

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of January 8, 2014

The following activity, as more fully described in the attached litigation report, has occurred since the report dated December 4, 2013 was circulated. New matters/proceedings since the last report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints

* 1	NEPGA FCA8 NPRR Complaint (EL14-17)	Jan 8	NEPGA files complaint, requesting 13-day comment period (ending Jan 21) and FERC order by Jan 27 either addressing the merits of its complaint or delaying FCA8 to Mar 24 to allow for a FERC order by Mar 17; NEPOOL intervenes
1	FCM Administrative Pricing Rules Complaint (EL14-7)	Dec 16 Dec 31	NEPGA, NextEra answer ISO's Nov 27 Answer; Energy New England and Participating Municipal Systems submit comments opposing Complaint; EPSA submits comments supporting Complaint NESCOE files answer to NEPGA Dec 16 Answer
2	NEPGA Resource Performance Obligations Complaint (EL13-66)	Dec 6	FERC denies rehearing but grants clarification requested of Aug 27, 2013 <i>NEPGA Order</i>

II. Rate, ICR, FCA, Cost Recovery Filings

4	ICR-Related Values and HQICCs - 2014/2015 ARA3, 2015/2016 ARA2, 2016/2017 ARA1 (ER14-510)	Dec 18-20	Exelon, NRG, NU intervene
5	FCA8 Qualification Informational Filing (ER14-329)	Dec 6 Dec 23 Dec 27	ISO files answer to NEPGA comments, PSEG and Exelon protests Exelon, PSEG respond to ISO Dec 6 answer FERC grants waiver of QDN deadlines requested by NGrid, Blue Sky West, Brookfield, and CSG
5	ICR, HQICCs and Related Values - 2017/2018 Power Year (ER14-328)	Dec 30	FERC accepts 2017/2018 Capability Year ICR, HQICCs and related values
6	2014 ISO-NE Administrative Costs and Capital Budgets (ER14-90)	Dec 19	FERC accepts ISO 2014 Budgets

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

* 8	Demand Response Baseline Changes (ER14-727)	Dec 20 Jan 7-9	ISO and NEPOOL jointly file changes; comment date Jan 10 Exelon, NRG, NU intervene
* 8	eTariff Corrections: Section III.13.5 (ER14-713)	Dec 19 Dec 27 Jan 7	ISO files conforming corrections to eTariff; comment date Jan 9 NEPOOL intervenes ISO files amendment to correct tariff record; comment date Jan 17
* 8	Dual-Fuel Switching Provisions Move to Market Rule 1 (ER14-707)	Dec 19 Jan 7	ISO and NEPOOL jointly file changes that move existing dual-fuel switching provisions from Appendix K to Market Rule 1 Exelon, NRG intervene
* 8	FCM Offer Review Trigger Price Revisions (ER14-616)	Dec 13 Dec 18 Dec 26 Dec 18- Jan 8 Jan 3-8	ISO files ORTP Changes NEPGA requests extension of comment date to Jan 8, 2014 FERC grants extension of comment date requested by NEPGA Brookfield, Deepwater Wind, Dominion, PSEG, NRG, NU, UI intervene NEPOOL, First Wind, NESCOE submit comments; EMCOS, EnerNOC, Exelon, National Grid, NEPGA/EPSCA, NextEra, Protesting Parties, NH PUC protest filing

* 9	LSCPR Cost Allocation Changes (ER14-584)	Dec 9 Dec 18-27	ISO and NEPOOL jointly file changes Exelon, NRG, NU intervene
* 9	Demand Resource Commercial Operation Auditing Revisions (ER14-581)	Dec 9 Dec 18-30	ISO and NEPOOL jointly file changes CMEEC, Exelon, NU intervene
9	Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463)	Dec 5-16 Dec 16 Jan 6	MPUC, HQUS, ConEd, NRG, Exelon, Verso, Calpine intervene NEPOOL, EPSA, NICC, Public Systems submit comments; Connecticut, ENE and Participating Municipals, GDF Suez, MA AG, MA DPU, NECPUC, NESCOE, NextEra, NU and UI, and PSEG submit protests. Dominion intervenes out-of-time
10	Waiver Request - Capacity Qualification Deadlines: Brookfield (ER14-442)	Dec 12 Dec 13 Dec 27	ISO submits comments indicating it does not oppose request; NEPOOL intervenes FERC grants requested waiver
10	Waiver Request - Capacity Qualification Deadlines: Blue Sky West (ER14-364)	Dec 27	FERC grants Blue Sky West waiver request
10	Waiver Request - Capacity Qualification Deadlines: CSG (ER14-356)	Dec 27	FERC grants CSG waiver request
11	Waiver Request - Capacity Qualification Deadlines: National Grid (ER14-311)	Dec 27	FERC grants National Grid waiver request
11	CSO Termination: Pawtucket (ER14-270)	Dec 23	FERC accepts termination of the Pawtucket CSO
11	CSO Termination: Entergy (ER14-266)	Dec 12	FERC accepts termination of a portion of the Entergy CSO
11	eTariff Corrections: Sections I.2, III.1, and III.F (ER14-172)	Dec 23	FERC accepts corrections

IV. OATT Amendments / TOAs / Coordination Agreements

* 15	Order 784 Compliance Filing (ER14-877)	Dec 27 Dec 31	ISO submits Order 784 compliance filing NEPOOL intervenes
16	Order 1000 Compliance Filing (ER13-193; ER13-196)	Dec 10 Dec 16 Dec 18 Jan 7	NEPOOL submits comments, including NEPOOL Alternative CLF/Sustainable FERC Project, EMCOS/Participating Municipals, Environmental Parties, MA DPU, MMWEC/NHEC, NHT, NESCOE, VT/RI Parties submit comments and/or protests ISO and PTO AC request 15-day extension of time (to Jan 15) to respond to comments and protests LSP Transmission submits protest

V. Financial Assurance/Billing Policy Amendments

18	FCM Non-Commercial Capacity Changes to Financial Assurance Policy (ER14-487)	Dec 19-23 Jan 7 Jan 17	NU, NRG intervene ISO amends Dec 4 filing to correct eTariff viewer errors; comment date
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VI. Schedule 20/21/22/23 Changes

* 18	Schedule 21-UI: LCSAs (Bridgeport Energy) (ER14-691; ER14-690)	Dec 18	UI files Emera LCSA and termination of Capital Power LCSA related to Bridgeport Energy
* 18	Schedule 21-UI: LCSA (Wallingford) (ER14-650)	Dec 17	UI files Wallingford LCSA

19	Schedule 21-NU: LCRAs (CTMEEC, Wallingford) (ER14-324 et al.)	Dec 20	FERC accepts LCRA filings, effective Jan 1, 2014, subject to a further compliance filing
19	Schedule 21-NU: Elimination of Unreserved Use Penalties (ER14-258)	Dec 17	FERC accepts elimination of unreserved use penalties language, effective Jan 1, 2014
19	LGIA – BHE/Oakfield Wind Farm (ER14-63)	Dec 5 Dec 12	FERC accepts revised LGIA
19	Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)	Dec 13 Dec 18	FERC staff files comments on settlement agreement Settlement Judge Johnson issues status report

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

20	Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54)	Dec 19	ISO files its 21st quarterly report
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IX. Membership Filings

* 21	January 2014 Membership Filing (ER14-490)	Dec 31	New Members: Eligo Energy, Emera Energy Services Subsidiary Nos. 6-8, Genbright, Mid-Maine Waste Action Corporation, Oasis Energy, and Yes Energy; Termination: Exelon New England Holdings; comment date Jan 21
21	December 2013 Membership Filing (ER14-497)	Dec 23	FERC accepts BTG Pactual Commodities membership; AEP Energy termination

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

* 21	FFT Report: December 2013 (NP14-14)	Dec 30	NERC files Report
* 21	Revisions to BES Definition (RD14-2)	Dec 13	NERC proposes revisions to the definition of Bulk Electric System; comment date Jan 17, 2014
* 21	Revised Reliability Standards: PRC-023 and -025 (RM14-2; RM13-19)	Dec 17	NERC files revisions to PRC-023
22	NOPR: Revised TOP and IRO Reliability Standards (RM13-15, RM13-14, RM13-12)	Dec 20 Jan 6	NERC requests FERC defer action in this proceeding until Jan 31, 2015 ISO/RTO Council, NRECA support requested deferral
25	Order 793: Revised Reliability Standard: PRC-005-2 (RM13-7)	Dec 19	FERC issues final rule approving revised Reliability Standard
26	Order 791: Version 5 CIP Reliability Standards (-002 through -011) (RM13-5)	Dec 20	APPA/NRECA, EEI/EPSCA, Brian Evans-Mongeon request rehearing and/or clarification of Order 791
26	2014 NERC/NPCC Business Plans and Budgets (RR13-9)	Jan 3	FERC accepts Nov 22 NERC compliance filing

XI. Misc. - of Regional Interest

27	203 Application: NRG Kendall / Veolia ENH (EC14-33)	Dec 13 Dec 18 Dec 20 Dec 23 Jan 7	NSTAR intervenes and protest filing NSTAR withdraws protest FERC requests additional information NRG responds to Dec 20 FERC request FERC authorizes sale of NRG Kendall to Veolia ENH
28	203 Application: Edison Mission / NRG (EC14-14)	Dec 5 Dec 9 Dec 11 Dec 23 Jan 2 Jan 7	FERC requests additional information Additional parties intervene; PJM IMM submits comments NRG submits requested information NRG answers Dec 9 comments by PJM IMM PJM IMM submits additional comments NRG answers Jan 2 additional comments by PJM IMM
29	SGIA – CMP/MMWAC (ER14-451)	Dec 23	FERC accepts non-conforming SGIA, effective Jan 1, 2014
29	NSTAR/HQUS Use Rights Transfer Agreement (ER14-244)	Dec 12	FERC accepts Agreement, effective Jan 1, 2014
29	Bangor Hydro (Emera Maine) Notice of Succession to MPS OATT (ER14-218)	Dec 23	FERC accepts notice of succession
* 31	Termination of PURPA Purchase Obligation: Fitchburg from Pinetree QF(QM14-1)	Dec 17	Fitchburg seeks termination of its obligation to purchase the output from Pinetree’s 16MW QF; comment date Jan 14, 2014

XII. Misc. - Administrative & Rulemaking Proceedings

31	Zero Rate Reactive Power Rate Schedules (AD14-1)	Dec 11 Dec 17	FERC staff holds workshop FERC issues notice inviting comments on the mechanics of filing reactive power rate schedules for which there is no compensation; comment date Jan 24, 2014.
31	RTO/ISO Centralized Capacity Markets (AD13-7)	Dec 11 – Jan 8	Parties file comments

XIII. Natural Gas Proceedings

35	Order 787: Gas/Electric Operational Info Sharing (RM13-17)	Dec 16 Dec 23	Enable Interstate Pipelines and NGA/Process Gas Consumers Group/NW Industrial Gas Users request clarification and/or rehearing of <i>Order 787</i> <i>Order 787</i> becomes effective
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XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

37	Orders 1000 and 1000-A (12-1232)	Dec 13	Final Briefs filed; Petitioners submit motion proposing oral argument format. Respondent-Intervenors file response to Petitioners’ motion and cross-motion for the allocation of additional, separate time
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MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: January 9, 2014

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 December 4, 2013. If you have questions, please contact us.¹

I. Complaints

- **NEPGA FCA8 NPRR Complaint (EL14-17)**

On January 8, 2014, the New England Power Generators Association (“NEPGA”) filed a Complaint urging the FERC (i) to order the ISO to revise the Tariff to provide that Resources whose Non-Price Retirement Requests (“NPRRs”) were rejected for reliability reasons from FCA8 will not be counted towards the ICR; and (ii) to issue an order on the merits of the Complaint on or before January 27, 2014, or if it cannot issue an order on the merits by that date, to issue an order by January 27 directing the ISO to delay the commencement of FCA8 until five (5) business days after the issuance of an order on the merits, which it requested by issued by March 17, 2014. The date by which comments and the ISO's response must be filed has not yet been noticed, but NEPGA requested a shortened comment period that would end on January 21, 2014. A copy of the Complaint can be downloaded from the FERC's eLibrary at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13434042>. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; s_lombardi@daypitney.com).

