resources might have taken into account a certain level of risk of a Shortage Event and a resulting penalty in formulating their bids, there is insufficient record evidence that such risk had a significant effect on final bid determinations, rising to the level of detrimental reliance."²⁸ The FERC went on to note that "the record here as well as the history of the FCM reflects that the proposed definition of a Shortage Event ... is consistent with the original intent of the FCM, and, therefore better reflects the meaning that all parties, including stakeholders, intended from the outset."²⁹ The FERC rejected all of the protests and adverse comments filed. Unless the *Shortage Event Triggers Order* is challenged, with any challenges due on or before December 2, 2013, this proceeding will be concluded.

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).

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

On October 3, the FERC conditionally accepted energy market enhancements³⁰ designed 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").³¹ The Offer Flexibility Changes were accepted effective as of December 1, 2014, as requested. In accepting the Offer Flexibility Changes, the FERC noted a few potential inconsistencies between the ISO's intended application of the proposed revisions, including the lock-out provisions, and the actual proposed Tariff language. Accordingly, the FERC conditioned its acceptance upon the submission of a compliance filing that reconciles the proposed Tariff language with the ISO's statements concerning application. Although the compliance filing would have been due December 2, NEPOOL and the ISO requested an extension of time, to and including January 17, 2014, to allow for the Markets Committee to review and make its recommendations concerning the compliance changes at its

²⁸ *Shortage Event Triggers Order* at P 30.

²⁹ *Id.* at P 31.

³⁰ 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.

³¹ *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,014 (Oct. 3, 2013) ("*Offer Flexibility Changes Order*").

November and December meetings, and the Participants Committee to consider and vote on such recommendations at its January 10, 2014 meeting. That request was granted on October 30. Accordingly, the next activity will be review of the compliance changes at the November Markets Committee meeting. The *Offer Flexibility Changes Order* was not challenged and is final and unappealable. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC *conditionally* accepted the Winter Reliability Program on September 16, to be effective September 6, 2013 through February 28, 2014.³² The FERC conditioned its acceptance of the Program on the allocation of Program costs to RTLO rather than Regional Network Load, and on the removal of the specific dates added to Section III.K.2 in the Emergency Amendments Filing (related to the timing for public comments, and issuance of a FERC order, on the Bid Results filing).³³ In directing the change in cost allocation, the FERC found that that costs of the Program should be allocated to RTLO “[b]ecause real-time load is the primary beneficiary, and the primary cost-driver, of the Winter Reliability Program.”³⁴ The FERC found unpersuasive the arguments that it would be more appropriate to allocate Program costs to Regional Network Load.³⁵ As for the second condition, while the FERC recognized the urgency of the winter reliability concerns that led to the proposed specific dates, the FERC did not find that the record supported provisions binding it to issue an order by a specific date (or include a comment deadline for a proceeding that is already underway and pending before the FERC (*see* 2013/2014 Winter Reliability Program Bid Results Filing (ER13-2266) in Section II above). Rehearing of the 2013/2014 *Winter Reliability Program Order* was requested by EPSA and TransCanada. The requests for rehearing are pending before the FERC, with FERC action required on or before November 15, 2013, or the requests will be deemed denied.

Compliance Filing. On October 15, the ISO and NEPOOL jointly filed Market Rule changes in response to the *2013/2014 Winter Reliability Program Order*. The compliance changes were supported by the Participants Committee at its October 4 meeting. The Filing Parties requested that the compliance changes become effective with the rest of the Appendix K changes on September 6, 2013. Comments on the compliance filing were due November 5, but none were filed. The compliance filing is 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).

³² *ISO New England et al.*, 144 FERC ¶ 61,204 (Sep. 16, 2013) (“*2013/2014 Winter Reliability Program Order*”).

³³ The FERC also noted its expectation that the ISO would, as it committed to do in the proceeding, make a separate filing at the end of the Winter Reliability Program to relocate the market monitoring changes contained in Appendix K to elsewhere within Market Rule 1. Those changes to satisfy that commitment are under consideration at the Markets Committee.

³⁴ *Id.* at P 70.

³⁵ *Id.* at P 71. The filing parties asserted that Program cost allocation to Regional Network Load was more appropriate because (i) the Program is a discrete, out-of-market solution similar to a Gap RFP, and (2) the timing of the Program is such that it would have been difficult for LSEs to anticipate the costs and include them in their contracts. The FERC disagreed that the Program, which specifically addresses generation related concerns (resource performance coupled with the region’s increased dependence on natural gas), is akin to a Gap RFP, which addressed transmission-related concerns. Further, the FERC also found unpersuasive the arguments that the timing of the Program warranted allocation to Regional Network Load (either because an RTLO allocation would impose unavoidable costs on LSEs on short notice or increase risk premiums). Citing the Winter 2005/2006 order, the FERC stated that “LSEs “voluntarily assume Real-Time Load Obligation when entering into bilateral contracts with end-use customers[;]” those “contracts contain inherent risk associated with unforeseeable future costs, and we would expect that risk to be captured in bilateral contracts between LSEs and end-use customers.” (*Id.* at P 76).

- **Notice of Effective Date: CSO Bilateral Transaction Enhancements (ER13-585)**

On October 18, the ISO provided notice that the rule changes to allow Market Participants to submit CSO Bilaterals before the current submission windows open (in Section III.13.5), accepted December 19, 2012, will become effective on December 17, 2013. 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.³⁶ 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.³⁷ In addition, the FERC directed implementation of the changes within 6 months (mid-December 2013), rather than January 1, 2015, as requested. The FERC found it unreasonable to delay implementation, noting (i) the past and on-going market uncertainty for regulation market participants caused by delays in establishing an *Order 755*-compliant frequency regulation market in New England; (ii) the importance of ensuring that all frequency regulation resources receive just and reasonable and not unduly discriminatory compensation, and (iii) the fact that the interim changes proposed in ER13-1291 did not justify granting a delayed implementation date.³⁸

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 November 1, the FERC accepted limited regulation market changes jointly filed August 5, 2013 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. Challenges to the November 1 letter order, if any, will be due December 2.

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

³⁶ *ISO New England Inc. and New England Power Pool*, 143 FERC ¶ 61,250 (2013) ("*Revised Order 755 Compliance Changes Order*").

³⁷ *Id.* at P 23.

³⁸ *Id.* at P 33.

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).³⁹ 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,"⁴⁰ agreed that "the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties,"⁴¹ and found the "proposal will be beneficial to both demand response providers and wholesale electricity customers".⁴² 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.⁴³ 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.

60-Day Compliance Filing. The ISO submitted, on March 15, 2013, a compliance filing providing the directed explanations and addressing the changes rejected in the *January 14 Order*. Protests on that compliance filing were submitted on April 5 by DR Supporters⁴⁴ 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 Supporters and Verso Paper protests. On April 30, Verso Paper 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; dtodot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC, on February 12, 2013, conditionally accepted in part and rejected in part the revisions to the FCM and FCM-related rules in the Tariff ("FCA8 Revisions") filed by the ISO and the PTO AC.⁴⁵ 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;⁴⁶ unit specific offer review;⁴⁷ the ISO's proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports' treatment under MOPR;⁴⁸ no exemptions to MOPR for new Self-Supplied Resources;⁴⁹ the application of mitigation to *all* new

³⁹ *ISO New England Inc.*, 142 FERC ¶61,027 (2012) ("*January 14 Order*").

⁴⁰ *Id.* at P 27.

⁴¹ *Id.* at P 28.

⁴² *Id.* at P 29.

⁴³ *Id.* at PP 44-46.

