

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of March 6, 2014

The following activity, as more fully described in the attached litigation report, has occurred since the report dated February 5, 2014 was circulated. New matters/proceedings since the last report are preceded by an asterisk ‘*’. Page numbers precede the matter description.

I. Complaints

1	FCM Administrative Pricing Rules Complaint (EL14-7)	Feb 24	NEPGA requests rehearing and clarification of the <i>Jan 24 Orders</i>
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II. Rate, ICR, FCA, Cost Recovery Filings

* 3	FCA8 Results Filing (ER14-1409)	Feb 28	ISO files results of eighth FCA; comment date Apr 14
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III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests

* 4	CSO Terminations: Constellation (ER14-1339)	Feb 19	ISO files to terminate CSOs held by Constellation; comment date Mar 12
* 5	CSO Termination: NextEra (ER14-1338)	Feb 19	ISO files to terminate a CSO for Resource 367 held by NextEra; comment date Mar 12
* 5	CSO Terminations: Hess (ER14-1337)	Feb 19	ISO files to terminate CSOs held by Hess; comment date Mar 12
* 5	CSO Termination: DCAM (ER14-1336)	Feb 19	ISO files to terminate a CSO for Resource 15543 held by DCAM; comment date Mar 12
* 5	Information Policy Reliability-Related Information Changes (ER14-1284)	Feb 7 Feb 21-28	ISO and NEPOOL jointly file changes NRG, NU intervene
5	NCPC Payment Redesign (ER14-1147)	Feb 5-11	Brookfield, NU intervene
5	FCM Performance Incentives Jump Ball Filing (ER14-1050)	Feb 6-20 Feb 12	Parties intervene NEPOOL, the ISO, ANGA, Brookfield, CMEEC, CT PURA, Dominion, EMCOS, EMI, EnerNOC, Entergy, GDF SUEZ, HQUS, IECG, Indicated Generators, Maine OPA, MPUC, MA DPU, Nat'l Grid, NEPGA/EPSCA, NESCOE, NE Nat. Gas. Industry, N.E. Efficiency Partnerships, NextERA, NGSA, NRG, NU, PSEG, RENEW, UI, and VT PSB file comments and protests
		Feb 14	Potomac Economics files answer
		Feb 27	NEPOOL, CT and RI Parties, Dominion, Entergy, GDF SUEZ, Indicated Generators, Maine OPA and MPUC, and NRG file answers; NEPOOL files discovery request
		Mar 3	ISO answers Feb 12 comments and protests
		Mar 4	ISO answers Feb 27 Discovery Request
		Mar 6	NEPOOL answers ISO Mar 4 answer to NEPOOL Discovery Request; MMWEC submits comments supporting NEPOOL request
6	Pipeline Information Sharing Changes (ER14-970)	Mar 6	FERC accepts changes, effective Jan 11, 2014
7	FCM Offer Review Trigger Price Revisions (ER14-616)	Feb 7 Feb 11	EnerNOC files answer to ISO Jan 24 answer FERC issues order accepting in part, and rejecting in part, ORTP Changes; changes accepted became effective Feb 11


8	Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463)	Feb 24	NEPGA requests rehearing and clarification of the <i>Jan 24 Orders</i>
9	Energy Market Offer Flexibility Changes (ER13-1877)	Feb 7 Feb 21 Feb 24	NEPGA protests Jan 17 compliance filing ISO submits answer to Feb 7 NEPGA protest NEPOOL submits answer to Feb 7 NEPGA protest
11	ISO-NE Capacity Zones Proposal (ER12-953-004)	Feb 21 Feb 24	NEPOOL files comments; EMCOS, NEPGA, NRG, NU, PSEG file protests NEPOOL files a correction to its Feb 21 comments

IV. OATT Amendments / TOAs / Coordination Agreements 

14	<i>Order 1000</i> Compliance Filing (ER13-193; ER13-196)	Feb 18	ISO answers NHT Feb 4 answer
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V. Financial Assurance/Billing Policy Amendments 


* 15	FTR Risk Management Policies-Related FAP Changes (ER14-1311)	Feb 12 Feb 18- Mar 5	ISO and NEPOOL jointly submit changes DC Energy, Exelon, NU intervene
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VI. Schedule 20/21/22/23 Changes 

* 15	Schedule 21-NEP: Narragansett/Pontiac IA Cancellation (ER14-1387)	Feb 28	NEP files notice of cancellation; comment date Mar 21
* 15	Schedule 21-NEP: Narragansett/Pontiac IA Cancellation (ER14-1368)	Feb 25	Narragansett files notice of cancellation; comment date Mar 18

VII. NEPOOL Agreement/Participants Agreement Amendments 

No Activity to Report

VIII. Regional Reports 

* 17	Capital Projects Report - 2013 Q4 (ER14-1323)	Feb 13 Feb 19 Mar 6	ISO files Report NEPOOL intervenes, files comments NU intervenes
* 17	Quarterly Markets Reports - 2013 Q4 (ZZ13-4)	Feb 10	Internal Market Monitor files report for Q4 2013

IX. Membership Filings 

* 17	March 2014 Membership Filing (ER14-1399)	Feb 28	<i>New Members:</i> Enerwise Global Technologies, Pacific Summit Energy; <i>Involuntary Termination:</i> A123 Systems Inc.; comment date Mar 21
17	Suspension Notices (not docketed)	Feb 19 Feb 25 Feb 25	OBE Electric Ansonia Generation Concord Steam

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

* 18	FFT Report: February 2014 (NP14-34)	Feb 27	NERC files Report
* 18	Revised Reliability Standards: MOD-032-1, MOD-033-1 (RD14-5)	Feb 25	NERC files revised Standards; comment date Mar 27

* 19	Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-011-1 (RD14-4)	Feb 27	NERC files revised and new INT Standards; comment date Mar 31
19	Revisions to BES Definition (RD14-2)	Feb 14 Feb 18	AWEA answers NERC Feb 2 answer First Wind answers NERS Feb 2 answer
* 19	Revised Reliability Standard: MOD-001-2 (RM14-7)	Feb 10	NERC files revised MOD-001-2 Standard, and requests retirement of existing MOD Standards
23	<i>Order 791</i> : Version 5 CIP Reliability Standards (-002 through -011) (RM13-5)	Feb 27	FERC announces that it will hold Apr 29 tech. conf. on CIP issues identified in <i>Order 791</i>
23	<i>Order 773-A</i> : Revised “Bulk Electric System” Definition and Procedures (RM12-7; RM12-6)	Feb 6	FERC denies pending request for rehearing

XI. Misc. - of Regional Interest

24	CFTC Exemption	Feb 25	CFTC issues Advisory effectively confirming that contracts, agreements, and transactions entered into under the ISO’s Tariff (including internal bilaterals) are exempt from the CEA and CFTC regulations to the same degree and extent as the relief granted in the Mar 28 Order
24	203 Application: Edison Mission / NRG (EC14-14)	Feb 27	Applicants file joint request for expedited action by Mar 27, 2014, to facilitate timely consummation of EME and affiliated Debtors’ Chapter 11 Bankruptcy Plan
* 25	NU/UI Termination of Legacy Agreement (Black Pond Junction Coke Works) (ER14-1306)	Feb 11	NU files notice of termination of Black Pond Junction Coke Works agreement
25	EPC/O&M Agreement CL&P/Cricket Valley (ER14-1189)	Feb 28	FERC accepts Agreement
* 26	FERC Enforcement Action: Louis Dreyfus (IN12-6)	Feb 7	FERC approves Agreement resolving OE’s investigation of Louis Dreyfus Energy Services’ activities in MISO; LDES required to pay \$4.07 million civil penalty, disgorge \$3.34 million; individual trader ordered to pay \$310,000 fine

XII. Misc. - Administrative & Rulemaking Proceedings

* 27	RTO/ISO Winter 2013/14 Ops, Market Performance (AD14-8)	Feb 21	FERC issues notice of April 1 technical conference
27	RTO/ISO Centralized Capacity Markets (AD13-7)	Feb 10	APPA et al. submit comments
* 29	Revisions to EQR Filing Process (RM12-3)	Feb 28 Mar 4	FERC sets deadlines to file EQRs for 2013 Q3-Q4 and 2014 Q1-Q2 FERC announces Mar 26 tech. conf.
30	<i>Order 784-A</i> : 3rd-Party Provision of Ancillary Services, etc. (RM11-24; AD10-13)	Feb 20	FERC grants in part, and denies in part, clarification of <i>Order 784</i>
32	<i>Order 676-G</i> : Incorporation of WEQ DR and EE M&V Standards (RM05-5)	Feb 11	FERC denies PSEG request for rehearing of <i>Order 676-G</i>