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

As previously reported, the New England Power Generators Association (“NEPGA”) filed, on October 31, 2013, 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 (“Complaint”). 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). At the request of the ISO, and following comments by NEPOOL, supporting comments by CMEEC/MMWEC/NHEC, NGrid, and NU, and a protest by NEPGA, the FERC granted a one week extension of time, to November 27, for the ISO's answer to and any comments on the Complaint.

The ISO filed its response to the Complaint on November 27. Comments were filed by NEPOOL and jointly by Algonquin & Maritimes Pipelines. Protests were filed by CMEEC/MMWEC/NHEC, CT AG, CT Agencies, CT OCC, MA AG, NECPUC, NESCOE, NGrid, and NU. Calpine, EnerNOC, EPSA, Exelon, and

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”).

PSEG filed comments supporting the Complaint. On December 16, NEPGA and NextEra submitted answers to the ISO's November 27 answer, EPSA submitted additional comments supporting the Complaint, and Energy New England ("ENE") and Participating Municipals² submitted comments opposing the Complaint. On December 31, NESCOE filed an answer to NEPGA's December 16 answer. This matter is pending before the FERC.

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).

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

On December 6, the FERC denied rehearing but granted clarification³ of its August 27 order that itself granted in part and denied in part the resource performance obligations complaint originally filed by NEPGA.⁴ As previously reported, the May 17, 2013 complaint by NEPGA alleged 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.

In the *NEPGA Rehearing Order*, the FERC rejected NEPGA's assertion that the ISO should have been required to submit under Section 205 its filing containing the non-exhaustive list of factors the IMM typically will consider in analyzing whether fuel was available to a capacity resource, finding that "the IMM's list merely provides examples of the types of information, from the broad range of information that could be pertinent to such a fact-specific analysis, that the IMM will consider in determining whether a resource has met the standard set forth in the Tariff." In addition, the FERC rejected NEPGA's argument that the *NEPGA Order* allowed "confiscatory" rates to continue without identifying a remedy. With respect to fuel procurement, however, the FERC granted NEPGA's requested clarifications that (i) if a resource is asked to operate at levels above its Day-Ahead Energy Market schedule, "it must do everything in its control to procure fuel for the additional request, but it is not a Tariff violation if the resource is unable to obtain fuel or transportation using intra-day measures"; and (ii) a capacity resource is not required to guarantee fuel availability for the resource's entire Capacity Supply Obligation ("CSO") in Real-Time when dispatch exceeds its Day-Ahead Energy Market schedule and fuel is unavailable. The FERC stated that "the Tariff does not require capacity resources to guarantee that fuel will be available; rather, it requires them to purchase the fuel and transportation necessary to satisfy a [CSO] if the fuel and transportation are available. This finding neither alters the performance obligations the Tariff imposes on capacity resources nor expands the limited circumstances under which the Tariff may excuse non-performance."

The *NEPGA Rehearing Order* was not challenged and is final and unappealable, concluding this proceeding. 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; dttdoot@daypitney.com).

² "Participating Municipals" are Braintree, Concord, Groveland, Hingham, Littleton (MA), Merrimac, Middleton, Rowley, Taunton, and Wellesley.

³ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 145 FERC ¶ 61,206 (2013) ("*NEPGA Rehearing Order*").

⁴ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,157 (2013) ("*NEPGA Order*"), *order on reh'g and clarification*, 145 FERC ¶ 61,206 (2013).

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

Rehearing of the FERC's February 12, 2013 order denying NESCOE's FCM Renewable Exemption Complaint⁵ 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.⁶ 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),⁷ on which it concurrently issued an order conditionally accepting in part and dismissing in part the ISO's proposed compliance filing (*see* Section III below). Rehearing was requested by NESCOE, the CT PURA, and the MA DPU on March 14. On March 29, NEPGA filed an answer challenging NESCOE's request for rehearing. On April 15, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

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

This Complaint, as well as all of the 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")⁸ 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,⁹ MA AG, MOPA, MPUC, TEC, and the VT DPS. On January 16, the TOs filed their answer, asserting that the FERC

⁵ *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013), *reh'g requested*.

⁶ *Id.* at P 32.

⁷ *Id.* at P 30.

⁸ 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.

⁹ EMCOS or the "Eastern Massachusetts Consumer-Owned Systems" are Braintree, Hingham, Reading, and Taunton.

should dismiss the Complaint as contrary to Section 206's 15-month refund limitation and that the Complaint failed to show that the TOs' Base ROE is unjust and unreasonable. TOs argue that evidence relevant to their cost of capital for 2013 and beyond will only be relevant to this Complaint. MMWEC and NHEC filed joint comments supporting the complaint and urging the FERC to grant the relief requested therein and establish the earliest possible refund effective date. Substantively, MMWEC/NHEC provided additional evidence to counter TO arguments that they face substantial payment "risks" in connection either with the provision of transmission service or the construction of new facilities. On January 31, 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.¹⁰ By way of reminder, the FERC established hearing and settlement judge procedures¹¹ following a complaint by a number of State, consumer, and consumer advocate parties (the "2011 Complainants")¹² seeking a FERC order reducing the 11.14% Base ROE to 9.2% "due to changes in the capital markets since the *Bangor Hydro* proceeding."¹³ 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, 2013.¹⁴ 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

- **ICR-Related Values and HQICCs - 2014/2015 ARA3, 2015/2016 ARA2, and 2016/2017 ARA1 (ER14-510)**

On December 3, 2013, the ISO and NEPOOL jointly filed materials that identify the Installed Capacity Requirement ("ICR"), Local Sourcing Requirements ("LSR"), Maximum Capacity Limits ("MCL") (collectively, the "ICR-Related Values") and Hydro Quebec Interconnection Capability Credits ("HQICCs") for the third annual reconfiguration auction ("ARA") for the 2014/2015 Capability Year to be held March 1, 2014, the second ARA for the 2014/2015 Capability Year to be held in August 2014, and the first ARA for the 2015/2016 Capability Year to be held in June 2014. The ICR-Related Values and HQICCs were supported by the Participants Committee through the approval of the November 8, 2013 Consent Agenda. A

¹⁰ *Martha Coakley, Mass. Att'y Gen. et al.*, 144 FERC ¶ 61,012 (2013) ("2011 Base ROE Initial Decision").

¹¹ *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.

¹² Complainants are Martha Coakley, Mass. Att'y Gen. ("MA AG"), the Conn. Public Utilities Regulatory Authority ("CT PURA"), Mass. Dep't of Pub. Utils. ("MA DPU"), New Hampshire Pub. Utils. Comm. ("NH PUC"), George Jepsen, Conn. Att'y Gen. ("CT AG"), CT OCC, Maine Off. of the Pub. Advocate ("ME OPA"), New Hampshire Off. of the Consumer Advocate, ("NH OCA"), Rhode Island Div. of Pub. Utils. and Carriers ("RI PUC"), Vermont Dep't of Pub. Srv. ("VT DPS"), MMWEC, AIM, TEC, Power Options, and the IECG.

¹³ See *Bangor Hydro-Elec. Co. et al.*, 117 FERC ¶ 61,129 (2006) ("Opinion 489") at PP 79-81, *order on reh'g*, *Bangor Hydro-Elec. Co. et al.*, 122 FERC ¶ 61,265 (2008) at PP 30-34.

¹⁴ Errata to the Table of Authorities were filed by Complainants and the TOs on Oct. 25 and 29, respectively.

February 1, 2014 effective date was requested. Interventions were filed by Exelon, NRG and NU, but no comments were submitted. This matter is now pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **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.

Interventions were filed by NEPOOL, NESCOE, NRG, NU, Blue Sky West, CPV Towantic, Dominion, and GDF Suez. NEPGA submitted comments (i) stating that the IMM mitigated a significant percentage of FCA8 generator static de-list bids, suggesting a disconnect between the actual costs and risk thresholds necessary for a Market Participant to assume a CSO and those that, in the IMM’s opinion should, be allowed in a de-list bid, and (ii) asking that the ISO “explain its reasons for each rejected de-list bid after the ... FCA8 auction consistent with its obligation to do so under the ISO-NE Tariff.” PSEG protested the filing (i) requesting that, in light of its October 17 memo identifying the possibility of “a deficiency of 1,547 MW below [the Net Installed Capacity Requirement] (“NICR”)” due to the number of retirement notices received, the ISO be directed to supplement the Information Filing to give Participants a clearer picture of available capacity in FCA8, and (ii) requesting that the ISO be directed to revise its Tariff provisions governing the treatment of resources retained for reliability for FCA8, rather than waiting for FCA9 as discussed with Participants. Exelon protested the IMM’s determination with respect to Mystic 7’s static de-list bid and requested that its de-list bid be re-set in accordance with the information provided in its protest. On December 6, the ISO filed an answer to the comments and protests filed by NEPGA, PSEG, and Exelon. On December PSEG and Exelon responded to the ISO’s December 6 answer.

With respect to the QDN deadlines for FCA8, National Grid submitted in this proceeding, out of an abundance of caution, its November 5 request, filed in ER14-311, for a limited waiver of the QDN deadlines. Additional requests for waiver of the QDN Deadlines were filed by Blue Sky West, Brookfield, and CSG. Each of the requests was granted on December 27, 2013 (*See* Section III below).