⁴⁴ "DR Supporters" are Comverge, EnerNOC, NICC, Wal-Mart, and the IECG.

⁴⁵ *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013) ("*FCA8 Revisions Order*").

⁴⁶ *FCA8 Revisions Order* at PP 37-38.

⁴⁷ *Id.* at P 53.

⁴⁸ *Id.* at P 70.

⁴⁹ *Id.* at P 80.

resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;⁵⁰ \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;⁵¹ and a number of other additional revisions.⁵² The *FCA8 Revisions Order* rejected: the ISO's proposed methodology for reducing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA (directing the ISO to submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market)⁵³; 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.⁵⁴ 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."⁵⁵ 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."⁵⁶ 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, 2013.⁵⁷ 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 May 2014, 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; dt_doot@daypitney.com).

⁵⁰ *Id.* at P 97.

⁵¹ *Id.* at P 126.

⁵² *Id.* at P 127.

⁵³ *Id.* at PP 63-64.

⁵⁴ *ISO New England Inc.*, 143 FERC ¶ 61,198 (2013) ("*FCA8 Compliance Order*").

⁵⁵ *Id.* at P 31.

⁵⁶ *Id.* at P 35.

⁵⁷ *Id.*

- **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 report⁵⁸ regarding the plan to study and develop proposals to resolve issues related to the modeling of internal transmission constraints and tie benefits associated with individual lines. In the January 14, 2010 Update, the ISO proposed to comprehensively review and attempt to resolve during 2010 all outstanding and identified tie benefits issues (including the so-called "Reserved Issues", issues raised during 2009 stakeholder meetings, and tie benefits-related issues raised in Docket No. ER10-438) through a NEPOOL stakeholder process and to make a filing with the FERC on or before a date that will allow any related Market Rule or Tariff changes to be effective in time for FCA5 (covering the 2014/2015 Capacity Commitment Period). At its February 5, 2010 meeting, the Participants Committee considered and voted on the ISO's January 14 proposal. The ISO's Proposal received 43.25% support from the Participants Committee. On February 8, 2010, NEPOOL filed comments reflecting the results of that consideration and vote. NESCOE submitted a motion to intervene out-of-time and comments on February 12, 2010. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

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

On July 10, the ISO, NEPOOL and the PTO AC jointly filed revisions to Sections I and II of the ISO Tariff to comply with the interregional coordination and cost allocation requirements of *Orders 1000* and *1000-A* (the "*Order 1000* Interregional Compliance Changes") (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. NEPOOL added that "From a stakeholder perspective, stakeholder input into revisions to the Protocol as it evolves over time would be easier and more likely to be taken into account if it were made part of the individual regional tariffs of each of the Northeast ISOs rather than existing solely as a stand-alone three-party agreement". 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. Public Interest Organizations⁵⁹ raised concerns that the Protocol and related amendments "do not meet certain of the transparency and cost allocation aspects of [*Order 1000*]'s minimum requirements." On September 24, the ISO answered Public Interest Organizations' and NEPOOL's comments.

⁵⁸ 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).

⁵⁹ "Public Interest Organizations" are Conservation Law Foundation, Environment Northeast, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

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 filing⁶⁰ (described in previous Reports) remains pending. As previously reported, the *Order 1000 Compliance Order* accepted the ISO-NE/PTO compliance filing as partially complying with *Order 1000*, but required changes to the compliance proposal. The primary change 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*⁶¹ 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 EL10-58,⁶² 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

⁶⁰ *ISO New England Inc.*, 143 FERC ¶ 61,150 (2013) ("*Order 1000 Compliance Order*").

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

⁶² *See PSEG Power Conn. LLC v. ISO New England Inc.*, 132 FERC ¶ 61,022 at P 6 (2010).

agreements are a more reliable means of determining the CNR Capability ratings, and declined to direct the use of the MW ratings in the CELT Report. MMWEC requested rehearing of the *Capability Clarifications Order* on February 24, 2011, but requested the FERC defer action on the merits of the rehearing request until completion of the process under which the CNR rating for Stony Brook is currently under review. MMWEC stated that if it was able to secure adequate relief, it would so inform the FERC and withdraw the rehearing request; if not, it would ask the FERC to address the merits of its rehearing request. The FERC issued on March 24, 2011 a tolling order affording it additional time to consider the MMWEC rehearing request, which remains pending before the FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

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

As previously reported, the FERC conditionally accepted two sets of Tariff revisions⁶³ proposed in response to the CFTC's Exemption Order (*see* Section XI below). 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"). 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.

Compliance Filing. On September 13, 2013, the ISO and NEPOOL jointly filed revisions to the FAP to establish that a letter of credit provided to the ISO to satisfy the "appropriate person" requirements of FAP Section II.A.5 must be in an amount equal to the difference between the Participant's total assets and \$5 million ("Compliance Changes"). In addition, as required by the August 30 Order, the ISO clarified that it will not require a customer to own physical assets in order to qualify under the "actively participating in the generation, transmission, or distribution of electric energy" prong of the "appropriate person" test, a clarification that did not require any specific changes to the FAP. The Compliance Changes were accepted by the FERC on October 16, 2013. Unless the October 16 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-NU: LCRAs (CTMEEC, Wallingford) (ER14-324 et al.)⁶⁴**

On November 5, the NU Companies submitted (1) a Notice of Cancellation of NUSCO's Localized Costs Responsibility Agreement ("LCRA") with Connecticut Municipal Electric Energy Cooperative ("CMEEC"); (2) a LCRA by and between the NU Companies and Connecticut Transmission Municipal Electric Energy Cooperative ("CTMEEC"); and (3) a new LCRA by and between the NU Companies and the Town of Wallingford

⁶³ *ISO New England Inc. and New England Power Pool Participants Comm.*, 144 FERC ¶ 61,169 (Aug. 30, 2013). Challenges, if any, to this order will be due on or before Sep. 30, 2013.

⁶⁴ Because 3 NU Companies' eTariffs are involved, the cancellation of the CMEEC LCRA generated 3 dockets: ER14-312 (CL&P); ER14-313 (PSNH); and ER14-315 (WMECO); the CTMEEC LCRA: ER14-318 (CL&P); ER14-319 (PSNH); and ER14-320 (WMECO); and the Wallingford LCRA: ER14-321 (CL&P); ER14-322 (PSNH); and ER14-324 (WMECO). The Convex Agreements were filed in ER14-326 (Wallingford); ER14-327 (CMEEC); and ER14-330 (CTMEEC).