XIII. Natural Gas Proceedings

No Activity to Report

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

34	Orders 1000 and 1000-A (12-1232)	Mar 4	Parties identify attorneys for Mar 20 oral argument
35	PPL EnergyPlus, LLC v. Nazarian (4th Cir., 13-2424)	Feb 11	APPA/NRECA, AWEA/Mid-Atlantic Renewable Energy Coalition, CT PURA et al., MD Energy Administration, MD Office of People’s Counsel, and NRG file Amicus Curiae Briefs
		Feb 21	Oral argument tentatively scheduled for May 13-15 session
35	PPL EnergyPlus, LLC v. Hanna (3d Cir., 13-4330)	Feb 25-27	EEI/EPISA, PJM Power Providers Group, PA PUC file Amicus Curiae Briefs
		Mar 5	CPV, Hess, NJ BPU file Reply Briefs

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: March 6, 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 March 6, 2014. If you have questions, please contact us.¹

I. Complaints

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

On February 24, NEPGA requested rehearing and clarification of both the FERC’s January 24 orders (i) granting in part, and denying in part, NEPGA’s Administrative Pricing Rules Complaint in this proceeding,² and (ii) accepting changes to the FCM Administrative Pricing Rules in ER14-463 (*see* Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463) below).³ As previously reported, in the *Jan 24 Orders*, the FERC found that the administrative pricing provisions for situations of Inadequate Supply and Insufficient Competition were unjust and unreasonable. While the FERC declined to adopt NEPGA’s proposed revisions, it adopted the revisions proposed by the ISO in the Exigent Circumstances Filing (*see* ER14-463 below) and also declined to find the existing Capacity Carry Forward Rule unjust and unreasonable.⁴ NEPGA requested the FERC grant rehearing and clarification of the following three aspects of the *Jan 24 Orders*: (i) require prospective auctions to utilize ORTP-based prices; (ii) direct ISO-NE to implement a sloped demand curve for all aspects of the FCM, including for individual capacity zones, for FCA9; and (iii) require ISO-NE to eliminate the zero-bid requirement and implement the bidding protocols requested by NEPGA in its initial Complaint in this proceeding. The NEPGA request for rehearing and clarification is pending before the FERC, with FERC action required on or before March 26, 2014, or the request will be deemed denied. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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

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

² *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 146 FERC ¶ 61,039 (Jan. 24, 2014) (“*Jan 24 NEPGA FCM Admin Pricing Rules Order*”), *reh’g requested.*

³ *ISO New England Inc.*, 146 FERC ¶ 61,038 (Jan. 24, 2014) (“*Jan 24 Exigent Circumstances Order*”, and together with the *Jan 24 NEPGA FCM Admin Pricing Rules Order*, the “*Jan 24 Orders*”), *reh’g requested.*

⁴ *Id.* at P 1.

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

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; dttdoot@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 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

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.

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

- **FCA8 Results Filing (ER14-1409)**

On February 28, the ISO filed the results of the eighth FCA (“FCA8”) held February 3, 2014. The ISO reported: (i) that the Capacity Zones for FCA8 are Connecticut, Maine, NEMA/Boston and Rest of Pool; (ii) FCA7 commenced with a starting price of \$15.82/kW-mo. and concluded with a price of \$14.99/kW-month (reset to \$15.00/kW-mo.); (iii) FCA8 concluded with 33,702 MW of resources receiving CSOs to meet an ICR requirement of 33,855 MW (a 1,123 MW deficiency); (iv) administrative pricing rules set the prices for FCA8; (v) new resources that received a CSO in the Maine, Connecticut and Rest-of-Pool will be paid the \$15.00/kW-mo. Capacity Clearing Price; existing resources, the \$7.025/kW-mo. administrative price; (vi) both new and existing resources in NEMA/Boston (where the Carry Forward Rule was triggered) will be paid \$15.00/kW-mo.; and (vii) no de-list bids were rejected for reliability reasons. The ISO asked the FERC to accept the FCA8 rates and results, effective June 28, 2014. Comments on this filing are due on or before April 14, 2014. 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).

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.

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

As previously reported, the FERC conditionally accepted on October 7, 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.¹⁵ An ISO compliance filing directed by the *Bid Results Order*, further detailing its evaluation process in selecting winning bids,¹⁶ as well as to reflect corrections identified by Essential Power and Exelon,¹⁷ was accepted by the FERC on November 13. TransCanada challenged the *Bid Results Order*¹⁸ 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* order¹⁹ that PSEG’s May 2010 petition for review be granted, remanding the FERC’s orders in this proceeding²⁰ 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 Generators²¹ submitted comments 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

- **CSO Terminations: Constellation (ER14-1339)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on February 19 to terminate CSOs held by Project Sponsor Constellation New Energy (“Constellation”). The ISO indicated that, upon FERC acceptance of the

¹⁵ *ISO New England Inc.*, 145 FERC ¶ 61,023 (Oct. 7, 2013) (“*Bid Results Order*”), *reh’g requested*.

¹⁶ *Bid Results Order* at PP 23, 26-30.

¹⁷ *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.

¹⁸ 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.

¹⁹ *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

²⁰ *ISO New England Inc.*, 123 FERC ¶ 61,290 (June 20, 2008); *reh’g denied*, 130 FERC ¶ 61,235 (Mar. 24, 2010), *remanded*, *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

²¹ “Connecticut Generators” are CP Energy Marketing (US) Inc. and Bridgeport Energy LLC (collectively, “Capital Power”); Dominion Resources Services (“Dominion”); Milford Power Co. and EquiPower Resources Management (collectively, “EquiPower”); NRG Power Marketing, Conn. Jet Power, Devon Power, Middletown Power, Montville Power, Norwalk Power, and Somerset Power (collectively, “NRG”); and PPL EnergyPlus.

filing, the ISO will draw down the amount of financial assurance provided by Constellation with respect to the CSOs. Comments on this filing are due on or before March 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: NextEra (ER14-1338)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on February 19 to terminate a CSO for Resource No. 367 held by Project Sponsor NextEra Energy Power Marketing (“NextEra”). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by NextEra with respect to the CSO. Comments on this filing are due on or before March 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Hess (ER14-1337)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on February 19 to terminate CSOs held by Project Sponsor Hess Energy Marketing (“Hess”). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Hess with respect to the CSOs. Comments on this filing are due on or before March 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: DCAM (ER14-1336)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on February 19 to terminate a CSO for Resource No. 15543 held by Project Sponsor Massachusetts Division of Capital Asset Management (“DCAM”). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by DCAM with respect to the CSO. Comments on this filing are due on or before March 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Information Policy Reliability-Related Information Changes (ER14-1284)**

On February 7, the ISO and NEPOOL jointly submitted revisions to the Information Policy that clarify the ISO’s obligations to share reliability-related information pursuant to FERC, NERC Reliability Standard, and similar reliability-related rules and requirements. An April 8, 2014 effective date was requested. These changes were supported by the Participants Committee at the February 7, 2014 meeting by way of Consent Agenda Item # 1. Comments on this filing were due on or before February 28; none were filed. Doc-less interventions were filed by NRG and NU. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **NCPC Payment Re-Design and Conforming Mitigation Changes (ER14-1147)**

On January 24, the ISO and NEPOOL jointly submitted revisions to Appendices A & F to Market Rule 1 and to the unified Definitions Section of the Tariff (the “NCPC Credit Revisions”) to redesign the NCPC credit rules and to make conforming changes to the market mitigation provisions of Appendix A. Specifically, the NCPC Credit Changes were revised to account for the Energy Offer Flexibility Changes (*see* ER13-1877 below) and to unify the NCPC credit rules under an enhanced design principle. A December 3, 2014 effective date, for implementation with the Offer Flexibility Changes, was requested. The NCPC Credit Revisions were supported by the Participants Committee at the November 8, 2013 meeting. Comments on this filing were due on or before February 14, 2014. Doc-less interventions were filed by Brookfield, Dominion and NU; no comments were submitted. This matter is currently pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Performance Incentives Jump Ball Filing (ER14-1050)**

On January 17, the ISO and NEPOOL submitted two alternative versions of Market Rule changes intended to improve the operating performance of capacity resources in New England -- the “ISO-NE Proposal” and the “NEPOOL Proposal”.