The FCA8 Informational Filing is pending before the FERC. 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 December 30, the FERC accepted the 2017/2018 Capability Year ICRs, HQICCs and related values (Local Sourcing Requirements (“LSR”) and Maximum Capacity Limits “MCL”) jointly filed by the ISO and NEPOOL on November 5, 2013. Those values will be used in FCA8. 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. Unless the December 30 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On December 19, the FERC accepted the ISO's 2014 Administrative and Capital Budgets.¹⁵ As previously reported, the ISO reported that its 2014 Revenue Requirement (allowing for measured growth from 2013 levels), after true-up for 2012, was \$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 was \$28 million, 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 1 (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)

In accepting the 2014 ISO Budgets, the FERC found that the ISO had adequately supported the projected costs and associated Tariff Revisions.¹⁶ The FERC rejected the limited protest by the CT PURA and CT OCC (the "Connecticut State Agencies") that asserted that the ISO's proposed increase in and funding for additional full-time employees ("FTEs") did not comply with the 2013 Budgets Settlement Agreement and suggested postponement of the ISO's increase and funding for additional FTEs, finding "ISO-NE has adequately supported and justified these additional positions, and ... hiring of these additional personnel, who will perform important and time-sensitive work involving reliability and market efficiency matters, should not be delayed."¹⁷ On November 18, the ISO answered the Connecticut State Agencies protest, challenging the assertion that the 2014 ISO Budgets do not comply with the 2013 Settlement Agreement and asserting that the funding for additional FTEs cannot wait. 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).

¹⁵ *ISO New England Inc.*, 145 FERC ¶ 61,227 (2013) ("ISO 2014 Budgets Order").

¹⁶ *Id.* at P 21.

¹⁷ *Id.* at P 24.

- **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.¹⁸ As previously reported, the procurement “is intended to balance fuel security for the region against the costs to consumers.”¹⁹ 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. The FERC indicated the 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). An ISO compliance filing directed by the *Bid Results Order*, further detailing its evaluation process in selecting winning bids,²⁰ as well as to reflect corrections identified by Essential Power and Exelon,²¹ was accepted by the FERC on November 13.

TransCanada challenged the *Bid Results Order*²² on November 6, 2013. On December 2, the FERC issued a tolling order affording it additional time to consider the TransCanada rehearing request, which remains pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@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, which remains to be acted on. 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

¹⁸ *ISO New England Inc.*, 145 FERC ¶ 61,023 (Oct. 7, 2013) (“*Bid Results Order*”)

¹⁹ 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.

²⁰ *Bid Results Order* at PP 23, 26-30.

²¹ *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.

²² 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.

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.

supporting PSEG's request and a few of the Connecticut Generators moved to intervene out-of-time. As noted, this matter remains pending before the FERC.

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

- **Demand Response Baseline Changes (ER14-727)**

On December 20, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 and Appendix E1 (the "Demand Response Baseline Changes") to improve baseline accuracy by accounting for scheduled and forced curtailments of Real-Time Demand Response Assets and Real-Time Emergency Generation Assets (typically industrial or commercial facilities). Specifically, the Changes address the potential distortion of baselines due to scheduled or forced curtailments by requiring demand response ("DR") providers to submit meter data values during a curtailment that are equal to the last unadjusted baseline computed prior to the curtailment instead of actual meter readings. The Changes also provide that a DR provider may not submit a Demand Reduction Offer during a scheduled or forced curtailment since the affected assets are not actually available to be dispatched in order to balance Real-Time supply and demand. A June 1, 2014 effective date was requested, with DR Providers expected to provide notice in May 2014 for any curtailments scheduled to begin on or after June 1, 2014. The Demand Response Baseline Changes were supported by the Participants Committee by way of the December 6 Consent Agenda. Comments on this filing are due on or before January 10, 2014. Thus far, doc-less interventions were filed by Exelon, NRG and NU. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **eTariff Corrections: Section III.13.5 (ER14-713)**

On December 19, as corrected on January 7, the ISO submitted corrections to Sections III.13.5 of its eTariff that consolidate, effective December 17, 2013, changes accepted in ER13-585 (CSO Bilateral Transaction and Reconfiguration Auction Enhancements) and ER13-1742 (PRD Full Integration Changes & FCM Net Supply Revisions).²⁶ A December 17, 2013 effective date (the date changes accepted in ER13-585 became effective) was requested. A doc-less intervention was filed by NEPOOL on December 27. Comments on the December 19 filing are due on or before January 9, 2013; comments on the ISO's January 7 correction, January 17. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Dual-Fuel Switching Provisions Move to Market Rule 1 (ER14-707)**

On December 19, the ISO and NEPOOL jointly filed changes that move existing Tariff provisions that address Market Participant procedures for switching from a primary to a secondary fuel from Appendix K to Section III.1.11.3 of Market Rule 1 ("Dual-Fuel Switching Revisions"). The Dual-Fuel Switching Revisions will ensure that existing dual-fuel switching provisions remain in effect after the expiration of the Attachment K Winter 2013-14 Reliability Program on February 28, 2014. A March 1, 2014 effective date was requested. The changes were supported by the Participants Committee by way of the December 6, 2013 Consent Agenda. Doc-less interventions have been filed by Exelon and NRG. Comments on this filing are due on or before January 9, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Offer Review Trigger Price Revisions (ER14-616)**

On December 13, the ISO filed changes that establish new Offer Review Trigger Prices ("ORTP") for the ninth Forward Capacity Auction ("FCA9"), a revised methodology for calculating an ORTP for Demand Resources other than energy efficiency Demand Resources, and a mechanism for adjusting (by an index or combination of indices) the ORTPs for years when full recalculation of the ORTPs is not performed

²⁶ *ISO New England Inc. and New England Power Pool*, 144 FERC ¶ 61,140 (2013).

(collectively, the “ORTP Changes”). A February 11, 2014 effective date was requested. The ORTP Changes were considered but not supported by the Participants Committee at its December 6, 2013 meeting.

Interventions were filed by Brookfield, Deepwater Wind, Dominion, PSEG, NRG, NU, and UI. Comments were filed by NEPOOL (identifying the concerns and alternatives to the proposed ORTP Changes presented and reviewed in the course of the stakeholder process); First Wind (supporting the ORTP Changes), and NESCOE (supporting the ISO’s revised ORTP values resulting from the recalculation process, requesting that, for FCA9 and beyond, the FERC direct the ISO to consider the best available resource capability and cost information in setting the ORTP for offshore wind, and supporting the EnerNOC amendment to enhance the new resource qualification provisions for demand response resources with distributed generation). Protests were submitted by EMCOS, EnerNOC, Exelon, National Grid, NEPGA/EPISA, NextEra, Protesting Parties,²⁷ and the NH PUC. 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).

- **LSCPR Cost Allocation Changes (ER14-584)**

On December 9, the ISO and NEPOOL jointly filed changes that revise the allocation of reliability costs associated with Local Second Contingency Protection Resources (“LSCPR Cost Allocation Changes”). Specifically, the changes revise the allocation of NCPC costs associated with the commitment of resources to provide local second contingency protection so that those costs are allocated based on Real-Time Load Obligation regardless of whether those resources are committed through the Day-Ahead or Real-Time Market. The ISO requested that the LSCPR Cost Allocation Changes become effective immediately upon the issuance of a FERC order in this proceeding and no later than February 7, 2014, 60 days from the date of the filing. The changes were supported by the Participants Committee by way of the December 6, 2013 Consent Agenda. Doc-less interventions were filed by Exelon, NRG and NU. No comments on this filing were submitted on or before the December 30, 2013 comment date, and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Demand Resource Commercial Operation Auditing Revisions (ER14-581)**

Also on December 9, the ISO and NEPOOL jointly filed changes that modify the existing Demand Resource auditing requirements to permit additional audits to be performed throughout the Capacity Commitment Period as new assets are added to the Demand Resource to facilitate the return of additional Financial Assurance, as the demand response provider performs additional audits to demonstrate that additional MW of the resource are commercially operational. The DR Commercial Operation Audit Revisions also make a number of other ancillary and conforming changes to the audit rules for Demand Resources and to rules that address how the audit values are utilized. The Filing Parties requested that the Demand Resource Commercial Operation Auditing Revisions become effective June 1, 2014. The changes were supported by the Participants Committee by way of the November 8, 2013 Consent Agenda. Doc-less interventions were filed by CMEEC, Exelon and NU. No comments on this filing were submitted on or before the December 30, 2013 comment date, and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463)**

On November 25, the ISO filed revisions to the FCM administrative pricing rules that (i) address what the ISO identified as a “gap” in the Insufficient Competition rules; (ii) sets an administrative rate of \$7.025/kW-month to be applied if there is Insufficient Competition (as the ISO proposed to redefine it) or Inadequate Supply in FCA8; and (iii) make additional clarifying changes to the FCM administrative pricing rules (collectively, the “FCM Pricing Rule Changes”). The ISO proposed that the FCM Pricing Rule Changes

²⁷ “Protesting Parties” in this proceeding are: The American Wind Energy Association (“AWEA”), CLF, Energy Management, Inc. (“EMI”), The Offshore Wind Development Coalition, and Renewable Energy New England (“RENEW”).

become effective on January 24, 2014. The ISO stated that the FCM Pricing Rule Changes were being submitted as an “Exigent Circumstances” filing.²⁸

Comments on this filing were due on or before December 16, 2013. Interventions were filed by APPA, Brookfield, Calpine, ConEd, Dominion, Dynegy, EnerNOC, EPSA, Exelon, Footprint, HQUS, Maine OPA, MPUC, NRG, TransCanada, and Verso. Comments were submitted by NEPOOL, EPSA, the NEPOOL Industrial Customer Coalition, and Public Systems.²⁹ Protests were filed by Connecticut,³⁰ ENE and Participating Municipals, GDF Suez, MA AG, MA DPU, NECPUC, NESCOE, NextEra, NU and UI, and PSEG. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request - Capacity Qualification Deadlines: Brookfield (ER14-442)**

On December 27, the FERC granted Brookfield’s request for a limited waiver of the FCA8 Capacity Qualification Deadlines that would allow the ISO to reevaluate the Erie Boulevard Hydro facility capacity qualification and potentially permit Erie Boulevard to qualify an additional 35 MW of summer capacity and 18 MW of winter capacity.³¹ The ISO submitted comments on December 12, 2013, indicating it did not oppose the waiver request and requesting an order on or before January 17, 2014, should the FERC grant the waiver, to allow any revised values to be reflected in the FCA8 software. Unless the December order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request - Capacity Qualification Deadlines: Blue Sky West (ER14-364)**

On December 27, the FERC granted the limited, one-time waiver of the FCA8 Capacity Qualification Deadlines requested by Blue Sky West LLC (“Blue Sky West”) to enable the IMM to consider the additional data submitted by Blue Sky West after the relevant deadlines which will correct an error that resulted in an overstated New Resource Offer for Blue Sky West’s 186 MW on-shore wind facility in Maine.³² As previously reported, the ISO submitted comments on November 25, 2013, indicating it did not oppose the waiver request and requesting an order on or before January 17, 2014, should the FERC grant the waiver, to allow the revised values to be reflected in the FCA8 software. Unless the December order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request - Capacity Qualification Deadlines: CSG (ER14-356)**

On December 27, the FERC granted the limited, one-time waiver of the FCA8 Capacity Qualification Deadlines requested by Conservation Services Group (“CSG”) to enable the IMM to consider the additional data submitted by CSG after the relevant deadlines to support its position that three of its Combined Heat &

²⁸ Pursuant to Section 11.2 of the Participants Agreement, the ISO may file Market Rule changes in “Exigent Circumstances” before full consultation with NEPOOL through the FERC-approved Participant Processes. “Exigent Circumstances” are defined as circumstances where “ISO determines in good faith that (i) failure to immediately implement a new Market Rule, Operating Procedure, Reliability Standard, provision of the Information Policy, Non-TO OATT Provision or Manual would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures set forth in Section 11.1, 11.3 or 11.4 would not allow for timely redress of ISO’s concerns.”