Department of Public Utilities, Electric Division (“Wallingford”). In addition, the Northeast Utilities Service Company (“NUSCO”), as agent for CL&P, submitted an agreement with Wallingford under which CL&P will provide scheduling and dispatch services to Wallingford through the Connecticut Valley Exchange (“CONVEX”) dispatch center and amendments to the existing CMEEC and CTMEEC CONVEX Agreements. The Agreements were filed to reflect the fact that Wallingford will be procuring transmission service directly from the ISO, and to the extent necessary, from other New England TOs, rather than through CMEEC. A January 1, 2014 effective date was requested for each of the Agreements. Comments on these filings are due on or before November 26, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NU: Elimination of Unreserved Use Penalties (ER14-258)**

On November 1, NUSCO and the ISO filed amendments to Schedule 21-NU to eliminate unreserved use penalties and the associated penalty distribution methodology. The NU Companies concluded that the Schedule 21-NU unreserved use penalties no longer serve the purpose for which they were intended, create an unnecessary burden on customers associated with Schedule 21-NU point-to-point transmission service, and should be eliminated. An effective date of January 1, 2014 was requested. Comments on this filing are due on or before November 22. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **LGIA – BHE/Oakfield Wind Farm (ER14-63)**

On October 9, BHE filed a non-conforming LGIA (LGIA-ISONE/BHE-12-02) under Schedule 22 of the ISO Tariff to govern the interconnection of Evergreen Wind II’s 147.6 MW wind farm in Oakfield, Maine (the “Oakfield Project”). BHE reports that the LGIA does not conform to the *pro forma* LGIA because the revised LGIA is a four-party agreement (reflecting the separate ownership of certain interconnection facilities by Maine Gen Lead). An October 11, 2013 effective date was requested. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-BHE: Orono “B” and Stillwater “B” LSAs (ER13-2408)**

On October 31, the FERC accepted two non-conforming local service agreements (“LSAs”) under Schedule 21-BHE submitted September 20 by the ISO and Bangor Hydro. The LSAs reflect different rates from those in the form LSA in Schedule 21-BHE. The LSAs were accepted effective as of September 19, 2013, as requested. Unless the October 31 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-BHE: Black Bear HVGW LSA Cancellation (ER13-2383)**

On November 4, the FERC accepted a notice of cancellation of the Black Bear HVGW LSA, effective August 1, 2013, submitted by BHE and the ISO (“Filing Parties”). As previously reported, the Filing Parties stated that Veazie Hydroelectric Project (“Veazie”), located on the Penobscot River in central Maine, to which the LSA related, ceased operation in July 2013 in preparation for decommission and dismantling and BHE disconnected its transmission facilities from Veazie on July 31, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, the FERC accepted on September 24, 2012, the revised schedules and notices of cancellation filed by Green Mountain Power (“GMP”) in this proceeding, but suspended the provisions, subject to refund, and established hearing and settlement judge procedures.⁶⁵ In its September 24 order, the FERC stated that its “preliminary analysis indicates that Applicants’ proposed Schedules 21-GMP and 20A-GMP and notices of cancellation have not been shown to be just and reasonable, and ... raise issues of material fact that cannot be

⁶⁵ *ISO New England, Inc., Central Vt. Pub. Svc. Corp. and Green Mountain Power Corp.*, 140 FERC ¶ 61,239 (2012) (“*GMP Merger Order*”), *reh’g denied*, 142 FERC ¶ 61,146 (2013).

resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures we order.”⁶⁶ Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and WEC (“Cooperatives”)⁶⁷ were denied on February 25, 2013.⁶⁸ 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.⁶⁹

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 October 16, 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).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Capital Projects Report - 2013 Q3 (ER14-85)**

In a new matter since the last report, the ISO filed on October 15 its Capital Projects Report and Unamortized Cost Schedule covering the third quarter (“Q3”) 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: Alternative Technologies and Regulation Market (\$2,015,700); FCM Terminations and Retirements Project (\$779,900); and Control Room Visualization (\$284,100). Projects reported to have significant changes include (i) Simultaneous Feasibility Test and Market System Upgrade (\$551,800 *decrease*); (ii) Wind Integration (\$350,100 *increase*); (iii) HR and Payroll System Replacement (\$100,600 *increase*); (iv) Web Enhancements Phase II (\$140,000 *decrease*); (v) FCA8 Project (\$125,000 *decrease*); and (vi) Business Intelligence Phase III (\$106,000 *decrease*). On November 5, NU filed a doc-less motion to intervene and NEPOOL filed comments supporting the filing. 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).

- **Order 755 Regulation Market Progress Reports: 1st Quarterly Status Report (ER12-1643)**

Per its commitment in its July 19, 2013 request for an extension of time to October 1, 2014 to implement the regulation Market Rule changes submitted pursuant to Order 755, the ISO submitted its first informational quarterly progress report detailing the efforts made and milestones achieved in implementing the regulation market changes. In the first report, the ISO explained that progress toward implementing the regulation market changes has proceeded within the lower end of the estimated time that would be required to

⁶⁶ *Id.* at PP 21-22.

⁶⁷ 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.

⁶⁸ *ISO New England, Inc., Central Vt. Pub. Svc. Corp. and Green Mountain Power Corp.*, 142 FERC ¶ 61,146 (2013).

⁶⁹ *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.

meet the targeted October 1, 2014 effective date, with 3 of the first 8 development stages completed, and the fourth stage, software development, underway. The ISO's next quarterly progress report is due February 3, 2014. These status reports will not be noticed for public comment.

- **LFTR Implementation: 20th Quarterly Status Report (ER07-476; RM06-08)**

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

IX. Membership Filings

- **November 2013 Membership Filing (ER14-247)**

On October 31, NEPOOL requested that the FERC accept: (i) the memberships of Footprint Power Salem Harbor Development (Generation Sector, Group Seat); Pioneer Hydro Electric Co., Inc. (AR Sector, RG Sub-Sector, Small Group Member); Stetson Holdings, LLC [Related Person to First Wind Energy Marketing et al., AR Sector, RG Sub-Sector]; and Town Square Energy, LLC [Related Person to Twin Cities Power, Supplier Sector]; (ii) the termination of the Participant status of eKapital Investments LLC (Supplier Sector)(Oct 1, 2013); Reliable Power, LLC (Supplier Sector)(Nov 1, 2013); and University of Rhode Island (End User Sector, Oct 1, 2013); and (ii) the name changes of NRG Canal LLC (f/k/a GenOn Canal, LLC) and NRG Kendall LLC (f/k/a GenOn Kendall, LLC). Comments on this filing are due on or before November 21, 2013.

- **October 2013 Membership Filing (ER14-3)**

On October 24, the FERC accepted (i) the memberships of Black Bear SO, LLC [Related Person to Black Bear HVGW, Generation Sector, Group Seat]; Power Supply Services, LLC (AR RG Small Group Member); and the Town of Wallingford, Connecticut, Department of Public Utilities, Electric Division (Publicly Owned Entity Sector); (ii) the termination of the Participant status of Competitive Power Ventures, Inc. (Provisional Member, Related Person of CPV Towantic, Generation Sector Group Seat) (September 1, 2013); Freedom Logistics LLC (Related Person of PNE Energy Supply, Supplier Sector) (September 1, 2013); Maine Woods Pellet Company LLC and Athens Energy LLC (End User Sector) (October 1, 2013); and Merchant's Plaza, LLC and Merchant's Plaza Energy, LLC (End User Sector) (October 1, 2013); and (ii) the name changes of New Brunswick Energy Marketing Corporation (f/k/a New Brunswick Power Generation Corporation) and Brayton Point Energy, LLC (f/k/a/ Dominion Energy Brayton Point, LLC).

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: October 2013 (NP14-4)**

NERC submitted on October 30, 2013, its Find, Fix, Track and Report ("FFT") informational filing for the month of October 2013. The October FFT resolves 60 possible violations of 15 Reliability Standards that

posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁷⁰ The 16 Registered Entities involved each submitted a mitigation activities statement of completion. These filings are for information only and will not be noticed for public comment by the FERC.

- **Notice of Penalty: ISO-NE (\$5,000) (NP13-52)**

On September 30, NERC submitted a Notice of Penalty advising the FERC that ISO-NE and NPCC entered in a settlement agreement to resolve ISO-NE’s September 2, 2010 violation of BAL-002-0 R4.1 and R4.2 for its failure to recover Area Control Error (ACE) within 15 minutes. This was ISO-NE’s first reported violation of a mandatory NERC Reliability Standard. Citing a number of mitigating factors, NPCC assessed a \$5,000 penalty for the violation. In light of the FERC’ October 30 notice, pursuant to 18 C.F.R. § 39.7(e), the penalty became effective October 31, 2013.