Both Proposals seek to further address existing reliability, investment and resource performance challenges in New England. However, the two proposals offer fundamentally different approaches. The ISO-NE Proposal would redefine capacity as a different product where payments are affected by whether a resource is providing energy and/or operating reserves in Real-Time three years hence. Through its “pay-for-performance” mechanism, the ISO Proposal abandons longstanding capacity market principles in New England and the other RTO markets and converts the FCM from a market designed to ensure long-term resource adequacy to one that is driven primarily by prospective and largely unpredictable actual production. Resources not producing energy or reserves at the time of a “Capacity Scarcity Condition” for any reason would be subject to significant penalties, even if that scarcity condition occurs during very low load conditions, or is caused by transmission outages or even by errors in the ISO’s load forecasting. The NEPOOL Proposal, in contrast, builds upon a series of Market Rule changes, either made or are pending, proposes changes that would enhance the current market design and achieves the objective of improving the performance incentives for resources in the ISO-NE electricity markets. The Proposals were submitted pursuant to “jump ball provision” of the Participants Agreement (Section 11.1.5). As requested, comments on the Proposals were due on or before February 12, 2014.

Interventions only were filed by Algonquin Gas Transmission, ConEd, CT AG, CT OCC/DEEP, Essential Power, Exelon, LIPA, New England LDCs, NICC, REPSOL, RI PUC, TransCanada, Vitol, and the following gas transmission companies: Algonquin, Iroquois, Maritimes and Northeast, Tennessee. Comments and protests were filed by NEPOOL and the ISO on each other’s Proposals, as well as by Potomac Economics, ANGA, Brookfield, CMEEC, CT PURA, Dominion, EMCOS, EMI, EnerNOC, Entergy, GDF SUEZ, HQUS, IECG, Indicated Generators, Maine OPA, MPUC, MA DPU, Nat’l Grid, NEPGA/EPSA, NESCOE, NE Nat. Gas. Industry, N.E. Efficiency Partnerships, NextERA, NGS, NRG, NU, PSEG, RENEW, UI, and VT PSB. A summary of the comments was circulated to the Committee on February 17, and as revised on February 19, and is posted on the Litigation Updates & Reports webpage (http://www.nepool.com/Litigation_Reports.php).

Answers to the comments and protests were filed by NEPOOL, the ISO, Connecticut and Rhode Island Parties, Dominion, Entergy, GDF SUEZ, Indicated Generators, Maine OPA and MPUC, and NRG. A summary of those answers was circulated under separate cover to the Committee on March 5, and is posted on the Litigation Updates & Reports webpage. Also on February 27, NEPOOL submitted a Motion for Discovery. The ISO answered the Discovery Motion on March 4, and NEPOOL answered that ISO answer on March 6. Also on March 6, MMWEC submitted comments supporting NEPOOL’s Discovery Motion. NEPOOL requested FERC action on its Discovery Motion by March 7, 2014. These matters are 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 Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Pipeline Information Sharing Changes (ER14-970)**

On March 6, the FERC accepted revisions to the Information Policy to allow the ISO to share confidential information concerning gas-fuel generation with the operating personnel of the interstate natural gas pipeline companies, consistent with the FERC’s regulations under *Order 787*, as jointly submitted by the ISO and NEPOOL on January 10.²² The revisions were accepted as of January 11, 2014, as requested. Unless the March 6 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).

- **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

²² *ISO New England Inc.*, 146 FERC ¶ 61,159 (Mar. 6, 2014).

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. Doc-less interventions were filed by Exelon, NRG and NU. On January 10, Verso Paper filed comments supporting the changes. This matter is now pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On February 11, 2014, the FERC issued an order accepting in part, and rejecting in part, changes filed by the ISO to 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 (collectively, the “ORTP Changes”).²³ The accepted Tariff revisions became effective February 11, 2014.

As previously reported, 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, UI, RENEW and CLF. 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/EPSCA, NextEra, Protesting Parties,²⁴ and the NH PUC. On January 23, the ISO filed an answer to the protests and comments submitted and Renewable Parties²⁵ filed an answer to the protests and comments of NEPGA/EPSCA, NextEra, EMCOS, and Exelon. On February 3, NEPGA/EPSCA filed an answer to Renewable Parties. And on February 7, EnerNOC filed an answer to the ISO’s January 24 answer.

In accepting the ORTP Changes, the *ORTP Order accepted* nearly all the Tariff revisions proposed by the ISO, including the proposed ORTP for combustion turbines, combined cycle gas turbines, energy efficiency DR, load management DR, and off-shore wind (finding “that ISO-NE has adequately explained its determination that insufficient cost data exists to conduct a full calculation pursuant to section III.A.21.1.2(b) of its Tariff”²⁶); the *ORTP Order rejected* the proposed ORTP for on-shore wind (finding “the assumption that a resource participating in FCA9 for the 2018-2019 Capacity Commitment Period will receive Production Tax Credit revenues to be inappropriate”²⁷) and combined DG/DR (rejecting as unjust and unreasonable with respect to these kinds of resources the ISO proposal to tie the ORTP for a given resource to the ORTP of its underlying generation technology type²⁸). The Market Rule changes to be made in response to the *ORTP*

²³ *ISO New England Inc.*, 146 FERC ¶ 61,084 (Feb. 11, 2014) (“*ORTP Order*”).

²⁴ “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”).

²⁵ “Renewable Parties” are Renewable Energy New England, Inc. (“RENEW”) First Wind and CLF.

²⁶ *Id.* at P 39.

²⁷ *Id.* at P 33.

²⁸ *Id.* at PP 47-49.

Order will be considered at the March 7 meeting (Agenda Item #9). Challenges, if any, to the *ORTP Order* must be filed on or before March 13. 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)**

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 (“DR Commercial Operation Audit Revisions”). 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. On January 23, the ISO submitted an updated xml file to correct deficiencies in that file related to the “clean” tariff sheets. No comments on the updated filing were submitted on or before the February 13, 2014 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 January 24, the FERC accepted revisions to the FCM administrative pricing rules that (i) addressed what the ISO identified as a “gap” in the Insufficient Competition rules; (ii) set 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) made additional clarifying changes to the FCM administrative pricing rules (collectively, the “FCM Pricing Rule Changes”).²⁹ The FCM Pricing Rule Changes became effective January 24, 2014, as requested.

As previously reported, 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.³⁰ Protests were filed by Connecticut,³¹ ENE and Participating Municipals, GDF Suez, MA AG, MA DPU, NECPUC, NESCOE, NextEra, NU and UI, and PSEG. And on January 17, NEPGA filed a limited answer to inform the FERC of the ISO’s statements regarding the timing for implementation of a sloped demand curve.

In accepting the filing, the FERC established a \$7.025/kW rate, should the administrative pricing provisions trigger, for FCA8, replacing existing Tariff provisions that it found unjust and unreasonable in the Administrative Pricing Rules Complaint order (*see* EL14-7 above).³² Addressing the ISO’s statements about a sloped demand curve as a long-term solution to the issues presented in this proceeding, the FERC, noting its

²⁹ *Jan 24 Exigent Circumstances Order*.

³⁰ “Public Systems” are MMWEC, CMEEC, NHEC and VPPSA.

³¹ 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 (“CT DEEP”).

³² The order also accepted the ISO’s proposed changes to correct the IC Gap and the remaining administrative pricing provisions. Addressing the questions concerning the “Exigent Circumstances” underlying the filing, the FERC found that the ISO had satisfied the prescribed criteria for an Exigent Circumstances filing: “ISO-NE justifiably determined that failing to immediately implement a change prior to FCA 8 could affect the short-term competitiveness and efficiency of the markets and, in the long-term, affect system reliability.” *Id.* at P 52.

concerns that waiting until this summer for such a proposal to be filed would not allow sufficient time for implementation by FCA9, the FERC stated

Given ISO-NE's explanation that a sloped demand curve will address the difficult and challenging issues presented here, and based on ISO-NE's statements that its proposal here is intended to be temporary and address concerns for FCA8, we will direct ISO-NE to submit its proposed demand curve by April 1, 2014, to allow sufficient time for implementation prior to FCA9.³³

The stakeholder process for developing and providing input on a sloped Demand Curve proposal to be filed by April 1 is underway. A March 21 Participants Committee meeting has been scheduled for a vote on both the Demand Curve and the 60-day compliance filing directed in the *Jan 24 Exigent Circumstances Order*.