²⁹ “Public Systems” are MMWEC, CMEEC, NHEC and VPPSA.

³⁰ In this proceeding, “Connecticut” is the Connecticut Public Utilities Regulatory Authority (“Connecticut PURA”), the Connecticut Office of Consumer Counsel (“CT OCC”), the Connecticut Attorney General (“CT AG”), and the Connecticut Department of Energy and Environmental Protection.

³¹ *Brookfield Energy Marketing LP*, 145 FERC ¶ 61,286 (2013).

³² *Blue Sky West, LLC*, 145 FERC ¶ 61,285 (2013).

Power (“CHP”) projects in Massachusetts that were included in its aggregated FCM resources should be qualified for a New Resource Offer Floor Price below the FCA8 \$15.819/kW-month Offer Review Trigger Price.³³ Unless the December order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request - Capacity Qualification Deadlines: National Grid (ER14-311)**

On December 27, the FERC granted National Grid requested the limited waiver of the Capacity Qualification Deadlines for FCA8 it requested to enable the IMM to consider the additional data it had submitted after the relevant deadlines supporting qualification of two Combined Heat & Power (“CHP”) projects, one in Rhode Island and one in Massachusetts, for a New Resource Offer Floor Price below the FCA8 \$15.819/kW-month Offer Review Trigger Price.³⁴ Unless the December order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 23, 2013, the FERC accepted the termination of the CSO for Resource No. 326 held by Project Sponsor Pawtucket Power Holding Company LLC (“Pawtucket”). As indicated, the ISO will draw down the amount of financial assurance provided by Pawtucket with respect to the CSO. Unless the December 23 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 12, the FERC accepted the termination of a portion of the CSO for Resource No. 1630 held by Project Sponsor Entergy Nuclear Power Marketing LLC (“Entergy”). As indicated, the ISO will draw down the amount of financial assurance provided by Entergy with respect to the portion of the CSO terminated. Unless the December 12 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 23, the FERC accepted various corrections to the ISO’s eTariff filed by the ISO on October 24, as amended on November 19 and supplemented November 27. The corrections revised 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). Unless the December 23 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, the FERC conditionally accepted, on October 3, 2013, energy market enhancements³⁵ designed to provide Market Participants greater flexibility in structuring and modifying their

³³ *Conservation Svcs. Group Inc.*, 145 FERC ¶ 61,284 (2013).

³⁴ *Nat’l Grid USA, Mas. Elec. Co. and The Narragansett Elec. Co.*, 145 FERC ¶ 61,284 (2013).

³⁵ 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.

Supply Offers in the Day-Ahead and Real-Time Energy Markets (the “Offer Flexibility Changes”).³⁶ 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 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. The compliance changes are currently scheduled for consideration at the January 10 Participants Committee meeting under agenda item #7. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@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, 2014.³⁷ 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).³⁸ 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.”³⁹ The FERC found unpersuasive the arguments that it would be more appropriate to allocate Program costs to Regional Network Load.⁴⁰ 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). The allocation and other Tariff changes were reflected in an October 15 compliance filing that was accepted November 13, 2013. Rehearing of the 2013/2014 *Winter Reliability Program Order* was requested by EPSA and TransCanada. On November 12, 2013, the FERC issued a tolling order affording it additional time to consider the rehearing

³⁶ *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,014 (Oct. 3, 2013) (“*Offer Flexibility Changes Order*”). The *Offer Flexibility Changes Order* was not challenged and is final and unappealable.

³⁷ *ISO New England et al.*, 144 FERC ¶ 61,204 (Sep. 16, 2013) (“*2013/2014 Winter Reliability Program Order*”).

³⁸ 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.

³⁹ *Id.* at P 70.

⁴⁰ *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).

requests, which remain pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

The ISO's March 15, 2013 compliance filing in this proceeding remains pending before the FERC. As previously reported, the FERC, on January 14, 2013, accepted in part, and rejected in part, the ISO's proposed changes, filed April 26, 2012, to make the FCM Market Rules consistent with the PRD full integration rules (currently scheduled to become effective on June 1, 2017).⁴¹ 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,"⁴² agreed that "the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties,"⁴³ and found the "proposal will be beneficial to both demand response providers and wholesale electricity customers".⁴⁴ 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.⁴⁵ 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 Supporters⁴⁶ 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; dt_doot@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.⁴⁷ The *FCA8 Revisions Order* accepted the following aspects of the FCA8 Revisions as compliant with

⁴¹ *ISO New England Inc.*, 142 FERC ¶61,027 (2012) ("*January 14 Order*").

⁴² *Id.* at P 27.

⁴³ *Id.* at P 28.

⁴⁴ *Id.* at P 29.

⁴⁵ *Id.* at PP 44-46.

⁴⁶ "DR Supporters" are Comverge, EnerNOC, NICC, Wal-Mart, and the IECG.

⁴⁷ *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013) ("*FCA8 Revisions Order*").

its prior FCM Orders: the ISO's offer review trigger prices;⁴⁸ unit specific offer review;⁴⁹ the ISO's proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports' treatment under MOPR;⁵⁰ no exemptions to MOPR for new Self-Supplied Resources;⁵¹ the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;⁵² \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;⁵³ and a number of other additional revisions.⁵⁴ 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)⁵⁵; 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.

If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

- **Tie Benefits Calculation and Allocation (ER08-41)**

The ISO's January 14, 2010 update in this proceeding remains pending. As previously reported, the ISO filed, on January 14, 2010, an update to the joint ISO/NEPOOL November 26, 2008 report⁵⁶ 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).

⁴⁸ *FCA8 Revisions Order* at PP 37-38.

⁴⁹ *Id.* at P 53.

⁵⁰ *Id.* at P 70.

⁵¹ *Id.* at P 80.

⁵² *Id.* at P 97.

⁵³ *Id.* at P 126.

⁵⁴ *Id.* at P 127.

⁵⁵ *Id.* at PP 63-64.

⁵⁶ 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).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Order 784 Compliance Filing (ER14-877)**

On December 27, the ISO submitted a compliance filing in response to *Order 784*. In its December 27 filing, the ISO explained how the Tariff's deviations from the FERC's *pro forma* Open Access Transmission Tariff ("OATT"), including the Regulation Market Rules, already meet the requirements and policy goals of *Order 784* and therefore meet the FERC's requirements for a showing of provisions that are "consistent with or superior to" the *pro forma* OATT. In addition, the ISO asked for a waiver of the new requirement to post on its OASIS historical one-minute and ten-minute certain Area Control Error ("ACE") data for the most recent calendar year, and to update this posting once per year. Comments on this filing are due on or before January 17, 2014. NEPOOL intervened on December 31. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 764 Compliance Changes (ER14-375)**

On November 12, the ISO, NEPOOL, the PTO AC, CSC, and the Schedule 20A service providers ("SSPs") jointly filed revisions to Section II of the ISO Tariff to comply with the requirements of *Orders 764* and *764-A* (the "*Order 764 Compliance Changes*"). Specifically, the *Order 764 Compliance Changes* revise Schedule 22 (LGIA) of the OATT. This transmittal letter also explains how FERC-approved deviations from the *pro forma* OATT already meet the requirements and policy goals of *Order 764* and are "consistent with or superior to" those provisions. The Participants Committee supported the *Order 764 Compliance Changes* at its August 2, 2013 meeting. Comments on this filing were due on or before December 3, 2013. None were filed. Interventions were filed by Exelon and the NYISO. This matter remains pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On July 10, the ISO, NEPOOL and the PTO AC jointly filed revisions to Sections I and II of the ISO Tariff to comply with the interregional coordination and cost allocation requirements of *Orders 1000* and *1000-A* (the "*Order 1000 Interregional Compliance Changes*") (ER13-1960). In addition, the ISO, on behalf of itself, NYISO and PJM, filed an Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol ("Amended Protocol") as part of its compliance changes (ER13-1957). The *Order 1000 Interregional Compliance Changes* include (i) revisions to Attachment K to add provisions describing the interregional coordination provisions included in the Amended Protocol, as well as adding other provisions facilitating the consideration of interregional solutions to regional needs; (ii) a new Schedule 15 reflecting the methodology for allocation among ISO-NE and NYISO of the costs of approved interregional transmission projects; (iii) revisions to Schedule 12 describing the regional cost allocation within New England of the costs of approved interregional transmission projects; and (iv) conforming changes to Tariff Section I. The *Order 1000 Interregional Compliance Changes* and the Amended Protocol were supported by the Participants Committee at its June 27 Summer Meeting. On August 7, the FERC extended the comment deadline on these filings to and including September 9, 2013. Doc-less motions to intervene were filed by a number of New England parties in both proceedings, including Dominion, Exelon, PPL, PSEG, and NEPOOL (in the Protocol proceeding (in which it was not a filing party)). On August 26, NEPOOL filed comments supporting the Protocol. 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 Organizations⁵⁷ raised concerns that the Protocol and related amendments "do not meet certain of the transparency and cost allocation aspects of [*Order 1000*]'s minimum

⁵⁷ "Public Interest Organizations" are Conservation Law Foundation, Environment Northeast, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

requirements.” On September 24, the ISO answered Public Interest Organizations’ and NEPOOL’s comments. These matters remain 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 filing⁵⁸ (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. 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.

November 15 Order 1000 Compliance Order Changes. On November 15, the ISO and the PTO AC jointly submitted proposed revisions to Sections I and II of the ISO Tariff and to the Transmission Operating Agreement (“TOA”) (the “Compliance Revisions”) to comply with the FERC’s May 17, 2013 *Order 1000 Compliance Order*. The revisions included planning revisions (addressing competitive processes for developing new regional transmission projects), cost allocation revisions (regarding the allocation of costs for Public Policy Transmission Projects), and TOA revisions. The Planning Revisions and the Cost Allocation Revisions filed by the ISO and PTO AC were considered but not supported by the Participants Committee at its November 8 meeting.