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

On October 16, 2013, the FERC approved 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 filed by NERC on August 20. As previously reported, NERC stated that the revised Standard contained 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 (the order also approved a WECC regional reliability standard). The revised Standard will become effective April 1, 2014 (or the first day of the second quarter after regulatory approval). Unless the October 16 order is challenged, this proceeding will be concluded.

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

On September 19, 2013, the FERC issued a NOPR proposing to approve 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:⁷¹

- ▶ 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).

FERC also proposed to approve, with modifications, the associated implementation plans, Violation Risk Factors (“VRFs”) and Violation Severity Levels (“VSLs”). Finally, the FERC proposed to approve, as requested, the 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. FERD stated that the revised and new Standards will help ensure that verified data is available for power system planning and operational studies by requiring the verification of generator equipment needed to support Bulk-

⁷⁰ 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.

⁷¹ *Generator Verification Reliability Standards*, 144 FERC ¶ 61,205 (2013).

Power System reliability and enhance coordination of important protection system settings. Comments on the NOPR are due on or before November 25, 2013.⁷²

- **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 RM13-12 (*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.

⁷² The *Generator Verification Reliability Standards* NOPR was published in the *Fed. Reg.* on Sep. 24, 2013 (Vol. 78, No. 185) pp. 58,492-58,500.

- **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, 2013.⁷³ NERC stated that the changes respond to FERC directives in Order 693⁷⁴ to develop modifications to BAL-003-0 that: (1) include Levels of Non-Compliance; (2) determine the appropriate periodicity of frequency response surveys necessary to ensure that Requirement R2 and other requirements of the Reliability Standard are being met, and to modify Measure M1 based on that determination and (3) define the necessary amount of Frequency Response needed for Reliable Operation for each balancing authority with methods of obtaining and measuring that the frequency response is achieved. Specifically, the Revised Standard is designed to ensure that each of the Interconnections have sufficient Frequency Response to guard against underfrequency load shedding (“UFLS”) due to an event in that Interconnection. NERC requested an effective date that is the first day of the first calendar quarter that is 12 months following the effective date of a Final Rule in this docket. Comments on this NOPR were due September 27, 2013,⁷⁵ and were filed by NERC, BPA, Electricity Consumers Resource Council, jointly by EEI, APPA, NRECA, and EPSA, MISO, ISO/RTO Council, and Arizona Public Service. NERC filed reply comments on October 15, 2013. This NOPR is pending before the FERC.

- **Order 786: TPL-001-4 (footnote ‘b’) (RM13-9; RM12-1)**

On October 17, the FERC approved TPL-001-4.⁷⁶ As previously reported, NERC had a long standing compliance obligation to address FERC concerns with footnote ‘b’.⁷⁷ 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)). Order 786 also approves the consolidation of 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. Finally, the FERC directed NERC to modify Reliability Standard TPL-001-4 to address the concern that the Standard could exclude planned maintenance outages of significant facilities from future planning assessments and directed NERC to change the TPL-001-4, Requirement R1 Violation Risk Factor from medium to high.⁷⁸ Order 786 will become effective December 23, 2013.⁷⁹

- **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.⁸⁰ Comments on this NOPR were due on or before August 27, 2013⁸¹ and were filed by NERC, Canadian Electricity Association, Dominion,

⁷³ *Frequency Response and Frequency Bias Setting Rel. Std.*, 144 FERC ¶ 61,057 (July 18, 2013)

⁷⁴ *Order 693* at P 375.

⁷⁵ The NOPR was published in the *Fed. Reg.* on July 29, 2013 (Vol. 78, No. 145) pp. 45,479-45,490.

⁷⁶ *Trans. Planning Rel. Standards*, 145 FERC ¶ 61,051 (2013) (“*Order 786*”).

⁷⁷ *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.

⁷⁸ *Order 786* at P 3.

⁷⁹ *Order 786* was published in the *Fed. Reg.* on Oct. 23, 2013 (Vol. 78, No. 205) pp. 63,036-63,052.

⁸⁰ *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, 143 FERC ¶ 61,251 (Jun. 20, 2013).

⁸¹ The NOPR was published in the *Fed. Reg.* on June 28, 2013 (Vol. 78, No. 125) pp. 38,851-38,867.

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.⁸² 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 were due on or before September 23, 2013.⁸³ Comments were submitted by NERC, Bureau of Reclamation, Duke, G&T Cooperatives,⁸⁴ Idaho Power Company, ITC, and Oncor. On October 30, 2013, NERC submitted an errata to the Implementation Plan for proposed PRC-005-2. The NOPR is pending before the FERC.

- **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-002.⁸⁵ 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, 2013,⁸⁶ 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.⁸⁷ 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*

⁸² *Protection System Maintenance Reliability Standard*, 144 FERC ¶ 61,055 (July 18, 2013) (“*PRC-005-2 NOPR*”).

⁸³ The *PRC-005-2 NOPR* was published in the *Fed. Reg.* on July 24, 2013 (Vol. 78, No. 142) pp. 44,475-44,483.

⁸⁴ “G&T Cooperatives” are Associated Electric Cooperative, Basin Electric Power Cooperative, and Tri-State Generation and Transmission Association.

⁸⁵ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) (“*BAL-002-1a Interpretation Remand NOPR*”).

⁸⁶ 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.

⁸⁷ *Version 5 Critical Infrastructure Protection Reliability Standards*, 143 FERC ¶ 61,055 (2013) (“*CIP Version 5 NOPR*”).

NOPR were due June 24, 2013.⁸⁸ 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.

As previously reported, as requested, the FERC granted an extension of the compliance deadline for the Version 4 CIP Reliability Standards from April 1, 2014 to October 1, 2014.⁸⁹ On September 30, as corrected on October 1, NERC filed errata changes to: (i) replace the term “intermediate devices” with “Intermediate Systems” in the definitions for EACMS and Interactive Remote Access; and (ii) correct typographical errors identified in the corresponding VSLs. And, since the last report, NECR submitted an informational filing describing the program that will be conducted during the transition from the Version 3 to the Version 5 Standards. The Transmission Program has 3 goals: (1) to improve the industry’s understanding of the technical security challenges to be addressed in order to comply with CIP Version 5; (2) to provide the industry with a clear path and approach to transition from CIP Version 3 to CIP Version 5 that includes expectations for compliance and enforcement; and (3) to provide stakeholders with an understanding of what technical and compliance-related resources and effort are needed to transition to and manage compliance with CIP Version 5. The informational filing was not noticed for public comment.

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

Other than a pending request for re-hearing of the FERC’s June 13, 2013 order in this proceeding,⁹⁰ which deferred the effective date for the revised BES definition as approved in *Order Nos. 773*⁹¹ and *773-A*⁹² to July 1, 2014 (rather than July 1, 2013), this proceeding has largely been concluded. The Pacific Northwest Generating Cooperative (“PNGC”) requested rehearing of the *June 13 Order*, asserting that, in granting the request, the FERC incorrectly stated that utilities must apply the BES definition prior to seeking a local distribution determination from the FERC and, consequently, inappropriately postponed filing of local distribution filings until the BES definition becomes effective. The FERC issued a tolling order on August 7, 2013 affording it additional time to consider the PNGC rehearing request, which remains pending before the FERC. Also, a compliance filing to modify Exclusion E3 of the BES Definition, to remove the 100 kV minimum operating voltage in the local network definition, is expected to be filed in late November 2013.