On February 24, NEPGA requested rehearing and clarification of the *Jan 24 Exigent Circumstances Order*. Specifically, NEPGA requested the FERC : (i) grant rehearing and require Capacity Prices to be based on ORTPs; (ii) clarify that the \$7.025/kW-month proxy price may be used only in FCA8 and that the sloped demand curve replace the current Administrative Pricing provisions in all respects for FCA9; and (iii) require the ISO to eliminate the Zero Bid Requirement for Capacity that is subject to multi-year price protection. The NEPGA request for rehearing and clarification is pending before the FERC, with FERC action required on or before March 26, 2014, or the request will be deemed denied. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or 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 enhancements³⁴ designed to provide Market Participants greater flexibility in structuring and modifying their Supply Offers in the Day-Ahead and Real-Time Energy Markets (the "Offer Flexibility Changes").³⁵ 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.

Compliance Filing. Changes in response to the *Offer Flexibility Changes Order* were supported by the Participants Committee at its January 19, 2014 meeting and submitted on January 17, 2014. On February 7, NEPGA protested the January 17 compliance filing (the proposed 5pm deadline for updates to hourly Reference Levels for "locked-out" Resources). Answers to the NEPGA protest were filed by the ISO and NEPOOL. The compliance filing is pending before the FERC. 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).

³³ *Id.* at P 30.

³⁴ 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.

³⁵ *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.

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

Rehearing of the 2013/2014 *Winter Reliability Program Order* remains pending. As previously reported, the FERC *conditionally* accepted the Winter Reliability Program on September 16, to be effective September 6, 2013 through February 28, 2014.³⁶ 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).³⁷ 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.”³⁸ The FERC found unpersuasive the arguments that it would be more appropriate to allocate Program costs to Regional Network Load.³⁹ 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 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).⁴⁰ 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,”⁴¹ agreed that “the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and

³⁶ *ISO New England et al.*, 144 FERC ¶ 61,204 (Sep. 16, 2013) (“2013/2014 Winter Reliability Program Order”), *reh’g requested*.

³⁷ 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.

³⁸ *Id.* at P 70.

³⁹ *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).

⁴⁰ *ISO New England Inc.*, 142 FERC ¶61,027 (Jan. 14, 2012) (“January 14 Order”).

⁴¹ *Id.* at P 27.

will provide substantial benefits to many parties,”⁴² and found the “proposal will be beneficial to both demand response providers and wholesale electricity customers”.⁴³ 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.⁴⁴ 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 Supporters⁴⁵ 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; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC, on February 12, 2013, conditionally accepted in part and rejected in part the revisions to the FCM and FCM-related rules in the Tariff (“FCA8 Revisions”) filed by the ISO and the PTO AC.⁴⁶ The *FCA8 Revisions Order* accepted the following aspects of the FCA8 Revisions as compliant with its prior FCM Orders: the ISO’s offer review trigger prices;⁴⁷ unit specific offer review;⁴⁸ the ISO’s proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports’ treatment under MOPR;⁴⁹ no exemptions to MOPR for new Self-Supplied Resources;⁵⁰ the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;⁵¹ \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;⁵² and a number of other additional revisions.⁵³ 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

⁴² *Id.* at P 28.

⁴³ *Id.* at P 29.

⁴⁴ *Id.* at PP 44-46.

⁴⁵ “DR Supporters” are Comverge, EnerNOC, NICC, Wal-Mart, and the IECG.

⁴⁶ *ISO New England Inc.*, 142 FERC ¶ 61,107 (Feb. 12, 2013) (“*FCA8 Revisions Order*”).

⁴⁷ *FCA8 Revisions Order* at PP 37-38.

⁴⁸ *Id.* at P 53.

⁴⁹ *Id.* at P 70.

⁵⁰ *Id.* at P 80.

⁵¹ *Id.* at P 97.

⁵² *Id.* at P 126.

⁵³ *Id.* at P 127.

submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market)⁵⁴; 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.

ISO-NE Capacity Zones Proposal (-004). On January 31, 2014, the ISO filed its "Capacity Zones Changes," under which the ISO will annually identify and evaluate all of the boundaries and interface transfer capabilities that could be relevant to FCA Capacity Zone modeling. The proposal includes objective criteria to revise the number and boundaries of Capacity Zones automatically as these relevant conditions change. Zones will automatically be modeled in an FCA if the objective criteria described in the proposal are triggered. The ISO requested an April 1, 2014 effective date. The Capacity Zones Changes were considered but not supported at the January 10 Participants Committee meeting. On February 21, NEPOOL filed comments on the Capacity Zones filing,⁵⁵ and protests were filed by EMCOS, NEPGA, NRG, NU, and PSEG. The January 31 Capacity Zones compliance filing is pending before the FERC.

If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dt_doot@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).

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

⁵⁴ *Id.* at PP 63-64.

⁵⁵ NEPOOL filed a correction to its comments on February 24.

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 (Feb. 26, 2009).

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. Interventions were filed by NEPOOL, Exelon and NU. No comments on this filing were submitted on or before the January 17, 2014 comment date. This matter is pending before the FERC. 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 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).

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

- **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.

Order 1000 November 15 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 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

⁵⁸ *ISO New England Inc.*, 143 FERC ¶ 61,150 (May 17, 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.

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). Answers to the protests and comments were filed on January 15 by the ISO, PTO AC, and MA DPU (to the VT/RI Parties). On February 4, NHT filed an answer to the January 15 answers by the ISO and PTO AC. The ISO answer the NHT February 4 answer on February 18.

These matters are pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **FTR Risk Management Policies-Related FAP Changes (ER14-1311)**

On February 12, the ISO and NEPOOL jointly submitted revisions to the Financial Assurance Policy to change the annual submission requirements for risk management policies, procedures, and controls by certain FTR Market participants. Specifically, the changes replace the current annual filing requirement with a requirement either to certify that no changes have been made to the previously submitted policies or to submit the changes. An April 15, 2014 effective date was requested. These changes were unanimously supported by the Participants Committee at the February 7, 2014 meeting. Comments on this filing were due on or before March 5, 2014. Doc-less interventions were filed by DC Energy, Exelon, and NU; no comments were submitted. This matter is currently pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-NEP: NEP/Ware Cogen IA Cancellation (ER14-1387)**

On February 28, New England Power (“NEP”) submitted a notice of cancellation of its IA with Ware Cogen LP (“Ware Cogen”), effective April 30, 2014. NEP stated that the IA was no longer needed because of the ISO’s December 20 granting of Ware Cogen’s Non-Price Retirement for its generating facility. Comments on the notice of cancellation are due on or before March 21. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NEP: Narragansett/Pontiac IA Cancellation (ER14-1368)**

On February 25, Narragansett submitted a notice of cancellation of its IA with Pontiac Energy Corporation (“Pontiac ”), effective April 27, 2014. Narragansett stated that the IA was no longer needed because the Pontiac generating facility has been decommissioned and dismantled, and no further operation of the generating facility is contemplated. Comments on the notice of cancellation are due on or before March 18. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@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”).

- **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.⁶² 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.⁶³ 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."⁶⁴ Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and WEC ("Cooperatives")⁶⁵ were denied on February 25, 2013.⁶⁶ 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.⁶⁷

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. There has been no reported activity since the last Report. 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

⁶² *ISO New England Inc. and Bangor Hydro Elec. Co.*, 145 FERC ¶ 61,197 (Dec. 5, 2013).

⁶³ *ISO New England, Inc., Central Vt. Pub. Srv. Corp. and Green Mountain Power Corp.*, 140 FERC ¶ 61,239 (Sep. 24, 2012) ("*GMP Merger Order*"), *reh'g denied*, 142 FERC ¶ 61,146 (Feb. 25, 2013).

⁶⁴ *Id.* at PP 21-22.

⁶⁵ 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.

⁶⁶ *ISO New England, Inc., Central Vt. Pub. Srv. Corp. and Green Mountain Power Corp.*, 142 FERC ¶ 61,146 (2013).

⁶⁷ *Green Mountain Power Corp.*, 142 FERC ¶ 61,147 (Feb. 25, 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.