Comments on the November 15 filing were filed by **NEPOOL** (seeking two sets of changes to the Planning Revisions filed by the ISO and PTO AC (i) limiting the scope of transmission projects that are grandfathered under the old, non-competitive processes, so that Proposed Projects are not grandfathered but instead are open to competition; and (ii) ensuring that all Qualified Transmission Project Sponsors (“QTPS”) are on an equal footing regarding consulting with the ISO in assessing regional transmission needs and solutions (together, the “NEPOOL Alternative”); but taking no position on the Cost Allocation revisions); **CLF and The Sustainable FERC Project** (supporting the November 15 filing and its public policy planning and regional cost allocation provisions.); EMCOS/Participating Municipals (request the ISO and TOs be required to revise Section 3.3 of Attachment K to eliminate the grandfathering for proposed Transmission Projects, and to revise Schedule 12 to ensure that public power systems not subject to state Public Policy requirements are exempted from any obligation to pay for Public Policy projects); **Environmental Groups**⁵⁹ (each supporting the Cost Allocation Revisions, but noting continuing concern that the region’s planning

⁵⁸ *ISO New England Inc.*, 143 FERC ¶ 61,150 (2013) (“*Order 1000 Compliance Order*”).

⁵⁹ “Environmental Groups” are Environment Northeast, Connecticut Fund for the Environment, Environment Council of Rhode Island, Health Care Without Harm, The Natural Resources Council of Maine, and The Sustainable FERC Project.

process fails to produce more cost-effective and efficient planning outcomes); *LSP Transmission* (supporting NEPOOL’s Alternative, requesting a January 1, 2014 effective date for the compliance filing, and protesting the hold harmless provision contained in Attachment O, Section 9.01, the ISO’s evaluation process and the proposed study deposit); *MA DPU* (supporting the Cost Allocation Revisions); *NESCOE* (without expressing a position on the Cost Allocation Revisions, affirming its support for NESCOE it having a central role in determining how public policy planning need relates to cost allocation); *New Hampshire Transmission* (“NHT”) (protesting the November 15 filing and suggesting specific amendments to the proposal to be submitted a short time after an order on the second compliance filing is issued); *Public Systems*⁶⁰ (requesting that the FERC adopt MMWEC’s cost allocation proposal and direct the Filing Parties to include an express right of consumer-owned utilities to opt out of the non-regional allocated costs of projects satisfying policy requirements that do not apply to them); and *VT/RI Parties*⁶¹ (protesting the Cost Allocation Revisions). On December 18, the ISO and PTO AC requested a 15-day extension (to January 15, 2014) to respond to the Protests and Comments filed in this proceeding.

This matter is 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*⁶² 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 EL10-58,⁶³ namely, the controlling order of approval documents and data used by the ISO to establish the CNR Capability of an existing generating resource. The Capability Clarifications were considered by the Participants Committee at its October 18, 2010 meeting, but ultimately not supported. In accepting the Capability Clarifications, the FERC addressed protests filed by Dominion, MMWEC, and PSEG. The FERC found that the changes were consistent with, and not a collateral attack on, the FERC’s July 2010 order, and provide equal treatment to resources seeking to change capacity limits. In addition, the FERC was also persuaded that interconnection agreements are a more reliable means of determining the CNR Capability ratings, and declined to direct the use of the MW ratings in the CELT Report. MMWEC requested rehearing of the *Capability Clarifications Order* on February 24, 2011, but requested the FERC defer action on the merits of the rehearing request until completion of the process under which the CNR rating for Stony Brook is currently under review. MMWEC stated that if it was able to secure adequate relief, it would so inform the FERC and withdraw the rehearing request; if not, it would ask the FERC to address the merits of its rehearing request. The FERC issued on March 24, 2011 a tolling order affording it additional time to consider the MMWEC rehearing request, which remains pending before the FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

⁶⁰ In this proceeding, “Public Systems” are MMWEC and NHEC.

⁶¹ “VT/RI Parties” are the State of New Hampshire Public Utilities Commission (“NHPUC”), the Rhode Island Public Utilities Commission (“RIPUC”), the Vermont Public Service Board (“VT PSB”), the Vermont Public Service Department (“VPSD”), Vermont Electric Power Company (“VELCO”), and Vermont Transco (“VT Transco”).

⁶² *ISO New England Inc. and the Participating Trans. Owners Admin. Comm.*, 134 FERC ¶ 61,057 (2011) (“*Capability Clarifications Order*”), *reh’g requested*.

⁶³ *See PSEG Power Conn. LLC v. ISO New England Inc.*, 132 FERC ¶ 61,022 at P 6 (2010).

V. Financial Assurance/Billing Policy Amendments

- **FCM Non-Commercial Capacity Changes to Financial Assurance Policy (ER14-525; ER14-487)**

The ISO and NEPOOL jointly re-submitted on December 4, 2013 changes related to financial assurance (“FA”) for Non-Commercial Capacity in the FCM. The changes: (i) required Designated FCM Participants to provide additional FA prior to offering Non-Commercial Capacity in an FCA; (ii) strengthened the incentives to bring Non-Commercial Capacity to commercial status; (iii) employed a market price based-value, rather than a fixed value, to calculate FA for Non-Commercial Capacity; and (iv) eliminated the requirement that Non-Commercial Capacity that has not cleared in an FCA provide FA when acquiring CSOs through reconfiguration auctions or bilateral transactions. Although the changes were first filed on November 27 (ER14-487), they were subsequently withdrawn on December 3 to allow the new filing to accurately reflect the separate effective dates associated with implementation of the changes which, other than for those described in (iv) (which are to take effect March 28, 2014), are to take effect for resources that clear in FCA9 or later. Interventions were filed by NRG and NU. No comments on the re-filed changes were submitted. On January 7, the ISO amended the December 4 filing to correct errors in the eTariff viewer caused by errors in its eTariff software. Comments, if any, on the corrected eTariff data will be due on or before January 17. 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-UI: LCSAs (Bridgeport Energy) (ER14-691; ER14-690)**

On December 18, UI submitted a new Localized Cost Sharing Agreements (“LCSA”) and a notice of termination of LCSA-14 under Schedule 21-UI. UI stated that the new LCSA with Emera Energy Services Subsidiary No. 5 (“EESS5”) on behalf of Bridgeport Energy (LCSA-17) and the notice of termination of LCSA-14 (Capital Power) were filed so that UI could recover the Category B Load Ratio Share of the revenue requirement for UI’s Localized Facilities from EESS5 under Schedule 21-UI. UI requested that the EESS5 LCSA and termination of the Capital Power LCSA become effective December 1, 2013. No comments on this filing were submitted on or before the January 8, 2014 comment date and this matter is pending before the FERC.. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-UI: LCSA (Wallingford) (ER14-650)**

On December 17, UI filed a LCSA with the Town of Wallingford Department of Public Utilities, Electric Division (“Wallingford”) so that it could recover Wallingford’s Category B Load Ratio Share of the revenue requirement for UI’s Localized Facilities under Schedule 21-UI. A January 1, 2014 effective date was requested. No comments were submitted on or before the January 7, 2014 comment date and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NU: LCRA (Emera, Capital Power) (ER14-465 et al.)⁶⁴**

On November 26, the NU Companies submitted (1) a Notice of Cancellation of NU’s Localized Costs Responsibility Agreement (“LCRA”) with CP Energy Marketing (US) LLC (“Capital Power”); and (2) a new LCRA by and between the NU Companies and Emera Energy Services Subsidiary No. 5 LLC (“Emera”). The Agreements were filed to reflect the fact Emera acquired the Bridgeport Energy facility from Capital Power. A December 1, 2013 effective date was requested for each of the Agreements. No comments on these filings were submitted on or before the December 17 comment date and these filings are pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁶⁴ Because 3 NU Companies’ eTariffs are involved, the LCRA’s related to the Bridgeport Energy generated 3 dockets: ER14-465 (CL&P); ER14-466 (PSNH); and ER14-467 (WMECO).

- **Schedule 21-NU: LCRAs (CTMEEC, Wallingford) (ER14-324 et al.)⁶⁵**

On December 20, 2014, the FERC accepted the following filing submitted by the NU Companies: 1) a Notice of Cancellation of NUSCO's 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 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. As previously reported, 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. The filings were accepted, effective January 1, 2014, as requested, subject to a further compliance filing to correct a Tariff section reference in each of the CTMEEC LCRAs. 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 December 17, the FERC accepted amendments to Schedule 21-NU to eliminate unreserved use penalties and the associated penalty distribution methodology filed by NUSCO and the ISO, effective January 1, 2014, as requested. Unless the December 17 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).

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

On December 5, the FERC accepted a revised, 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"), effective October 11, 2013, as requested, subject to Bangor Hydro submitting a compliance filing within 14 days of the Maine Commission's determination, describing the outcome of the proceeding and, as necessary, including an executed agreement.⁶⁶ That compliance filing was submitted on December 20, 2013 and is pending before the FERC. BHE reported that the LGIA did 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). 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.⁶⁷ In its September 24 order, the FERC stated that its "preliminary analysis indicates that Applicants' proposed Schedules 21-GMP and 20A-GMP and notices of cancellation have not been shown to be just and reasonable, and ... raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures we order."⁶⁸ Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC

⁶⁵ 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).

⁶⁶ *ISO New England Inc. and Bangor Hydro Elec. Co.*, 145 FERC ¶ 61,197 (2013).

⁶⁷ *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).

⁶⁸ *Id.* at PP 21-22.

and WEC (“Cooperatives”)⁶⁹ were denied on February 25, 2013.⁷⁰ 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.⁷¹

Judge Karen V. Johnson was designated as the settlement judge, and convened two settlement conferences. After a lengthy period of reported negotiation, Green Mountain Power Corporation (“GMP”) submitted on November 13 a Settlement Agreement and Offer of Settlement (“Settlement”) that reportedly resolves all disputes in these proceedings. Pursuant to a December 2 notice issued by Judge Johnson, the deadline for filing initial comments was December 13, 2013; the deadline for filing reply comments, December 23, 2013. FERC Staff filed comments on December 13 indicating that it did not oppose certification or approval of the settlement. On December 18, Judge Johnson issued a status report indicating that she would consider certification following expiration of the December 23 reply comments deadline. This matter is pending before the FERC. 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

- **New England Simultaneous Import Limits (AD10-2)**

As previously reported, the ISO filed with the FERC, on November 20, 2013, the 2012 simultaneous import limits (“SIL”) for the New England-wide geographic market and the Connecticut Import Interface (“CT Import Interface”) and the Southwest Connecticut Import Interface (“SWCT Import Interface”) geographic submarkets to assist New England sellers in preparing their updated market power indicative screens and Delivered Price Test (“DPT”) analyses to be submitted pursuant to Order 697.

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

The ISO filed its twenty-first report on December 19, 2013. As previously reported, the ISO committed in the August 5, 2008 Regulation Filing to provide the FERC with quarterly reports on its progress in implementing and carrying out market rule revisions to allow non-generating resources to provide Regulation, including the Alternative Technologies Pilot Program.⁷² In the 21st report, the ISO reported that the Market Rule changes that would have been implemented upon conclusion of the Pilot Program pursuant to the August 8, 2008 filing instead have been incorporated in, and will become effective on October 1, 2014 as part of, the ISO’s Order 755 compliance changes. In addition, the ISO reported that interim regulation market

⁶⁹ 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.