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

On November 1, the FERC largely accepted NERC’s proposed 2014 Business Plan and Budget, as well as the 2014 Business Plans and Budgets for the Regional Entities, including NPCC.⁹³ As previously reported, NERC’s 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. Based on the information contained in the NERC Application, the FERC rejected NERC’s proposal to allocate \$3.8 million to “restricted working capital” to offset future liabilities under NERC’s lease agreements. Instead, the FERC directed NERC to submit a compliance filing within 30 days of the November 1 order indicating how NERC will

⁸⁸ The *CIP Version 5 NOPR* was published in the *Fed. Reg.* on Apr. 24, 2013 (Vol. 78, No. 79) pp. 24,107-24,124.

⁸⁹ *Version 4 Critical Infrastructure Protection Reliability Standards and Version 5 Critical Infrastructure Protection Reliability Standards*, 144 FERC ¶ 61,123 (2013).

⁹⁰ *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, 143 FERC ¶ 61,231 (2013) (“*June 13 Order*”), *reh’g requested*.

⁹¹ *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).

⁹² *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).

⁹³ *N. Am. Elec. Reliability Corp.*, 145 FERC ¶ 61,097 (2013).

allocate the \$3.8 million consistent with NERC's Working Capital and Operating Reserve Policy. Challenges, if any, to the November 1 order are due on or before December 2, 2013.

- **Market Implications of Frequency Response and Frequency Bias Setting Requirements (AD13-8)**

On July 18, 2013, the FERC solicited comment on the potential market and commercial impacts of certain of the requirements of the proposed Reliability Standard BAL-003-1 (Frequency Response and Frequency Bias Setting) (*see* RM13-11 above).⁹⁴ The FERC did not propose changes to proposed Reliability Standard BAL-003-1. Rather, the FERC indicated the comments would inform its consideration and coordination of the requirements of the proposed Standard with tariffs and markets rules subject to its jurisdiction.⁹⁵ Comments were due on October 18, 2013. Comments were submitted by NERC, Arizona Public Service, BPA, EEI, EPSA, the Electricity Consumers Resource Council, the Electricity Storage Association (“ESA”), MISO and PJM, and PG&E. This matter is pending before the FERC.

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,⁹⁶ 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 were considered at the September 13 meeting, and submitted in a compliance filing submitted 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.⁹⁷ If there are questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

⁹⁴ *Market Implications of Frequency Response and Frequency Bias Setting Reqs.*, 144 FERC ¶ 61,058 (2013).

⁹⁵ *Id.* at P 2.

⁹⁶ 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>.

⁹⁷ 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: Edison Mission / NRG (EC14-14)**

On October 25, NRG Energy Holdings Inc. (“NRG”) and Edison Mission Energy (“EME”) and its public utility subsidiaries requested approval of a transaction whereby NRG will acquire substantially all of EME’s assets, including EME’s direct and indirect interests in EME’s public utility subsidiaries and other generation-owning entities, in exchange for cash and stock. Applicants asked for a FERC order by January 31, 2014. Comments on this filing are due on or before December 9, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: Capital Power/Emera (Bridgeport & Tiverton) (EC13-151) (Rumford) (EC13-152)**

As previously reported, on September 19 and 20, 2013, a number of Capital Power affiliates, including Capital Power Investments LLC (“CP Investments”), Tiverton Power LLC (“Tiverton”), Bridgeport Energy LLC (“Bridgeport”), Rumford Power Inc. (“Rumford”) and CP Energy Marketing (US) Inc. (together, “Capital Power”) and Emera Incorporated (“Emera”) requested FERC authorization for the sale of 100 percent of the equity interests in Rumford, Tiverton and Bridgeport to Emera and the transfer of a Capacity Supply Agreement from CP Energy Marketing to Emera (collectively, the “Transactions”). Applicants have asked for a FERC order by November 1, 2013. No comments on these filings (separately submitted for business reasons related to the Rumford Purchase and Sale Agreement and therefore separately docketed) were submitted on or before the November 4, 2013 comment date and these matters are pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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, 2013.⁹⁸ 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),⁹⁹ 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).¹⁰⁰ 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

⁹⁸ *Bangor Hydro Elec. Co. and Me. Pub. Serv. Co.*, 144 FERC ¶ 61,030 (2013) (“*BHE/MPS Merger Order*”).

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

¹⁰⁰ *Fore River Dev., LLC*, 133 FERC ¶ 61,248 (2010).

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).

- **NSTAR/HQUS Use Rights Transfer Agreement (ER14-244)**

On October 31, NSTAR filed an Agreement between NSTAR and H.Q. Energy Services (U.S.), Inc. ("HQUS") that transfers, for an additional year, NSTAR's transmission capacity Use Rights on the HQ Interconnection.¹⁰¹ Once transferred, HQUS may use or market and sell those Use Rights at its sole discretion, consistent with the Restated Use Agreement and/or in compliance with the ISO-NE OATT and OASIS posting requirements. NSTAR retains all of its IRH management committee voting rights, financial obligations and all other rights and responsibilities provided for in its Support Agreements and the Restated Use Agreement that are not directly related to the Use Rights and their exercise by HQUS. A January 1, 2014 effective date was requested. Comments on this filing are due on or before November 21, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Bangor Hydro (Emera Maine) Notice of Succession to MPS OATT (ER14-218)**

On October 29, Bangor Hydro (which will be renamed Emera Maine when, on January 1, 2014, Maine Public Service ("MPS") will be merged with and into it) filed a notice of its intent to succeed to the MPS OATT, and filed a revised OATT reflecting that succession. As previously reported, the FERC approved the merger of MPS and BHE and waiver of its regulations to permit the successor entity to maintain two OATTs on file with the FERC – one for the former MPS transmission system and one for the former BHE transmission system (*see* EC13-81 above).¹⁰² A January 1, 2014 effective date for the revised OATT was requested. Comments on this filing are due on or before November 19, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **SGIA – NGrid / Vuelta Solar (ER14-183)**

On October 25, New England Power Company ("NGrid") filed a non-conforming SGIA (IA-NEP-45) to govern the interconnection of Vuelta's 5 MW photovoltaic generating facility (the "Vuelta Plant"), located in East Brookfield, Massachusetts, which will sell all of its output to Massachusetts Electric Company pursuant to a power purchase agreement. NGrid reports that the SGIA generally conforms to the *pro forma* SGIA set forth in Schedule 23 of ISO's OATT, with only minor modifications. The SGIA is non-conforming in that the ISO is not a party (the ISO having determined that Vuelta Solar's interconnection subject to the SGIA does not constitute an interconnection request under the OATT and is therefore not subject to Schedule 23 of the OATT. A September 17, 2013 effective date was requested. Comments on this filing are due on or before November 15, 2013. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **E&P Agreement CMP/Western Maine Renewables (ER14-35)**

On October 4, CMP filed a Design Engineering & Procurement Agreement ("E&P Agreement") with Western Maine Renewables, LLC (designated as service agreement CMP-EP-5 under CMP's eTariff files). The E&P Agreement sets forth the terms and conditions under which CMP will provide engineering and procurement services to Western Maine Renewables in connection with Western Maine's planned 100 MW wind farm in Moscow, Maine. CMP requested that the E&P Agreement be accepted for filing as of May 21,

¹⁰¹ Pursuant to the "Third Amendment And Restated Use Agreement With Respect To Use Of Quebec Interconnection," ("Restated Use Agreement"), NSTAR has rights to use a portion of the transfer capability on the Phase I and Phase II high-voltage, direct-current transmission facilities ("HQ Interconnection"), which are known as "Use Rights". The Agreement continues, with modifications summarized in the filing, the First Transfer Agreement accepted in a series of orders in Docket No. ER09-207. *See NSTAR Elec. Co.*, 125 FERC ¶ 61,371 (2008).