VIII. Regional Reports

- **Capital Projects Report - 2013 Q4 (ER14-1323)**

In a new matter since the last report, the ISO filed on February 13 its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter (“Q4”) of calendar year 2013 (the “Report”). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the ISO Tariff. Highlights include the following new projects: Energy Market Offer Flexibility (Hourly Market) (\$13,843,900); 2014 Issue Resolution Project Phase I (\$455,000); Asset Registration Electronic Forms (\$204,365); and Software Testing Tool 2014 (\$200,000). Projects reported to have significant changes include decreases in (i) CTS Scheduling (by \$1.8 million, deferred to 2015); (ii) Pre-requisite Unit Dispatch & Scheduling Changes for Generation Control Application (by \$140,000); Business Intelligence Phase IV, 3d Party FTR Admin, and Cyber Security (\$1.64 delayed to later in 2014); and Quarterly Release Project and Wind Integration Phase II (\$800,000 removed). A doc-less intervention was filed by NU. NEPOOL intervened and filed comments on February 19. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Quarterly Markets Reports - 2013 Q4 (ZZ13-4)**

On February 10, 2013, the internal Market Monitor filed with the FERC its report for the fourth quarter of 2013 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. A report on the 2013 Q4 Report will be presented at the March 7, 2014 Participants Committee meeting (Agenda Item # 6). These filings are not noticed for public comment by the FERC.

IX. Membership Filings

- **March 2014 Membership Filing (ER14-1399)**

On February 28, NEPOOL requested that the FERC accept: (i) the memberships of Enerwise Global Technologies [Related Person to Comverge (AR Sector)]; and Pacific Summit Energy (Supplier Sector); (ii) the involuntary termination of A123 Systems Inc. (Mar 1, 2014); and (iii) the name changes of Kendall Green Energy LLC (f/k/a NRG Kendall LLC) and Liberty Utilities (Granite State Electric) Corp. (f/k/a Granite State Electric Company). Comments on this filing are due on or before March 21, 2014.

- **February 2014 Membership Filing (ER14-1244)**

On January 31, NEPOOL requested that the FERC accept: (i) the memberships of Champion Energy Marketing [Related Person to EDF Trading North America, LLC (Supplier Sector)]; eKapital Investments (Supplier Sector); and Sunwave USA Holdings (Supplier Sector); (ii) the termination of the Participant status of Easy Energy of Massachusetts, (Jan 1, 2014); Maine Public Service Co. (Jan 1, 2014); Pepco Energy Services (Jan 1, 2014); Wheelabrator Claremont Company (Jan 1, 2014); Corinth Wood Pellets and (Feb 1, 2014); and Corinth Energy LLC (Feb 1, 2014); and (iii) the name change of Emera Maine (f/k/a Bangor Hydro-Electric Company). No comments on this filing were filed on or before the February 21, 2014 comment date and this filing is pending before the FERC.

- **Suspension Notices (not docketed)**

Since the last Report, the ISO filed, pursuant to Section 2.3 of the Information Policy, notices with the FERC that the following Participants were suspended from the New England Markets on the date indicated (all at 8:30 a.m.) due to Financial Assurance Defaults:

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Feb 19	OBE Electric	---
Feb 25	Ansonia Generation	---
Feb 25	Concord Steam	--- ⁶⁸

These notices were for the FERC’s information only and were not docketed or noticed for public comment. As of the date of this Report, only People’s Power & Gas remains suspended.

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: February 2014 (NP14-34)**

NERC submitted on February 27, 2014, its Find, Fix, Track and Report (“FFT”) informational filing for the month of February 2014. The February FFT resolves 22 possible violations of 9 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁶⁹ The 11 Registered Entities involved each submitted a mitigation activities statement of completion. These filings are for information only and will not be noticed for public comment by the FERC.

- **Revised Reliability Standards: MOD-032-1, MOD-033-1 (RD14-5)**

On February 25, 2014, NERC filed for approval changes to two Modeling, Data, and Analysis Standards, MOD-032-1 (Data for Power System Modeling and Analysis) and MOD-033-1 (Steady-State and Dynamic System Model Validation), to replace, consolidate and improve upon the “Existing MOD B Standards⁷⁰” in addressing system-level modeling data and validation requirements (“MOD Revisions”). NERC states that the purpose of the proposed Reliability Standards is to establish comprehensive modeling data requirements, reporting procedures, and validation requirements necessary to effectively model the interconnected transmission system for the Near-Term Transmission Planning Horizon and the Long-Term Transmission Planning Horizon. The Proposed Standards were developed to address: (i) directives from *Order Nos. 890* and *693* to modify the Existing MOD B Standards; and (ii) recommendations from a white paper drafted by the NERC Planning Committee’s System Analysis and Modeling Subcommittee (the “SAMS Whitepaper”) proposing improvements to the Existing MOD B Standards. NERC also requested approval of revised VRFs, VSLs, Implementation Plan, retirements of existing MOD-010-0 and MOD-012-0, and the withdrawal of the MOD B Standards. Changes to the Revised Standards were requested to become effective on the first day of the first calendar quarter that is one year (in the case of MOD-032 R1), two years (in the case of MOD-032 R2, R3, R4), and three years (in the case of MOD-033) after the date that the proposed MOD Revisions are approved by the FERC. Comments on the MOD Revisions are due on or before March 27, 2014.

⁶⁸ Voluntary request to terminate NEPOOL and Market Participant status pending.

⁶⁹ 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 (Mar. 15, 2012) at PP 46-56.

⁷⁰ Just two of The Existing MOD B Standards, MOD-010-0 and MOD-12-0 were approved in *Order 693*. The other four Existing MOD B Standards were deemed “fill-in-the-blank” standards and were neither approved nor remanded but remain pending. *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16416, FERC Stats. & Regs. ¶ 31,242, at PP 1131-1222, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007). The February 25 filing requests approval to retire MOD-010-0 and MOD-012-0 and withdraw MOD-011-0, MOD-013-1, MOD-014-0, and MOD-015-0.1.

- **Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-011-1 (RD14-4)**

On February 27, 2014, NERC filed for approval changes to the following five Interchange and Coordination Standards (“INT Changes”):

- INT-004-3 – Dynamic Transfers;
- INT-006-4 – Evaluation of Interchange Transactions;
- INT-009-2 – Implementation of Interchange;
- INT-010-2 – Interchange Initiation and Modification for Reliability; and
- INT-011-1 – Intra-Balancing Authority Transaction Identification.

The INT Changes are designed to consolidate nine currently effective INT Standards into five new Standards⁷¹ that clarify responsibility for Interchange Authority tasks. In addition, NERC requested approval of associated VRFs and VSLs, a proposed implementation plan, and four new and ten revised definitions⁷² for inclusion in its *Glossary of Terms* (“Definitions”). NERC requested that the revised INT Standards, VRFs, VSLs, Implementation Plan, and Definitions be approved effective on the first day of the second calendar quarter that is after the date that the proposed INT Standards are approved by the FERC. Comments on the revised Reliability Standards are due on or before March 31, 2014.

- **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 were due on or before January 17, 2014, and were filed by AWEA, APPA and Exelon; protests, by the Electricity Consumers Resource Council (“ELCON”) and First Wind. On January 31, Exelon responded to ELCON’s protest. NERC responded to the ELCON and First Wind requests on February 2. Answers to NERC’s February 2 answer were filed February 14 by AWEA and February 18 by First Wind. This matter is pending before the FERC.

- **Revised Reliability Standard: MOD-001-2 (RM14-7)**

On February 10, 2014, NERC filed for approval changes to MOD-001-2 (Modeling, Data, and Analysis — Available Transmission System Capability) (“MOD Changes”). The MOD Changes are designed to replace, consolidate and improve upon the Existing MOD Standards in addressing the reliability issues associated with determinations of Available Transfer Capability (“ATC”) and Available Flowgate Capability (“AFC”). MOD-001-2 is designed to replace the six Existing MOD Standards⁷³ to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2’s effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and

⁷¹ The 5 existing INT Standards to be replaced by INT-011-1 are: INT-001-3 (Interchange Information); INT-003-3 (Interchange Transaction Implementation); INT-005-3 (Interchange Authority Distributes Arranged Interchange); INT-007-1 (Interchange Confirmation); and INT-008-3 (Interchange Authority Distributes Status).