⁷⁰ *ISO New England, Inc., Central Vt. Pub. Svc. Corp. and Green Mountain Power Corp.*, 142 FERC ¶ 61,146 (2013).

⁷¹ *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.

⁷² See Market Rule 1 revisions regarding the provision of Regulation by non-generating resources, *ISO New England Inc. and New England Power Pool*, Docket Nos. ER08-54-000 and -001 (filed Aug. 5, 2008) (the “Regulation Filing”).

design changes, to include energy opportunity costs in the clearing price, became effective July 1, 2013. These reports are not noticed for public comment.

IX. Membership Filings

- **January 2014 Membership Filing (ER14-930)**

On December 31, NEPOOL requested that the FERC accept, effective January 1, 2014: (i) the membership of Eligo Energy, LLC (Supplier Sector); Emera Energy Services Subsidiary Nos. 6, 7, and 8 (Related Persons to Emera Maine (f/k/a Bangor Hydro), Transmission Sector); Genbright, LLC (Provisional Member, AR Sector, LR Sub-Sector); Mid-Maine Waste Action Corporation (AR Sector, RG Sub-Sector, Small RG Group Member); Oasis Energy (Supplier Sector); and Yes Energy, LLC (Data Only Participant); and (ii) the termination of the Participant status of Exelon New England Holdings (Supplier Sector). Comments on this filing are due on or before January 21, 2014.

- **December 2013 Membership Filing (ER14-497)**

On December 23, FERC accepted (i) the membership of BTG Pactual Commodities (Data Only Participant); and (ii) the termination of the Participant status of AEP Energy (Supplier Sector) (Nov 1, 2013).

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: December 2013 (NP14-14)**

NERC submitted on December 30, 2013, its Find, Fix, Track and Report (“FFT”) informational filing for the month of December 2013. The December FFT resolves 69 possible violations of 12 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁷³ The 18 Registered Entities involved each submitted a mitigation activities statement of completion. These filings are for information only and will not be noticed for public comment by the FERC.

- **Revised Definition of Bulk Electric System (RD14-2)**

On December 13, NERC filed for FERC approval proposed revisions to the definition of the term “Bulk Electric System” (“BES Definition”) in the *NERC Glossary of Terms Used in Reliability Standards*. NERC stated that the proposed revisions add clarity and granularity that will allow for greater transparency and consistency in the identification of Elements and facilities that make up the Bulk Electric System (“BES”) and is responsive to the technical and policy concerns discussed in *Orders 773* and *773-A*. Comments on this filing are due on or before January 17, 2014.

- **Revised Reliability Standards: PRC-023-003 and -025-001 (RM14-2; RM13-19)**

On December 17, 2013, NERC filed for approval changes to PRC-023 (Transmission Relay Loadability) in Docket No. RM14-2. NERC requested that the FERC concurrently on these changes together with changes to PRC-025 (Generator Relay Loadability) pending in Docket no. RM13-19. Proposed PRC-025-1 was proposed in response to FERC directives in Order 733⁷⁴ to address generator protective relay loadability. PRC-023-003 was

⁷³ 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.

⁷⁴ *Transmission Relay Loadability Standard*, Order No. 733, 130 FERC ¶ 61,221, at P 104-08 (2010), *order on reh’g and clarification*, Order No. 733-A, 134 FERC ¶ 61,127, *order on reh’g and clarification*, Order No. 733-B, 136 FERC ¶ 61,185 (2011).

developed to establish a bright-line between the applicability of load-responsive protective relays in the transmission and generator relay loadability Reliability Standards. NERC requested that the revised PRC Standards become effective in accordance with the implementation plans filed with the revised Standards, or the first day of the first calendar quarter following FERC approval of the revised Standards. As of the date of this report, a comment date has not been set for either filing.

- **New Reliability Standard: EOP-010-1 (Geomagnetic Disturbance Operations) (RM14-1)**

On November 14, 2013, NERC filed for approval a new Reliability Standard that requires Bulk-Power System owners and operators to develop and implement operational procedures to mitigate the effects of Geomagnetic Disturbances consistent with the reliable operation of the BPS. As of the date of this report, a comment date has not been set. The lack of a comment date or NOPR notwithstanding, interventions have to this point been filed by APPA, EEI, Exelon, and NRECA.

- **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:⁷⁵

- 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. FERC 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-Power System reliability and enhance coordination of important protection system settings. Comments on the NOPR were due on or before November 25, 2013⁷⁶ and were filed by eight parties, including ISO-NE, EEI, and NERC. In its comments, ISO-NE asked the FERC to modify Reliability Standards MOD-026-1 and MOD-027-1 to include generators rated below 100 MVA. ISO-NE asserted that the 100 MVA threshold was too high, would exclude too many new England generating units, and should be lowered to match the “bulk electric system” registration requirement of 20 MVA. This NOPR is pending before the FERC.

- **NOPR: Revised TOP and IRO Reliability Standards (RM13-15, RM13-14, RM13-12)**

On November 21, 2013, the FERC issued a NOPR⁷⁷ proposing (i) to approve NERC’s proposed revisions to Reliability Standard TOP-006-3 (Monitoring System Conditions) filed in RM13-12, but (ii) to remand changes

⁷⁵ *Generator Verification Reliability Standards*, 144 FERC ¶ 61,205 (2013).

⁷⁶ 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.

⁷⁷ *Monitoring System Conditions - Transmission Operations Reliability Standard, Transmission Operations Reliability Standards and Interconnection Reliability Operations and Coordination Reliability Standards*, 145 FERC ¶ 61,158 (Nov. 21, 2013) (“*Nov 21 NOPR*”).

to the following Interconnection Reliability Operations and Coordination (“IRO”) and Transmission Operating (“TOP”) Reliability Standards filed in RM13-14 and RM13-15:

- ▶ IRO-001-3 (Reliability Coordination — Responsibilities and Authorities);
- ▶ IRO-002-3 (Reliability Coordination – Analysis Tools);
- ▶ IRO-005-4 (Reliability Coordination – Current Day Operations);
- ▶ IRO-0014-2 (Coordination Among Reliability Coordinators);
- ▶ TOP-001-2 (Transmission Operations);
- ▶ TOP-002-3 (Operations Planning);
- ▶ TOP-003-2 (Operational Reliability Data); and
- ▶ PRC-001-2 (System Protection Coordination).⁷⁸

As previously reported, the changes to TOP-006-3 filed April 5, 2013 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.

The changes to the IRO Standards were to achieve two important overall reliability benefits: (1) delineate a clean division of responsibilities between the Reliability Coordinator and Transmission Operators; and (2) 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.

The changes to the remaining TOP Standards were to upgrade the overall quality of the Standards, eliminate gaps in the requirements, eliminate ambiguity, eliminate redundancies, and address Order 693 directives. NERC indicated in its April filing that 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.

Because the proposed TOP and IRO Reliability Standards were interrelated, and because the proposed revisions to Reliability Standard TOP-006-3 involved similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the FERC addressed all three proposals together in the one NOPR. Although the FERC acknowledged that the proposed TOP and IRO Reliability Standards contain some improvements over the current Standards, concerns that the changes would create reliability gaps in the Standards that are critical to reliable operation of the BPS resulted in the proposed remand of the proposed TOP Standards.⁷⁹ The FERC went on to explain that

given the interrelationship between the TOP and IRO Reliability Standards and that NERC requests that both sets of standards be addressed together, we believe a remand of the proposed IRO standards in addition to those of the TOP will enable NERC to more comprehensively consider modifications to the standards that would address the reliability concerns identified in this NOPR. This

⁷⁸ The changes in proposed PRC-001-2 were administrative in nature and were limited to removal of three requirements in currently-effective PRC-001-1 that were to be addressed in proposed TOP-003-2.

⁷⁹ *Id.* at P 4.

approach, in turn, should allow NERC more flexibility in developing appropriate modifications that address our concerns since changes to the TOP standards might require, in some instances, commensurate changes to the IRO standards.⁸⁰

Comments are the *Nov 21 NOPR* are due on or before February 3, 2014.⁸¹

On December 20, NERC requested that the FERC defer action in this proceeding to January 31, 2015 to allow NERC time to consider the reliability concerns raised by the FERC in the *Nov 21 NOPR* and by an independent review commissioned by NERC that identified proposed TOP-001-2, PRC-001-2, IRO-001-3, and IRO-005-4 as high risk standards requiring improvement. On January 6, 2014, the ISO/RTO Council and NRECA filed comments supporting NERC's requested deferral.

- **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, 2013.⁸² NERC stated that the changes respond to FERC directives in Order 693⁸³ 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, 2013,⁸⁴ 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-001-4.⁸⁵ As previously reported, NERC had a long standing compliance obligation to address FERC concerns with footnote 'b'.⁸⁶ 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 approved 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

⁸⁰ *Id.*

⁸¹ The *Nov 21 NOPR* was published in the *Fed. Reg.* on Dec. 5, 2013 (Vol. 78, No. 234) pp. 73,112-73,128.

⁸² *Frequency Response and Frequency Bias Setting Rel. Std.*, 144 FERC ¶ 61,057 (July 18, 2013)

⁸³ *Order 693* at P 375.

⁸⁴ The NOPR was published in the *Fed. Reg.* on July 29, 2013 (Vol. 78, No. 145) pp. 45,479-45,490.

⁸⁵ *Trans. Planning Rel. Standards*, 145 FERC ¶ 61,051 (2013) ("*Order 786*").

⁸⁶ *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.

significant facilities from future planning assessments and directed NERC to change the TPL-001-4, Requirement R1 Violation Risk Factor from medium to high.⁸⁷ *Order 786* will become effective December 23, 2013.⁸⁸

- **Order 788: Retirement of Reliability Standard Requirements: P 81 Project (RM13-8)**

As previously reported, the FERC approved, on November 21, 2013, the retirement of 34 requirements in 19 Standards that NERC indicated were redundant and/or otherwise could be removed with little or no effect on reliability.⁸⁹ In addition, the FERC withdrew 41 directives that remained outstanding that required NERC to develop modifications to Reliability Standards because the identified outstanding directives had either been addressed in some other manner, were redundant with another directive or provided general guidance as opposed to a specific directive.⁹⁰ *Order 788* will become effective January 21, 2014.⁹¹

- **Order 793: Revised Reliability Standard: PRC-005-2 (RM13-7)**

On December 19, the FERC approved 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.⁹² *Order 793* will become effective [60 days after publication in the *Federal Register*].⁹³

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

This May 16 NOPR, which proposes 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), remains pending.⁹⁴ 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, 2013,⁹⁵ 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.

⁸⁷ *Order 786* at P 3.

⁸⁸ *Order 786* was published in the *Fed. Reg.* on Oct. 23, 2013 (Vol. 78, No. 205) pp. 63,036-63,052.