¹⁰² *Bangor Hydro Elec. Co.*, 144 FERC ¶ 61,030 (2013); *Bangor Hydro Elec. Co.*, 144 FERC ¶ 61,031 (2013).

2013. Comments on this filing were due on or before October 25, 2013, and none were filed. This matter is pending before the FERC.

- **VELCO Floyd Project Cost Recovery Deferral (ER14-12)**

On October 2, 2013, VELCO requested authorization to defer for future recovery costs associated with the VELCO Floyd Project (company-wide effort to evaluate and reduce operating costs, streamline processes, and make VELCO a leaner and more efficient business). VELCO requested authorization to begin the deferral December 31, 2013. No comments on this filing were submitted on or before the October 23 comment date and this filing is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **SGIA – CMP/Spruce Wind (ER14-11)**

On October 1, 2013, CMP filed an amended SGIA with Spruce Wind, which replaces a previously executed SGIA to reflect the term and milestone dates for the SGIA and correct other errors in the SGIA that provides for the interconnection of Spruce Wind's ten 2 MW wind turbine generators located along the Woodstock, Maine Spruce Mountain ridgeline. An October 2, 2013 effective date was requested. No comments on this filing were submitted on or before the October 21 comment date and this filing 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. An executed version of the agreement was filed on October 3, 2013. No comments on this filing or the executed agreement 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).

- **FERC Enforcement Action: Staff Notices of Alleged Violations (IN__-__)**

Constellation. On October 4, 2013, the FERC issued a notice that Staff has preliminarily determined that Constellation Energy Commodities Group, Inc. violated 18 CFR § 35.41(b) and the parallel provision of the California ISO ("CAISO") tariff, § 37.5.1, by not providing accurate information to CAISO.

Recall that Notices of Alleged Violations ("NoVs") are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff's conclusions regarding the subject's conduct.¹⁰³ NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

¹⁰³ See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (2009), *order on requests for reh'g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

- **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”,¹⁰⁴ 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).

- **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.¹⁰⁵ Bangor Hydro requested a limited waiver from the FERC’s Standards of Conduct requirements,¹⁰⁶ 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)**

On October 17, the FERC denied Green Mountain Power’s request for a continued waiver of the FERC’s Standards of Conduct requirements, finding that, based on Green Mountain’s changed circumstances (i.e., its merger with CVPS), it no longer qualifies for a waiver of the FERC’s Standards of Conduct requirements.¹⁰⁷ On November 1, 2013, Green Mountain requested, and on November 6 the FERC granted, an extension of time, to December 17, 2013, to comply with the FERC’s order. Unless the October 17 order is challenged, this proceeding will be concluded.

¹⁰⁴ *Midwest Indep. Trans. Sys.Op., Inc.*, 141 FERC ¶ 63,021 (2012) (“*MISO Initial Decision*”) at P 923.

¹⁰⁵ *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (2011) (“*BHE Standards of Conduct Order*”).

¹⁰⁶ See 18 C.F.R. § 358 (2011) *et seq.*

¹⁰⁷ *Green Mountain Power Corp. and Central Vt. Pub. Svc. Corp.*, 145 FERC ¶ 61,039 (2013). In addition, the FERC dismissed, as moot, an earlier request for waiver by CVPS.

- **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 were due on or before September 12, 2013. Protests were filed by Boltonville Hydro Associates, Otter Creek Solar, Winooski One Partnership, and the Solar Energy Industries Association. On September 27, BED filed an answer to the protests filed. On October 11, Winooski answered BED’s September 27 answer. This matter is pending before the FERC.

XII. Misc. - Administrative & Rulemaking Proceedings

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

On September 25, 2013, the FERC held a technical conference on centralized capacity markets. The purpose of the technical conference was 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 technical conference provided 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 focused on the goals and objectives of existing centralized capacity markets (e.g., resource adequacy, long-term price signals, fixed-cost recovery, etc.) and examined how specific design elements are accomplishing existing and emerging goals and objectives. Comments and presentations have been posted in eLibrary under Docket No. ER13-7. On October 25, the FERC issued a notice inviting post-tech conference comments on any or all of questions attached to the Notice regarding capacity markets in the three Northeast Control Areas. Those comments must be filed on or before December 9, 2013.

- **Zero Rate Reactive Power Rate Schedules (AD14-1)**

On October 17, 2013, the FERC issued a notice (i) noting that it had found that, on a prospective basis, for any jurisdictional reactive power service (including within-the-deadband reactive power service) provided by both new and existing generators, the rates, terms, and conditions for such service must be pursuant to a FERC-filed rate schedule, *even when that rate schedule provides no compensation for such service*;¹⁰⁸ and (ii) indicating that a staff-led workshop, open to the public at a time and date to be announced, would be held to explore the mechanics of public utilities filing reactive power rate schedules for which there is no compensation. A subsequent notice will be issued in this docket setting forth the details of the workshop.

- **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

¹⁰⁸ See *Chehalis Power Generating, L.P.*, 145 FERC ¶ 61,052 (Oct. 17, 2013).

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.

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

On June 26, WIRES¹⁰⁹ 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, more than 16 sets of comments have been filed. Since the last report, WIRES submitted on October 3 a summary of the comments and analysis filed to that point in the proceeding. On October 16, the Organization of PJM States noted its position that the WIRES petition did not present a compelling reason for the FERC to initiate a generic rulemaking proceeding or abandon its Discounted Cash Flow methodology. On November 5, a letter from US Senator Angus King, urging the FERC to establish a more certain regulatory environment that provide investors the level of confidence necessary to support and encourage needed infrastructure investments, was posted in eLibrary. This matter is pending before the FERC.

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

On January 17, 2013, the FERC issued a NOPR¹¹⁰ 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.

¹⁰⁹ 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.

¹¹⁰ *Small Generator Interconnection Agreements and Procedures*, 142 FERC ¶ 61,049 (2013) (“*SGIA/SGIP NOPR*”).

Speaker materials are available in eLibrary. Comments on the *SGIA/SGIP NOPR* were due June 3, 2013.¹¹¹ 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.

- **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 784¹¹² 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, 2013.¹¹³ 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. On September 16, 2013, the FERC issued a tolling order affording it additional time to consider the requests for clarification, which remain pending before the FERC.

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

Rehearing of portions of *Order 771* has been requested and remains pending. As previously reported, the FERC issued *Order 771* on December 20, 2012.¹¹⁴ *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, 2013.¹¹⁵ 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*.¹¹⁶ *Order 771-A* addressed only those issues that needed to be answered on an expedited basis to allow affected entities to comply

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

¹¹² *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*").

¹¹³ *Order 784* was published in the *Fed. Reg.* on July 30, 2013 (Vol. 78, No. 146) pp. 46,178-46,237.

¹¹⁴ *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).

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

¹¹⁶ *Availability of E-Tag Info. to Comm'n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (2013) ("*Order 771-A*").

with the requirement to ensure FERC access in a timely manner to the e-Tags covered by *Order 771*.¹¹⁷ The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

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

Requests for rehearing and/or clarification of *Order 764-A* remain pending before the FERC. As previously reported, the FERC, in *Order 764-A*,¹¹⁸ affirmed its basic *Order 764* determinations,¹¹⁹ 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;¹²⁰ (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;¹²¹ and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.¹²² 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. Since the last report, the FERC issued on October 15, 2013, a notice of filing procedures for the *Order 764* eTariff filings. 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 NOPR¹²³ 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

¹¹⁷ *Order 771-A* clarified that: (1) Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of *Order 771*; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the FERC in the CC field; (3) the requirement for the FERC to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the FERC will deem all e-Tag information made available to the FERC pursuant to *Order 771* as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the FERC is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure FERC access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

¹¹⁸ *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (2012) ("*Order 764-A*"), *reh'g requested*.