⁷² The proposed new Definitions are: Attaining Balancing Authority; Native Balancing Authority; Composite Confirmed Interchange; and Reliability Adjustment Arranged Interchange; proposed revised Definitions are: Adjacent Balancing Authority; Arranged Interchange; Confirmed Interchange; Dynamic Interchange Schedule or Dynamic Schedule; Intermediate Balancing Authority; Operational Planning Analysis; Pseudo-Tie; Request for Interchange; Sink Balancing Authority; and Source Balancing Authority.

⁷³ The 6 existing MOD Standards to be replaced by MOD-001-2 are: MOD-001-1, MOD-004-1, MOD-008-1, MOD-028-2, MOD-029-1a and MOD-030-2.

are not included in proposed MOD-001-2. As of the date of this report, a comment date has not been set for this filing.

- **Revised Reliability Standards: PRC-023-003 and -025-001 (RM14-3; RM13-19)**

On December 17, 2013, NERC filed for approval changes to PRC-023 (Transmission Relay Loadability) in Docket No. RM14-3. 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 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.

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

On January 16, 2014, the FERC issued a NOPR proposing to approve Reliability Standard EOP-010-1 (Geomagnetic Disturbance Operations).⁷⁵ As previously reported, NERC filed the new Reliability Standard to require 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. Comments on the *GDO NOPR* are due on or before March 24, 2014.⁷⁶

- **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:⁷⁷

- ▶ 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

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).

⁷⁵ *Reliability Standard for Geomagnetic Disturbance Operations*, 146 FERC ¶ 61,015 (Jan. 16, 2014) (“*GDO NOPR*”).

⁷⁶ The *GDO 21 NOPR* was published in the *Fed. Reg.* on Jan. 22, 2014 (Vol. 79, No. 14) pp. 3,547-3,552.

⁷⁷ *Generator Verification Reliability Standards*, 144 FERC ¶ 61,205 (Sep. 19, 2013).

NOPR were due on or before November 25, 2013⁷⁸ 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 NOPR⁷⁹ 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 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).⁸⁰

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.

⁷⁸ 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.

⁷⁹ *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*”).

⁸⁰ 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.

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.⁸¹ 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 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.⁸²

Initially, comments on the *Nov 21 NOPR* were due on or before February 3, 2014.⁸³ However, 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. On January 14, 2014, the FERC granted NERC's motion to defer action on the *Nov 21 NOPR* until January 31, 2015, including deferral of the comment due date. Comments were nonetheless submitted on February 3, 2014 by BPA and Idaho Power.

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

This May 16, 2013 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.⁸⁴ 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, 2013,⁸⁵ 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.

⁸¹ *Id.* at P 4.

⁸² *Id.*

⁸³ The *Nov 21 NOPR* was published in the *Fed. Reg.* on Dec. 5, 2013 (Vol. 78, No. 234) pp. 73,112-73,128.

⁸⁴ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

⁸⁵ 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.⁸⁶ 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, 2014.⁸⁷ Rehearing and/or clarification of *Order 791* was requested on December 20, 2013 by APPA/NRECA, EEI/EPSCA, and Brian Evans-Mongeeon. On January 22, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

On February 27, the FERC announced that it would hold, on April 29, 2014, a staff-led technical conference on CIP issues identified in *Order 791*. Technical Conference panelists may be asked to address: (1) whether additional definitions and/or security controls are needed to protect Bulk-Power System communications networks, including remote systems access; (2) the adequacy of the approved CIP version 5 Standards’ protections for Bulk-Power System data being transmitted over data networks; and (3) functional differences between the respective methods utilized for identification, categorization, and specification of appropriate levels of protection for cyber assets using CIP version 5 Standards as compared with those employed within the National Institute of Standards and Technology Security Risk Management Framework. A subsequent notice detailing the topics to be discussed and agenda will be issued in advance of the conference.

- **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,⁸⁸ which deferred the effective date for the revised BES definition as approved in *Order Nos. 773*⁸⁹ and *773-A*⁹⁰ to July 1, 2014 (rather than July 1, 2013), this proceeding has largely been concluded. The Pacific Northwest Generating Cooperative (“PNGC”) and Northwest Requirements Utilities (“NRU”) jointly 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 denied that request for rehearing on February 6, 2014.⁹¹ The FERC’s earlier orders in this proceeding were appealed to the U.S. Court of Appeals for the Second Circuit and further developments in that proceeding will be reported in Section XV below.

⁸⁶ *Version 5 Critical Infrastructure Protection Reliability Standards*, Order No. 791, 145 FERC ¶ 61,160 (Nov. 22, 2013) (“*Order 791*”).

⁸⁷ *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).

⁸⁸ *Revisions to ERO Definition of Bulk Electric System and Rules of Procedure*, 143 FERC ¶ 61,231 (2013) (“*June 13 Order*”), *reh’g denied*, 146 FERC ¶ 61,070 (2014).

⁸⁹ *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).

⁹⁰ *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).

⁹¹ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 146 FERC ¶ 61,070 (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 BAL-003-1 (Frequency Response and Frequency Bias Setting).⁹² 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.⁹³ 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 (“Order”) in response to a February 7, 2012 petition by the RTO/ISOs, including ISO-NE,⁹⁴ 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.

On February 25, 2014, the CFTC issued an “Advisory with respect to the scope of potential transactions covered by the Order providing exemptive relief for electric energy markets administered by certain Regional Transmission Organizations and Independent System Operators” that effectively confirms that contracts, agreements, and transactions entered into under the ISO’s Tariff (including internal bilaterals) are exempt from the CEA and CFTC regulations to the same degree and extent as the relief already granted in the March 28 Order. A copy of the Advisory and an memo from the ISO addressing the conclusion of the CFTC exemption process was included with the materials for the March 7 meeting. In that memo, the ISO concludes that “all of [its] market transactions, including IBTs, are within the scope of the order and therefore exempt from most provisions of the [CEA] and regulations thereunder, and plan to withdraw their separate request for supplemental relief, which technically remain pending.” If there are questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **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 (“Applicants”) 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

⁹² *Market Implications of Frequency Response and Frequency Bias Setting Reqs.*, 144 FERC ¶ 61,058 (July 18, 2013).

⁹³ *Id.* at P 2.

⁹⁴ A copy of the “Consolidated Request” is available at <http://www.iso-ne.com/regulatory/ferc/fed/index.html>.

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. On January 21, the PJM IMM submitted an answer to NRG and EME's answers. NRG responded to that answer on January 24. Since the last Report, Applicants filed a joint request for expedited action by March 27, 2014, to facilitate timely consummation of the plan of reorganization (the "Plan") for EME and its affiliated debtors (collectively, the "Debtors") under Chapter 11 of the U.S. Bankruptcy Code. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **NU/UI Termination of Legacy Agreement (Black Pond Junction Coke Works) (ER14-1306)**

On February 11, NU filed to terminate a 1972 agreement between CL&P and UI that provided for the joint use by CL&P and UI of certain specified transmission facilities, which has since become unnecessary as the transmission facilities are used to provide regional network service ("RNS") pursuant to, and the annual revenue requirements recovered under, the ISO Tariff. A December 1, 2013 effective date was requested. No comments were submitted on or before the March 6 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).

- **Local Control Center Services Agreement – NSTAR/Norwood (ER14-1261; ER14-1191)**

On January 29, NSTAR filed, in Docket No. ER14-1191, a Local Control Center ("LCC") Services Agreement between itself and Norwood that sets the terms pursuant to which NSTAR will operate and maintain a LCC to operate Norwood's transmission facilities on a 24-hour basis, implement the instructions, orders and directions received from the ISO related to the Norwood facilities, and perform other central dispatch functions all as delineated in and required under the TOA. LCC costs are billed directly to the ISO and recovered under Schedule 1 of the ISO Tariff. The LCC Agreement will supersede a 1993 Coordination Agreement between Boston Edison and Norwood, for which NSTAR filed a notice of Termination on February 4 (ER14-1261). An April 1, 2014 effective was requested for the LCC Services Agreement and Notice of Termination. No comments on the LCC Services Agreement or Notice of Termination were filed 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).

- **EPC/O&M Agreement CL&P/Cricket Valley (ER14-1189)**

On February 28, the FERC accepted an executed Engineering, Procurement, Construction, and Operations and Maintenance Agreement ("EPC/O&M Agreement"), filed by CL&P, and designated as service agreement IA-NU-15, addressing required upgrades arising out of the interconnection of the 1,000 MW Cricket Valley project (in Dover, NY) between ConEd's Pleasant Valley Substation near CL&P's Long Mountain Substation. As requested, the Agreement is effective as of January 27, 2014. Unless the February 28 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).