⁸⁹ *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, Order No. 788, 145 FERC ¶ 61,147 (Nov. 21, 2013) ("*Order 788*").

⁹⁰ *Id.* at P 2.

⁹¹ *Order 788* was published in the *Fed. Reg.* on Dec. 6, 2013 (Vol. 78, No. 235) pp. 73,424-73,434.

⁹² *Protection System Maintenance Reliability Standard*, Order No. 793, 145 FERC ¶ 61,253 (Dec. 19, 2013) ("*Order 793*").

⁹³ *Order 793* has not yet been published in the *Fed. Reg.*

⁹⁴ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

⁹⁵ 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.

- **Order 791: Version 5 CIP Reliability Standards (-002 through -011) (RM13-5)**

On November 22, 2013, the FERC approved the Version 5 Critical Infrastructure Protection (“CIP”) Reliability Standards submitted by NERC, which adopt new cyber security controls and extend the scope of the systems that are protected by the CIP Standards.⁹⁶ The FERC also approved 19 new or revised definitions associated with the CIP version 5 Standards for inclusion in NERC’s Glossary of Terms. In addition, as it proposed in the prior NOPR, the Commission directed NERC to develop modifications to the CIP version 5 Standards to address concerns that limited aspects of the CIP Version 5 Standards are potentially ambiguous and may raise questions regarding the enforceability of the standards. The FERC also directed NERC to submit informational filings regarding certain issues during and following implementation of the CIP version 5 Standards. *Order 791* will become effective February 3, 2014.⁹⁷ Rehearing and/or clarification of *Order 791* was requested on December 20, 2013 by APPA/NRECA, EEI/EPSA, and Brian Evans-Mongeon. The requests for clarification and/or rehearing are pending before the FERC, with FERC action required on or before January 20, 2014, or the requests will be deemed denied.

- **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,⁹⁸ which deferred the effective date for the revised BES definition as approved in *Order Nos. 773*⁹⁹ and *773-A*¹⁰⁰ 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.

- **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.¹⁰¹ 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

⁹⁶ *Version 5 Critical Infrastructure Protection Reliability Standards*, Order No. 791, 145 FERC ¶ 61,160 (Nov. 22, 2013) (“*Order 791*”).

⁹⁷ *Order 791* was published in the *Fed. Reg.* on Dec. 3, 2013 (Vol. 78, No. 232) pp. 72,756-72, 787. As previously reported, and as requested, the FERC granted an extension of the compliance deadline for the Version 4 CIP Reliability Standards from Apr. 1, 2014 to Oct. 1, 2014. See *Version 4 Critical Infrastructure Protection Reliability Standards and Version 5 Critical Infrastructure Protection Reliability Standards*, 144 FERC ¶ 61,123 (2013).

⁹⁸ *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, 143 FERC ¶ 61,231 (2013) (“*June 13 Order*”), *reh’g requested*.

⁹⁹ *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).

¹⁰⁰ *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).

¹⁰¹ *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. NERC submitted that compliance filing on November 22, and that compliance filing was accepted on January 3, 2014.

- **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).¹⁰² 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.¹⁰³ 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**

As previously reported, the Commodity Futures Trading Commission ("CFTC") issued on March 28, 2013, a 142-page final order in response to a February 7, 2012 petition by the RTO/ISOs, including ISO-NE,¹⁰⁴ 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. Changes to the FAP and Information Policy required to comport with the CFTC Order were filed and have been accepted.

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.¹⁰⁵ If there are questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **203 Application: NRG Kendall / Veolia ENH (EC14-33)**

On January 7, 2014, the FERC authorized the sale of 100% of the common equity interests in NRG Kendall by NRG to a joint venture between ISQ Thermal Kendall LLC and Veolia Energy North America Holdings, Inc. ("Veolia ENH").¹⁰⁶ Unless the January 7 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).

¹⁰² *Market Implications of Frequency Response and Frequency Bias Setting Reqs.*, 144 FERC ¶ 61,058 (2013).

¹⁰³ *Id.* at P 2.

¹⁰⁴ A copy of the "Consolidated Request" is available at <http://www.iso-ne.com/regulatory/ferc/fed/index.html>.

¹⁰⁵ 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>.

¹⁰⁶ *NRG North America LLC and NRG Kendall LLC*, 146 FERC ¶ 62,006 (Jan. 7, 2014).

- **203 Application: Edison Mission / NRG (EC14-14)**

As previously reported, NRG Energy Holdings Inc. (“NRG”) and Edison Mission Energy (“EME”) and its public utility subsidiaries requested, on October 25, 2013, 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. On December 5, the FERC requested that NRG submit additional information, and that information was provided on December 11, 2013. Interventions were filed by various creditors of EME, Bank of New York, PJM Customer Coalition, and PSEG affiliates that are the owners-lessors of certain affected facilities. PJM’s IMM submitted comments on December 9 indicating that the proposed transaction will have a “limited, but not inconsequential impact on the potential competitiveness of PJM markets” and recommending that the FERC consider mitigation to address the issues it identified in its comments. NRG answered the December 9 PJM IMM comments on December 23. The PJM IMM submitted additional comments on January 2, 2014. NRG also answered those comments on January 7. This matter is 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, 2013.¹⁰⁷ 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),¹⁰⁸ 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 was expected to occur on January 1, 2014. As of the date of this Report, that notice has not been posted on the FERC’s eLibrary. 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).¹⁰⁹ As previously reported, the Bankruptcy Court authorized on November 24, 2010 the sale of the generating facilities and other assets to Constellation (“Sale Order”). Mystic Power notified the FERC that the transaction was consummated on January 3, 2011. On January 21, 2011, NSTAR filed a request for rehearing of FERC’s order authorizing the transaction to correct the common mode failure reliability condition of Mystic 8 and 9. On February 22, 2011, the FERC issued a tolling order affording it additional time to consider NSTAR’s request. On June 3, NSTAR submitted to the FERC additional information to accompany its January 21 request for rehearing. Mystic Power requested on June 20 that the FERC disregard NSTAR’s June 3 filing, and affirm its December 22, 2010 order. NSTAR’s request for rehearing remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹⁰⁷ *Bangor Hydro Elec. Co. and Me. Pub. Serv. Co.*, 144 FERC ¶ 61,030 (2013) (“*BHE/MPS Merger Order*”).

¹⁰⁸ *Bangor Hydro Elec. Co.*, 144 FERC ¶ 61,031 (2013) (“*BHE OATT Waiver Order*”).

¹⁰⁹ *Fore River Dev., LLC*, 133 FERC ¶ 61,248 (2010).

- **SGIA – CMP/MMWAC (ER14-451)**

On December 23, the FERC accepted the non-conforming SGIA (IA-CMP-14-01) filed by CMP to govern the interconnection of the 2.1 MW waste-to-energy facility of Mid-Maine Waste Action Corporation (“MMWAC”) in Auburn, Maine to replace the agreement with CMP that expired at the end of 2013. CMP reported that the SGIA did not conform to the *pro forma* SGIA because of modifications to recognize (i) that the ISO is not a party to the LGIA and (ii) the MMWAC facility has been connected to the grid for many years and therefore there has been no new interconnection request or change/break in service with CMP. A January 1, 2014 effective date was granted, as requested. Unless the December 23 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).

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

On December 12, the FERC accepted 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.¹¹⁰ 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. The Agreement was accepted effective as of January 1, 2014, as requested. Unless the December 12 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 23, the FERC accepted the filing by Emera Maine (f/k/a Bangor Hydro) that provides for the succession by Emera Maine to the Maine Public OATT and (ii) changes the name on the OATT to reflect 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).¹¹¹ The revised OATT was accepted effective as of January 1, 2014, as requested. Unless the December 23 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).

- **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.

Louis Dreyfus. On January 6, 2014, the FERC issued a notice that Staff has preliminarily determined that Louis Dreyfus Energy Services, L.P. (“Louis Dreyfus”) violated 18 C.F.R. § 1c.2 (2013) by placing virtual trades in MISO at a node in North Dakota to affect the value of its nearby Financial Transmission Rights (“FTRs”) during the November 2009 to February 2010 period.

¹¹⁰ 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).

¹¹¹ *Bangor Hydro Elec. Co.*, 144 FERC ¶ 61,030 (2013); *Bangor Hydro Elec. Co.*, 144 FERC ¶ 61,031 (2013).

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.¹¹² 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.

- **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”,¹¹³ 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: Emera Maine (f/k/a Bangor Hydro) Request (TS11-5)**

Emera Maine’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.¹¹⁴ Bangor Hydro requested a limited waiver from the FERC’s Standards of Conduct requirements,¹¹⁵ 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.

¹¹² 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).

¹¹³ *Midwest Indep. Trans. Sys.Op., Inc.*, 141 FERC ¶ 63,021 (2012) (“*MISO Initial Decision*”) at P 923.

¹¹⁴ *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (2011) (“*BHE Standards of Conduct Order*”).

¹¹⁵ See 18 C.F.R. § 358 (2013) *et seq.*

- **Termination of Fitchburg Mandatory PURPA QF Purchase Obligation from Pinetree QF (QM14-1)**

On December 17, 2013, Fitchburg Gas and Electric Light Company (“Fitchburg”) filed to terminate its mandatory purchase obligation with respect to the output of the 16 MW Qualifying Facility (“QF”) owned and operated by Pinetree Power Fitchburg, Inc. in Westminster, MA (“Pinetree QF”). In its petition, Fitchburg asserts that the Pinetree QF has nondiscriminatory access to the New England Markets (through its parent GDF Suez) and requests that Fitchburg be relieved of its mandatory PURPA purchase requirement with respect to the Pinetree QF. Comments on Fitchburg’s petition are due on or before January 14, 2014. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

XII. Misc. - Administrative & Rulemaking Proceedings

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

On December 11, FERC staff led a workshop that explored the mechanics of filing reactive power rate schedules for which there is no compensation. The workshop was held pursuant to a FERC directive in *Chehalis*.¹¹⁶ Interested persons were invited to file written comments, on or before January 24, 2014, focused on the mechanics of filing reactive power rate schedules for which there is no compensation.

- **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. Comments were due on or before January 8, 2014 and were filed by over 50 parties, including the following New England parties: Brookfield, CMEEC, CPV, EMCOS, Entergy, Exelon, GDF SUEZ, Green Mountain Power, LIPA, MMWEC, NEPGA, Potomac Economics, PSEG, UCS, Viridity, Vitol, VT DPS.