¹¹⁹ *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) ("*Order 764*"), *order on reh'g*, 141 FERC ¶ 61,232 (2012), *reh'g requested*.

¹²⁰ *Id.* at P 15.

¹²¹ *Id.* at P 19.

¹²² *Id.* at P 23.

¹²³ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 144 FERC ¶ 61,026 (Jul. 18, 2013) ("*WEQ Version 003 Standards NOPR*").

Order Nos. 676, 676-A, 676-E and 717 and add consistency. In addition, there are modifications to the Coordinate Interchange standards to compliment recent updates to e-Tag specifications, modifications to the Gas/Electric Coordination standards to provide consistency between the two markets, and re-organized and revised definitions to create a standard set of terms, definitions and acronyms applicable to all NAESB WEQ standards. The Version 003 Standards include the Standards addressed in *Order 676-G* below and the recent Smart Grid Standards. Comments on the WEQ Version 003 Standards NOPR were due on or before September 24, 2013,¹²⁴ and were filed by 11 parties, including APPA, EEI, and the IRC. This matter is pending before the FERC.

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

On February 21, 2013, the FERC issued *Order 676-G*,¹²⁵ 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”¹²⁶ and “represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F.”¹²⁷ *Order 676-G* became effective May 6, 2013.¹²⁸ 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, 2013.¹²⁹ New England’s *Order 676-G* compliance changes were filed on August 7, 2013 and accepted September 4, 2013.

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

¹²⁴ 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.

¹²⁵ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-G, 142 FERC ¶ 61,131 (2013) (“*Order 676-G*”).

¹²⁶ *Id.* at P 1.

¹²⁷ *Id.* at P 33.

¹²⁸ *Order 676-G* was published in the *Fed. Reg.* on Mar 7, 2012 (Vol. 78, No. 45) pp. 14,654-14,664.

¹²⁹ 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)”.

system.¹³⁰ 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 prove inadequate to promote reliable service or operational planning on natural gas pipelines and electric transmission systems, it may revisit the need to require certain communications or information sharing between transmission operators in the future. Comments on this NOPR were due August 26, 2013¹³¹ 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, the Natural Gas Supply Association (“NGSA”), and the New England Natural Gas Industry.¹³² On September 30, NGSA submitted reply comments. This matter is pending before the FERC.

- **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.¹³³ 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. Since the last report, each of the ISO/RTOs appeared before the FERC at its October 17 open meeting. RTO/ISO comments/presentations from the October 17 meeting are posted on eLibrary. 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

¹³⁰ *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*”).

¹³¹ 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.

¹³² 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.) .

¹³³ *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.

<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 October 18. 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.

- **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. The most recent gas-related enforcement activity was in the following two proceedings:

<u>Company</u>	<u>Alleged Violation(s)</u>	<u>Civil Penalty/Disgorgement</u>
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 ¹³⁴ \$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 ¹³⁵ \$25 million (civil penalty) \$800,000 (disgorgement)

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

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

¹³⁴ *Enterprise Texas Pipeline LLC*, 144 FERC ¶ 61,156 (Aug. 26, 2013).

¹³⁵ *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

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: ER11-4336¹³⁶
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: RM10-23¹³⁷
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; Respondent's brief, September 25, 2013. The remaining briefing schedule calls for Intervenor's in Support of Respondent's Brief to be filed by 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; EL10-50¹³⁸
Appellants: NEPGA, NSTAR, MMWEC/NHEC, VT DPS/VT PSB, NRG

Petitions for review of FERC's orders in the FCM Re-Design proceeding were filed by NEPGA on January 27, 2012; by NSTAR on February 3, 2012; by MMWEC/NHEC on February 10, 2012; by VT DPS/VT PSB on March 1, 2012; and by NRG on March 16, 2012. By orders dated February 7, 2012, February 27, 2012, March 2, and March 22, 2012, the Court consolidated the first four cases, with Case No. 12-1060 remaining the lead Case No. On February 29, 2012, the FERC filed an unopposed motion to hold the NEPGA, NSTAR, MMWEC/NHEC petitions in temporary abeyance pending expiration of the statutory deadline for the filing of petitions for review of the challenged orders. On May 7, 2012, NEPOOL notified the Court of its intent to be aligned as an intervenor in support of NSTAR (12-1074) and MMWEC/NHEC (12-1085), reserving the right to join in an intervenors' brief in support of those petitioners. On October 9, briefs were filed by MMWEC/NHEC, NSTAR, and NEPGA. Supporting petitions were filed on October 23 by NECPUC and PSEG. NEPOOL indicated that it would not join in any intervenor's brief. On January 7, 2013, FERC filed its Respondent Brief. Intervenor for Respondent Briefs were filed on January 22, 2013 by NEPGA and jointly by the CT PURA, HQ US, NICC, NSTAR, and NECPUC. Reply Briefs for Generator Petitioners and Distribution Utility Petitioners were filed on February 5, 2013. Final Briefs were submitted on March 5, 2013. Since the last report, on October 30, a joint motion was filed proposing an allocation of oral argument time, which is scheduled for November 19, 2013.

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

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

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

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093)
Underlying FERC Proceedings: RM10-17-000¹³⁹
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 was held on September 23, 2013 and this matter is pending before the DC Circuit.

- **PPL EnergyPlus, LLC v. Nazarian, (D. MD - MJG-12-1286)**

On September 30, the United States District Court for the District of Maryland found that a Maryland Public Service Commission ("MD PSC") order directing three Maryland distribution utilities to enter into a 'contract for differences' for capacity and energy in the PJM control area (the "CfD") with a gas-fired merchant generator selected by the MD PSC (the "MD PSC Order") violated the Supremacy Clause of the United States Constitution and cannot be enforced.¹⁴⁰

The MD PSC Order,¹⁴¹ after finding that the long-term demand for electricity in Maryland, and specifically in the transmission-congested area encompassing portions of Maryland and the District of Columbia ("SWMAAC Zone"), compelled it to order new generation in that Zone by 2015, directed the utilities to negotiate and enter into the CfD with CPV Maryland, LLC ("CPV"),¹⁴² which had been selected by the MD PSC to provide that generation pursuant to a MD PSC-implemented competitive bid process ("RFP"). Under the CfD, CPV was guaranteed a fixed price for its capacity and energy sales in the PJM markets. The CfD required CPV be paid by the utilities for any revenue shortfall below the fixed contract price and that CPV pay the utilities any excess revenue above the fixed contract price. Any losses would be recouped from, and any gains passed onto, those utilities' standard offer service customers.¹⁴³ The MD PSC Order was challenged by a number of PPL companies, PSEG Power, and Essential Power ("Plaintiffs") on the grounds that the Order violated the U.S. Constitution's Supremacy Clause and "dormant" Commerce Clause,¹⁴⁴ and that the MD PSC had deprived Plaintiffs of their federal statutory rights ("Section 1983 Claim").