- **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”,⁹⁵ which the Midwest ISO (“MISO”) and ITC proposed unilaterally to do (without the support of either PJM or NYISO) in its October 20, 2010 filing initiating this proceeding. For a summary of specific findings, please refer to any of the January to June 2013 Reports.

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. Briefs opposing exceptions were filed by the FERC Trial Staff, MISO TOs, NYISO, NY TOs, PJM, and the PJM TOs. On February 25, Joint Applicants moved to strike a portion of the PJM Brief Opposing Exceptions. On March 12, PJM answered Joint Applicants February 25 motion. Since the last report, MISO (now called “Midcontinent Independent System Operator, Inc.”) moved to lodge a portion of OE’s 2012 State of the Markets Report, presented to the FERC on May 16, 2013, which addressed “Phase Angle Regulators Between Michigan & Ontario Enter Service.” Oppositions to that motion to lodge were filed by FERC Staff, NYISO, NY TOs, PJM, PJM TOs. This matter remains pending before the FERC. If there are any questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FERC Enforcement Action: Louis Dreyfus (IN12-6)**

On February 7, 2014, the FERC approved a Stipulation and Consent Agreement between OE and Louis Dreyfus Energy Services L.P. (“LDES”) that, among other things, levied a **\$4,072,257 civil penalty**, required LDES to **disgorge \$3,340,000** in unjust profits and interest, and (iii) requires Xu Cheng, an LDES trader, to pay a civil penalty of **\$310,000** in connection with virtual trading activities in MISO.⁹⁶ OE alleged that LDES inflated the value of its FTR positions through its virtual trading, and that this conduct manipulated the MISO market.⁹⁷ In addition to the penalties, Cheng agreed to not trade in any FERC-regulated markets for 2 years.

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

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

Recall that Notices of Alleged Violations (“NoVs”) are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff’s conclusions regarding the subject’s conduct.⁹⁸ 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.

- **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.⁹⁹ Bangor Hydro requested a limited waiver from the FERC’s Standards of Conduct requirements,¹⁰⁰ 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

⁹⁵ *Midwest Indep. Trans. Sys.Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

⁹⁶ *MISO Virtual and FTR Trading.*, 146 FERC ¶ 61,072 (Feb. 7, 2014).

⁹⁷ *Id.* at P 7.

⁹⁸ *See Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh’g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

⁹⁹ *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (Sep. 15, 2011) (“*BHE Standards of Conduct Order*”).

¹⁰⁰ *See* 18 C.F.R. § 358 (2013) *et seq.*

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.

- **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 Westminister, 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 were due on or before January 14, 2014. On January 14, Pinetree submitted a protest. On January 30, Fitchburg answered Pinetree's protest. Fitchburg's request is now pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

XII. Misc. - Administrative & Rulemaking Proceedings

- **RTO/ISO Winter 2013-2014 Op and Market Performance (AD14-8)**

On February 21, the FERC issued a notice that it will hold, on April 1, 2014, a technical conference to explore the impacts of and actions taken to respond to recent cold weather events by RTO/ISOs. Discussion will focus on: the impact of cold weather events on operational planning and real-time operations, market prices and performance, and regional infrastructure; the actions taken in response to those impacts; gas procurement; and lessons learned that can be shared between regions and applied in future events. Further details will be provided in a supplemental notice to be issued prior to the technical conference. Those interested in attending the technical conference are encouraged to register at the following webpage: <https://www.ferc.gov/whats-new/registration/04-01-14-form.asp>.

- **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*.¹⁰¹ 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. Seven sets of comments were filed, including comments by AMP, AWEA/EEL, DTE, EPSA, and NRG.

- **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

¹⁰¹ See *Chehalis Power Generating, L.P.*, 145 FERC ¶ 61,052 (Oct. 17, 2013) ("*Chehalis*").

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. Since the last report, comments were submitted, on February 10, 2014, by an ad hoc group of “load” parties.¹⁰²

- **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.

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

On June 26, WIRES¹⁰³ 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.

¹⁰² The “load” parties were an ad hoc group of publicly and cooperatively owned electric utilities, national consumer and low-income organizations, state public utility commissions, state consumer advocates, investor-owned utilities, industrial customers, and independent power producers, including, among others, APPA, CT AG, CPV, CT DEEP, CT PURA, GMP, and the Northeast Public Power Assoc.

¹⁰³ WIRES, the **W**orking group for **I**nvestment in **R**eliable and Economic **E**lectric **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.

- **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.¹⁰⁴ Order 792 will become effective February 3, 2014.¹⁰⁵

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.¹⁰⁶ The FERC will consider requests for variations submitted on compliance on the same bases as the variations permitted for compliance with Order 2006.¹⁰⁷ RTOs will be afforded greater flexibility to propose “independent entity variations” from any revisions to the *pro forma* SGIP and SGIA.¹⁰⁸ Requests for regional reliability variations or independent entity variations were due on February 3, 2014. Requests for variations that are “consistent with or superior to” the *pro forma* OATT were also permitted to be submitted on or after the February 3 effective date.¹⁰⁹ On February 3, the ISO and PTO AC notified the FERC that its 6-month (August 4, 2014) compliance filing will contain independent entity variations necessary to preserve previously approved variations and accommodate specific regional needs or differences.

- **Revisions to EQR Filing Process (RM12-3)**

On February 28, the FERC issued an order establishing the new deadlines for the filings of EQRs for third and fourth quarters of 2013 and the first quarter of 2014. The EQR deadlines had been extended to a date to be determined because the new web-based approach for EQR filing was not yet ready for implementation. It is now. Accordingly, the FERC set the following new filing period deadlines:

- ▶ Q3 2013: April 1, 2014 to April 30, 2014;
- ▶ Q4 2013: May 1, 2014 to May 31, 2014;
- ▶ Q1 2014: June 1, 2014 to June 30, 2014; and
- ▶ Q2 2014: July 1, 2014 to July 30, 2014 (normal filing periods resume).

On March 4, the FERC issued a notice that will hold a technical conference on the revised EQR filing process on March 26 from 10:00am to 1:00pm at FERC headquarters. FERC staff will demonstrate the new EQR filing system, announced in Order 770, that includes two options for filing EQRs: one through a web interface on

¹⁰⁴ *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (Nov. 22, 2013) (“Order 792”).

¹⁰⁵ Order 792 was published in the *Fed. Reg.* on December 5, 2013 (Vol. 78, No. 234) pp. 73,240-73,354.

¹⁰⁶ Order 792 at P 269.

¹⁰⁷ *Id.* at P 270.

¹⁰⁸ *Id.* at P 274.

¹⁰⁹ *Id.* at P 276.

the FERC's website, and a second through submission of an XML file. Additional information regarding the technical conference will be posted on the FERC's Calendar of Events at www.ferc.gov.

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

On February 20, 2014, the FERC issued *Order 784-A*,¹¹⁰ granting in part, and denying in part, the pending requests for clarification filed by EEI, Powerex, SoCal Edison, and WSPP. Specifically, *Order 784-A* clarifies, among other things, that any intra-hour transmission scheduling practice would be sufficient to meet *Order 784*'s new requirements, nothing in *Order 784* is intended to permit transmission providers to limit the quantity or percentage of total reserve obligations that a customer may self-supply, absent verifiable operational reasons for doing so, and that utilities are required to implement the accounting and reporting requirements as of January 1, 2013. Unless *Order 784-A* is challenged, with any challenges due on or before March 24, this proceeding will be concluded.

- **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, 2012.¹¹¹ *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, 2013.¹¹² 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*.¹¹³ *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*.¹¹⁴ The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

¹¹⁰ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784-A, 146 FERC ¶ 61,114 (Feb. 20, 2014) ("*Order 784-A*").

¹¹¹ *Availability of E-Tag Info. to Comm'n Staff*, Order No. 771, 141 FERC ¶ 61,235 (Dec. 20, 2012) ("*Order 771*"), order on reh'g and clarification, 142 FERC ¶ 61,181 (2013).

¹¹² *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹¹³ *Availability of E-Tag Info. to Comm'n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) ("*Order 771-A*").