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

As previously reported, the FERC issued a notice of inquiry (“NOI”), on April 19, 2012, seeking comments on whether, and, if so, how, the FERC should revise its current policy concerning priority rights and open access with regard to certain interconnection facilities. The FERC reported that it had, on a case-by-case basis, permitted an owner of interconnection facilities to have priority to capacity over its facilities for its existing use at the time of a third-party request for service. Specifically, in the instance where an owner of interconnection facilities has specific, pre-existing generator expansion plans with milestones for construction of generation facilities and can demonstrate that it has made material progress toward meeting those milestones, the FERC has granted priority rights for the capacity on the interconnection facilities to those future generation projects or expansions as well. Further, an affiliate of the current interconnection facility owner that is developing its own generator projects also may obtain priority rights to the capacity on the interconnection facilities by meeting the “specific plans and milestones” standard with respect to future use, provided that the plans include a future transfer of ownership of the interconnection facilities to such an affiliate. More than 25 parties filed comments on options for addressing priority rights on interconnection facilities, and this matter remains pending before the FERC.

¹¹⁶ See *Chehalis Power Generating, L.P.*, 145 FERC ¶ 61,052 (Oct. 17, 2013) (“*Chehalis*”).

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

On June 26, WIRES¹¹⁷ 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.

- **Order 792: Revisions to Pro Forma SGIA and SGIP (RM13-2)**

On November 22, 2013, the FERC amended its *pro forma* Small Generator Interconnection Procedures (“SGIP”) and *pro forma* Small Generator Interconnection Agreement (“SGIA”), originally set forth in Order 2006, 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; (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; (5) revise the *pro forma* SGIP and the *pro forma* SGIA to specifically include energy storage devices; and (6) clarify certain sections of the *pro forma* SGIP and the *pro forma* SGIA.¹¹⁸ Order 792 will become effective February 3, 2014.¹¹⁹

Each public utility Transmission Provider must submit a compliance filing within six months of the February 3 effective date revising its SGIP and SGIA or other document(s) subject to the FERC’s jurisdiction as necessary to demonstrate that it meets the requirements set forth herein.¹²⁰ The FERC will consider requests for variations submitted on compliance on the same bases as the variations permitted for compliance with Order 2006.¹²¹ RTOs will be afforded greater flexibility to propose “independent entity variations” from any revisions to the *pro forma* SGIP and SGIA.¹²² Requests for regional reliability variations or independent entity variations

¹¹⁷ WIRES, the **W**orking group for **I**nvestment in **R**eliable and **E**conomic electric **S**ystems, describes itself as a national non-profit association of investor-, member-, and publicly-owned entities dedicated to promoting investment in a strong, well-planned, and environmentally beneficial high voltage electric transmission grid. Information about its principles and members is available on its website www.wiresgroup.com.

¹¹⁸ *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (Nov. 22, 2013) (“Order 792”).

¹¹⁹ Order 792 was published in the *Fed. Reg.* on December 5, 2013 (Vol. 78, No. 234) pp. 73,240-73,354.

¹²⁰ Order 792 at P 269.

¹²¹ *Id.* at P 270.

¹²² *Id.* at P 274.

are due on February 3, 2014. Requests for variations that are “consistent with or superior to” the *pro forma* OATT may be submitted on or after the February 3 effective date.¹²³

- **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 784¹²⁴ 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, 2013.¹²⁵ 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 EEL, 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, 2012.¹²⁶ *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, 2013.¹²⁷ 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*.¹²⁸ *Order 771-A* addressed only those issues that needed to be answered on an expedited basis to allow affected entities to comply with the requirement to ensure FERC access in a timely manner to the e-Tags covered by *Order 771*.¹²⁹ The

¹²³ *Id.* at P 276.

¹²⁴ *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*”).

¹²⁵ *Order 784* was published in the *Fed. Reg.* on July 30, 2013 (Vol. 78, No. 146) pp. 46,178-46,237.

¹²⁶ *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).

¹²⁷ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹²⁸ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (2013) (“*Order 771-A*”).

¹²⁹ *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

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*,¹³⁰ affirmed its basic *Order 764* determinations,¹³¹ 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;¹³² (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;¹³³ and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.¹³⁴ 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 ISO, NEPOOL, PTO AC, CSC and SSPs jointly filed, on November 12, 2013, New England's compliance changes (*see* Section IV, ER14-375 above). 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 NOPR¹³⁵ which proposes to amend FERC regulations by incorporating by reference *Version 003* of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB"). The Version 003 Standards update earlier versions of these standards previously incorporated by reference into FERC regulations at 18 CFR 38.2. The Version 003 standards include modifications to support Order Nos. 890, 890-A, 890-B and 890-C, including the standards to support Network Integration Transmission Service on an Open Access Same-Time Information System ("OASIS"), Service Across Multiple Transmission Systems ("SAMTS"), standards to support FERC policy regarding rollover rights for redirects on a firm basis, standards that incorporate the functionality for transmission providers to credit redirect requests with the capacity of the parent reservation and standards modifications to support consistency across the OASIS-related standards. The Version 003 Standards also include modifications to the OASIS-related standards that NAESB states support Order Nos. 676, 676-A, 676-E and 717 and add consistency. In addition, there are modifications to the Coordinate Interchange standards to compliment recent updates to e-Tag specifications, modifications to the Gas/Electric Coordination standards to provide consistency between the two markets, and re-organized and

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.

¹³⁰ *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (2012) ("*Order 764-A*"), *reh'g requested*.

¹³¹ *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) ("*Order 764*"), *order on reh'g*, 141 FERC ¶ 61,232 (2012), *reh'g requested*.

¹³² *Id.* at P 15.

¹³³ *Id.* at P 19.

¹³⁴ *Id.* at P 23.

¹³⁵ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 144 FERC ¶ 61,026 (Jul. 18, 2013) ("*WEQ Version 003 Standards NOPR*").

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, 2013,¹³⁶ 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*,¹³⁷ 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”¹³⁸ and “represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F.”¹³⁹ *Order 676-G* became effective May 6, 2013.¹⁴⁰ 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, 2013.¹⁴¹ 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).

- **Order 787: Gas/Electric Operational Info Sharing (RM13-17)**

As previously reported, the FERC issued, on November 15, 2013, its final rule revising its regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to share nonpublic, operational information with each other for the purpose of promoting reliable service or operational planning on either the public utility’s or pipeline’s system.¹⁴² Recipients of the non-public, operational information will be subject to a

¹³⁶ 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.

¹³⁷ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-G, 142 FERC ¶ 61,131 (2013) (“*Order 676-G*”).

¹³⁸ *Id.* at P 1.

¹³⁹ *Id.* at P 33.

¹⁴⁰ *Order 676-G* was published in the *Fed. Reg.* on Mar 7, 2012 (Vol. 78, No. 45) pp. 14,654-14,664.

¹⁴¹ 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)”.

¹⁴² *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 145 FERC ¶ 61,134 (Nov. 15, 2013) (“*Order 787*”).

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. *Order 787* became effective December 23, 2013.¹⁴³

On December 16, the Natural Gas Supply Association (“NGA”), Process Gas Consumers Group, and the Northwest Industrial Gas Users, as well as Enable Interstate Pipelines requested clarification and/or rehearing of *Order 787*. The requests for clarification and/or rehearing are pending before the FERC, with FERC action required on or before January 15, 2014, or the requests will be deemed denied. Regionally, the Participants Committee will be asked at the January 10 meeting to support changes to the Information Policy that would allow the ISO, consistent with *Order 787*, to share Confidential Information with interstate natural gas pipelines..

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

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

- **Natural Gas-Related Enforcement Actions**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines. There was no activity since the last Report

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 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: ER11-4336¹⁴⁴
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

¹⁴³ *Order 787* was published in the *Fed. Reg.* on Nov. 22, 2013 (Vol. 78, No. 226) pp. 70,164-70,188.

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

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: RM10-23¹⁴⁵
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; Intervenor's in Support of Respondent's Brief, October 16; and Reply Briefs, November 15. Final Briefs were filed on December 13, 2013. Also on December 13, 2013, an unopposed motion of Petitioners proposing format for oral argument was filed. In that motion, Petitioners proposed to waive oral argument on three of the eight issue-based briefs and contemplated oral argument solely on the issues in the remaining five briefs, divided into five sessions totaling 69 minutes per side. Respondent-Intervenor CLF et al. filed a response to Petitioners' motion and cross-motion for the allocation of three minutes of additional and separate time from that of the FERC to respond to Petitioners' and Supporting Intervenor's arguments on the issue of Transmission Planning and Public Policy. 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; EL10-50¹⁴⁶
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 intervenor's 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. Oral arguments were held on November 19, 2013 before Judges Sentelle, Brown and Griffith. This matter is now pending a decision of that panel.

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093) Underlying FERC Proceedings: RM10-17-000¹⁴⁷
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

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

¹⁴⁶ 131 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).

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

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.¹⁴⁸

The MD PSC Order,¹⁴⁹ 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”),¹⁵⁰ 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.¹⁵¹ 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,¹⁵² 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.¹⁵³ However, by setting that price, the MD PSC encroached on the FERC’s exclusive authority to set wholesale energy and capacity prices.¹⁵⁴ 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.”

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.¹⁵⁵ Based on this principle, Maryland cannot

¹⁴⁸ *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*”).

¹⁴⁹ MD PSC Order No. 84815 (Apr. 12, 2012).

¹⁵⁰ *Id.* at pp 29-30.

¹⁵¹ *See id.* at pp. 26-27.

¹⁵² 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”..

¹⁵³ *District Court Order* at *132.

¹⁵⁴ *Id.* at *133.

¹⁵⁵ “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

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.¹⁵⁶

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.¹⁵⁷

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.¹⁵⁸ 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."

The September 30 decision has been appealed to the United States Court of Appeals for the Fourth Circuit (consolidated under 13-2424) and will be reported under that docket going forward.

- **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").¹⁵⁹

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"¹⁶⁰ 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.¹⁶¹ Any losses would be recouped from, and 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.

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.

¹⁵⁶ *Id.* at *102.

¹⁵⁷ 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.

¹⁵⁸ 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.

¹⁵⁹ *PPL EnergyPlus, LLC v. Hanna*, __ F.Supp.2d __ (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, ("*NJ Order*").

¹⁶⁰ N.J.S.A. § 48:3-98(d)(2).

¹⁶¹ *NJ Order* at *72-73.

The Court found LCAPP and its implementation unconstitutional under both the field and conflict preemption doctrines of the Supremacy Clause.¹⁶² 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.”¹⁶³ 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.”¹⁶⁴ 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.”¹⁶⁵ Accordingly, LCAPP “invades the field occupied by Congress and is [field] preempted by the Federal Power Act.”¹⁶⁶ The Court also found that LCAPP and the SOCAs were unconstitutional under the conflict preemption doctrine of the Supremacy Clause.¹⁶⁷ “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.”¹⁶⁸

The October 11 decision has been appealed to the United States Court of Appeals for the Third Circuit (13-4330) and will be reported under that docket going forward.

¹⁶² 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.

¹⁶³ *Id.* at *104.

¹⁶⁴ *Id.* at *103.

¹⁶⁵ *Id.* at *102. Physical performance includes plant construction, provision of available capacity, bidding into and clearing in RPM and the PJM markets.

¹⁶⁶ *Id.* at 103.

¹⁶⁷ “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.

¹⁶⁸ *Id.* at 106.

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