The District Court held that the MD PSC Order, through the CfD, set or established the ultimate price to be received by CPV for its wholesale energy and capacity sales.¹⁴⁵ However, by setting that price, the MD PSC encroached on the FERC's exclusive authority to set wholesale energy and capacity prices.¹⁴⁶ The FERC, the District Court stated, "has exclusive domain in that field and has fixed the price for wholesale energy and capacity sales in the PJM Markets as the market-based rate produced by the auction processes approved by FERC and utilized by PJM."

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

¹⁴⁰ *PPL EnergyPlus, LLC v. Nazarian*, ___ F.Supp.2d ___ (D. Md. Sep. 30, 2013); 2013 U.S. Dist. LEXIS 140210, 2013 WL 5432346 ("District Court Order").

¹⁴¹ MD PSC Order No. 84815 (Apr. 12, 2012).

¹⁴² *Id.* at pp 29-30.

¹⁴³ *See id.* at pp. 26-27.

¹⁴⁴ The "dormant commerce clause" is a doctrine developed by the U.S. Supreme Court that limits states' power to improperly discriminate against interstate commerce, even in the absence of affirmative federal law/regulation, or where federal law/regulation is "dormant".

¹⁴⁵ *District Court Order* at *132.

¹⁴⁶ *Id.* at *133.

While Maryland may retain traditional state authority to regulate the development, location, and type of power plants within its borders, the scope of Maryland's power is necessarily limited by FERC's exclusive authority to set wholesale energy and capacity prices under, *inter alia*, the Supremacy Clause and the field preemption doctrine.¹⁴⁷ Based on this principle, Maryland cannot secure the development of a new power plant by regulating in such a manner as to intrude into the federal field of wholesale electric energy and capacity price-setting.¹⁴⁸

Accordingly, the MD PSC Order was found to have violated the Supremacy Clause by virtue of field preemption, and the PSC was enjoined from enforcing the Generation Order, which includes the requirement that the Maryland utilities enter into the CfD with CPV.¹⁴⁹

With respect to Plaintiffs' remaining claims (the dormant Commerce Clause and Section 1983 Claims), the Court denied both. The Court denied the dormant Commerce Clause claim finding that (i) the MD PSC Order did not affect the ability of other market participants to sell energy and capacity in the PJM Markets and (ii) the addition of a state-sponsored market participant physically located within the SWMAAC Zone did not impose a burden on interstate commerce.¹⁵⁰ The Section 1983 Claim was not viable, the Court found, because "the Supremacy Clause is not a source of substantive individual rights that could support an action brought pursuant to Section 1983."

- **PPL EnergyPlus, LLC v. Hanna (D. NJ 11-745)**

On October 11, the United States District Court for the District of New Jersey issued an analogous decision declaring unconstitutional (and therefore null and void) New Jersey's Long Term Capacity Agreement Pilot Program Act ("LCAPP").¹⁵¹

LCAPP authorized, pursuant to New Jersey Public Service Board ("NJ PSB") oversight, the construction of several gas-fired generators in or near New Jersey "[to] ensure[] sufficient generation is available to the region, and thus the users in [New Jersey] in a timely and orderly manner".¹⁵² and to address a perceived lack of incentives under PJM's reliability pricing model ("RPM") to achieve that goal. Like the MD PSC Order, to accomplish those goals, LCAPP required New Jersey's four electric distribution companies to enter into NJ PSB-issued "standard offer capacity agreements" or "SOCAs" with NJ PSB-selected generators ("LCAPP generators"), obligating the LCAPP generators to construct their facilities and participate in the RPM. The utilities were obligated to pay for any RPM revenue shortfall below the LCAPP generator's NJ PSB-approved development costs, while the LCAPP generators were obligated to pay back any excess RPM Auction revenues received above the generator's NJ PSB-approved development costs.¹⁵³ Any losses would be recouped from, and

¹⁴⁷ "Field preemption" is a doctrine based on the Supremacy Clause of the U.S. Constitution that holds that any federal law, including regulations of a federal agency, takes precedence over any conflicting state law. Preemption can be implied when federal law/regulation "occupies the field" in which the state is attempting to act/regulate. Field preemption occurs when there is "no room" left for state regulation. Accordingly, a state may not pass a law or take any action in a field, like the regulation of wholesale power sales, pervasively regulated by federal law/regulation.

¹⁴⁸ *Id.* at *102.

¹⁴⁹ The ability of the Maryland utilities and CPV to enter into the CfD absent state directive was not directly challenged by the Plaintiffs and was not addressed by the District Court Order.

¹⁵⁰ The Court also held that, even if the Generation Order could be viewed as placing or imposing some burden on interstate commerce, the burden would be *de minimis*, and thus, not clearly excessive in relation to the benefits to Maryland.

¹⁵¹ *PPL EnergyPlus, LLC v. Hanna*, __ F.Supp.2d __ (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, ("*NJ Order*").

¹⁵² N.J.S.A. § 48:3-98(d)(2).

¹⁵³ *NJ Order* at *72-73.

any gains passed onto, those utilities' standard offer service customers. LCAPP and its implementation was challenged by PPL, Atlantic City, Calpine, Exelon, and PSEG companies.

The Court found LCAPP and its implementation unconstitutional under both the field and conflict preemption doctrines of the Supremacy Clause.¹⁵⁴ With respect to the field preemption doctrine, the Court stated “[a]lthough the State of New Jersey and the NJ PSB retained the responsibility for the siting and construction of power plants, they are required to exercise this responsibility without interfering with the [FERC]’s exclusive authority to regulate wholesale sales of electricity in interstate commerce.”¹⁵⁵ By establishing the price that LCAPP generators would receive for their sales of capacity, LCAPP “supplants the Federal Power Act and intrudes upon the FERC’s exclusive jurisdiction over interstate wholesale power rates.”¹⁵⁶ The Court rejected arguments that the SOCAs were purely financial contracts, and thereby did not intrude upon the FERC’s exclusive jurisdiction. “[T]he SOCAs are contingent upon the LCAPP generators’ successful sale of capacity to PJM” and “expressly condition payment on physical performance.”¹⁵⁷ Accordingly, LCAPP “invades the field occupied by Congress and is [field] preempted by the Federal Power Act.”¹⁵⁸ The Court also found that LCAPP and the SOCAs were unconstitutional under the conflict preemption doctrine of the Supremacy Clause.¹⁵⁹ “From reviewing the entire scheme of the RPM process, it is clear that [LCAPP] [and the SOCA’s imposition of a government-imposed price] poses as an obstacle to the [FERC]’s implementation of the RPM.”¹⁶⁰

¹⁵⁴ The Court denied Plaintiffs’ dormant Commerce Clause claim that the “community benefit” points awarded to New Jersey generators unconstitutionally favored in-state enterprises over out-of-state enterprises (effectively prohibiting out-of-state generators from competing to be LCAPP-eligible generators), finding it reasonable that the NJ PSB would incentivize construction in areas where reliability concerns are in flux. *Id.* at *110.

¹⁵⁵ *Id.* at *104.

¹⁵⁶ *Id.* at *103.

¹⁵⁷ *Id.* at *102. Physical performance includes plant construction, provision of available capacity, bidding into and clearing in RPM and the PJM markets.

¹⁵⁸ *Id.* at 103.

¹⁵⁹ “Conflict preemption” occurs where there is a conflict between a state law and a federal law. (“[E]ven if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute.”). Such a conflict occurs when “the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The court must look to “the entire scheme of the statute” and determine “[i]f the purpose of the [federal] act cannot otherwise be accomplished--if its operation with its chosen field [would] be frustrated and its provisions be refused their natural effect. Where a state law conflicts with a federal law, the Court does not balance the competing federal and state interests. Any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” *Id.* at 105-106.

¹⁶⁰ *Id.* at 106.

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