¹¹⁴ *Order 771-A* clarified that: (1) Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of *Order 771*; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the FERC in the CC field; (3) the requirement for the FERC to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the FERC will deem all e-Tag information made available to the FERC pursuant to *Order 771* as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the FERC is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure FERC access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

- **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*,¹¹⁵ affirmed its basic *Order 764* determinations,¹¹⁶ 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;¹¹⁷ (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;¹¹⁸ and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.¹¹⁹ 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 NOPR¹²⁰ which proposes to amend FERC regulations by incorporating by reference **Version 003** of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB"). The Version 003 Standards update earlier versions of these standards previously incorporated by reference into FERC regulations at 18 CFR 38.2. The Version 003 standards include modifications to support Order Nos. 890, 890-A, 890-B and 890-C, including the standards to support Network Integration Transmission Service on an Open Access Same-Time Information System ("OASIS"), Service Across Multiple Transmission Systems ("SAMTS"), standards to support FERC policy regarding rollover rights for redirects on a firm basis, standards that incorporate the functionality for transmission providers to credit redirect requests with the capacity of the parent reservation and standards modifications to support consistency across the OASIS-related standards. The Version 003 Standards also include modifications to the OASIS-related standards that NAESB states support Order Nos. 676, 676-A, 676-E and 717 and add consistency. In addition, there are modifications to the Coordinate Interchange standards to compliment recent updates to e-Tag specifications, modifications to the Gas/Electric Coordination standards to provide consistency between the two markets, and re-organized and revised definitions to create a standard set of terms, definitions and acronyms applicable to all NAESB WEQ standards. The Version 003 Standards include the Standards addressed in *Order 676-G* below and the recent Smart Grid Standards. Comments on the WEQ Version 003 Standards NOPR were due on or before September 24, 2013,¹²¹ and were filed by 11 parties, including APPA, EEI, and the IRC. This matter is pending before the FERC.

¹¹⁵ *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (Dec, 20, 2012) ("*Order 764-A*"), *reh'g requested*.

¹¹⁶ *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) ("*Order 764*"), *order on reh'g*, 141 FERC ¶ 61,232 (2012), *reh'g requested*.

¹¹⁷ *Id.* at P 15.

¹¹⁸ *Id.* at P 19.

¹¹⁹ *Id.* at P 23.

¹²⁰ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 144 FERC ¶ 61,026 (Jul. 18, 2013) ("*WEQ Version 003 Standards NOPR*").

¹²¹ 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.

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

As previously reported, the FERC issued *Order 676-G*¹²² on February 21, 2013. *Order 676-G* 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”¹²³ and “represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F.”¹²⁴ *Order 676-G* became effective May 6, 2013.¹²⁵ The PSEG Companies requested rehearing of *Order 676-G* on March 25, 2013, which the FERC denied on February 11, 2014.¹²⁶ With respect to implementation, 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.¹²⁷ Recipients of the non-public, operational information will be subject to a No-Conduit Rule that prohibits subsequent disclosure of that information to an affiliate or third party. The approach to the sharing of non-public information proposed by the FERC is intentionally permissive, but the FERC noted that should this voluntary approach prove inadequate to promote reliable service or operational planning on natural gas pipelines and electric transmission systems, it may revisit the need to require certain communications or information sharing between transmission operators in the future. *Order 787* became effective December 23, 2013.¹²⁸

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*. On January 13, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. As noted above (*see* Section III, ER14-970), changes to the ISO New England Information Policy that allow the ISO, consistent with *Order 787*, to share Confidential

¹²² *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-G, 142 FERC ¶ 61,131 (Feb. 21, 2013) (“*Order 676-G*”), *reh’g denied*, 146 FERC ¶ 61,088 (Feb. 11, 2014).

¹²³ *Id.* at P 1.

¹²⁴ *Id.* at P 33.

¹²⁵ *Order 676-G* was published in the *Fed. Reg.* on Mar 7, 2012 (Vol. 78, No. 45) pp. 14,654-14,664.

¹²⁶ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 146 FERC ¶ 61,088 (Feb. 11, 2014).

¹²⁷ *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 145 FERC ¶ 61,134 (Nov. 15, 2013) (“*Order 787*”).

¹²⁸ *Order 787* was published in the *Fed. Reg.* on Nov. 22, 2013 (Vol. 78, No. 226) pp. 70,164-70,188.

Information with interstate natural gas pipelines are pending before the FERC, but were implemented on January 11, 2014.

- **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 matters of interest, including petitions for review of FERC decisions in NEPOOL-related proceedings, that are currently pending before the federal courts (unless otherwise noted, the cases are before the U.S. Court of Appeals for the District of Columbia Circuit). 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).

- **Orders 773 and 773-A (2nd Cir., 13-2316)**
Underlying FERC Proceedings: RM12-6 and RM12-7¹²⁹
Appellants: NY PSC and People of the State of New York

The NY PSC and the People of the State of New York have petitioned the Second Circuit Court of Appeals for review of FERC's orders on *Orders 773 and 773-A* (Revised "Bulk Electric System" Definition and Procedures). The brief of the NY PSC/State of NY is now due to be filed no later than May 5, 2014.

- **New England's Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹³⁰
Appellants: EPSA and NEPGA

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

¹²⁹ 141 FERC ¶ 61,236 (2012); 143 FERC ¶ 61,053 (2013).

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

- **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: RM10-23¹³¹
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 before Justices Rogers, Griffith and Pillard has been set for March 20, 2014. On March 4, parties filed letters identifying the attorneys who intend to participate in oral argument.

- **FCM Re-Design (12-1060 consolidated with 12-1074, 12-1085, and 12-1149) **
Underlying FERC Proceedings: ER10-787; EL10-57; EL10-50¹³²
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: RM10-17-000¹³³
Appellants: EPSA, CAISO, ODEC, EEI, CA PUC**

As previously reported, petitions for review of FERC's Order 745 (Demand Response Compensation) were filed by EPSA on December 23, 2011; by CAISO on December 27, 2011; by Old Dominion Electric Cooperative ("ODEC"); and by EEI and the California Public Utilities Commission ("CA PUC") on February 13, 2012. The DC Circuit consolidated the EPSA and CAISO cases on December 28. By orders dated February 13, 2012 and February 15, 2012, the Court consolidated Case Nos. 12-1088, 12-1091 and 12-1093

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

¹³² 131 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).

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

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 (4th Cir., 13-2424)**

The September 30, 2013 decision of the United States District Court for the District of Maryland finding 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,¹³⁴ summarized in previous reports, was appealed to the 4th Circuit Court of Appeals. Opening briefs were due and filed by MD PSC and CPV Maryland, LLC (“CPV”) on February 4, 2014. Response briefs are due March 10, 2014. Since the last Report, Amicus Curiae Briefs were filed by APPA/NRECA, AWEA/Mid-Atlantic Renewable Energy Coalition, CT PURA et al.,¹³⁵ MD Energy Administration, MD Office of People’s Counsel, and NRG. Oral argument has tentatively been scheduled for the May 13-15 session.

- **PPL EnergyPlus, LLC v. Hanna (3d Cir., 13-4330)**

The analogous October 11, 2013 decision of the United States District Court for the District of New Jersey declaring unconstitutional (and therefore null and void) New Jersey’s Long Term Capacity Agreement Pilot Program Act (“LCAPP”),¹³⁶ also summarized in previous reports, was appealed to the 3rd Circuit Court of Appeals. A panel will be convened during the week of March 24 to determine whether there will be oral argument on this appeal and, if so, the amount of time to be allocated for each side. Since the last Report, Amicus Curiae Briefs were filed by EEI/EPSA, PJM Power Providers Group, PA PUC; Reply Briefs by CPV, Hess and NJ BPU.

¹³⁴ *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*”).

¹³⁵ Joining CT PURA were: California Public Utilities Commission, Connecticut Department of Energy and Environmental Protection, Connecticut Office of Consumer Counsel, Delaware Public Service Commission, George Jepsen, Maine Public Utilities Commission, New England Conference of Public Utilities Commissioners, Inc., New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Public Service Commission of the District of Columbia, Public Service Commission of the State of New York (NYPSC), Rhode Island Public Utilities Commission, Vermont Department of Public Service and Vermont Public Service Board.

¹³⁶ *PPL EnergyPlus, LLC v. Hanna*, __ F.Supp.2d __ (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, (“*NJ Order*”).

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