

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of April 3, 2014**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated March 6, 2014 was circulated. New matters/proceedings since the last report are preceded by an asterisk '\*'. Page numbers precede the matter description.

**I. Complaints**

* 1	206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 (EL14-23)	Mar 20	FERC initiates 206 Proceeding to ensure that ISO-NE's scheduling, particularly its Day-Ahead scheduling practices, correlate with any revisions to the natural gas scheduling practices to be ultimately adopted by the FERC in Docket No. RM14-2; intervention date Apr 10, 2014
2	FCM Administrative Pricing Rules Complaint (EL14-7)	Mar 24	FERC issues tolling order affording it additional time to consider NEPGA requests for rehearing of <i>Jan 24 Orders</i>

**II. Rate, ICR, FCA, Cost Recovery Filings**

4	FCA8 Results Filing (ER14-1409)	Mar 10-26 Mar 25 Apr 3	NEPOOL, Dominion, Exelon, NRG intervene ISO supplements its Feb 28 FCA8 Results filing to include Groton Wind CSO in Attachment A NESCOE intervenes
* 5	ISO Securities: Authorization for Future Drawdowns (ES14-31)	Mar 31	ISO requests continued authorization for drawdowns under previously authorized Revolving Credit Line and Payment Default Shortfall Fund; comment date Apr 21

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

* 5	Demand Curve Changes (ER14-1639)	Apr 1	ISO and NEPOOL jointly file Demand Curve changes; comment date Apr 22
* 6	Regulation Market Changes (ER14-1537)	Mar 20 Mar 31	ISO and NEPOOL jointly file changes; comment date Apr 10 NRG intervenes
* 6	FCA9 ORTPs for On-Shore Wind and DR with DG (ER14-1477)	Mar 13 Mar 24, 26 Apr 3	ISO and NEPOOL submit replacement FCA9 ORTPs for on-shore wind and DR with DG; comment date Apr 2 NRG, First Wind intervene NU intervenes; NEPGA submits limited protest
7	CSO Terminations: Constellation (ER14-1339)	Mar 7, 11	NEPOOL, Exelon intervene
7	CSO Termination: NextEra (ER14-1338)	Mar 7	NEPOOL intervenes
7	CSO Terminations: Hess (ER14-1337)	Mar 7	NEPOOL intervenes
7	CSO Termination: DCAM (ER14-1336)	Mar 7	NEPOOL intervenes
7	Information Policy Reliability-Related Information Changes (ER14-1284)	Mar 26	FERC accepts changes; effective Apr 8, 2014
8	FCM Performance Incentives Jump Ball Filing (ER14-1050)	Mar 10 Mar 12 Mar 18 Mar 28	Connecticut and Rhode Island Parties file answer urging rejection of ISO Mar 3 answer and new expert testimony AWEA submits out-of-time motion to intervene and comments NEPOOL answers the ISO's March 3 answer NextEra answers the ISO's March 3 answer

8	Demand Response Baseline Changes (ER14-727)	Apr 1	FERC conditionally accepts changes, effective Jun 1, 2014
9	FCM Offer Review Trigger Price Revisions (ER14-616)	Mar 13	ISO and NEPOOL file compliance changes; Renewable Parties request rehearing of <i>ORTP Order</i>
10	Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463)	Mar 24	FERC issues tolling order affording it additional time to consider NEPGA requests for rehearing of <i>Jan 24 Orders</i>
		Mar 25	ISO and NEPOOL file changes clarifying the precedence of the Inadequate Supply rule over the Insufficient Competition rule; comment date Apr 15
12	FCM Conforming Changes Reflecting PRD Full Integration (ER12-1627)	Mar 12	FERC accepts Mar 15, 2013 compliance filing
14	ISO-NE Capacity Zones Proposal (ER12-953-004)	Mar 10	ISO files answer to Feb 21 protests
		Mar 25	NRG answers ISO Mar 10 answer

**IV. OATT Amendments / TOAs / Coordination Agreements**

15	<i>Order 764</i> Compliance Changes (ER14-375)	Mar 20	FERC accepts in part and rejects in part compliance changes; directs 30-day (Apr 21) compliance filing
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**V. Financial Assurance/Billing Policy Amendments**

*	17	Revised Security Agreement (ER14-1448)	Mar 7	ISO and NEPOOL jointly file Security Agreement revisions; comment date Mar 17
			Mar 10	FERC grants request for expedited Mar 17 comment date
			Mar 14	NU intervenes

**VI. Schedule 20/21/22/23 Changes**

*	18	LGIA (Amended) – CMP/Warren (ER14-1473)	Mar 12	CMP files amended LGIA
	18	Schedule 21-NEP: Narragansett/Pontiac IA Cancellation (ER14-1368)	Mar 26	FERC accepts notice of cancellation
	18	LGIA –Emera Maine/Oakfield Wind Farm (ER14-63)	Mar 7	FERC accepts compliance filing
	19	Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)	Mar 24	Settlement Judge Johnson certifies uncontested settlement to the Commission

**VII. NEPOOL Agreement/Participants Agreement Amendments**

*No Activity to Report*

**VIII. Regional Reports**

	19	Capital Projects Report - 2013 Q4 (ER14-1323)	Mar 14	FERC accepts Report
	20	Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54)	Mar 19	ISO files its 22nd quarterly report
*	20	Reserve Market Compliance (16th) Semi-Annual Report (ER06-613)	Apr 1	ISO submits 16th semi-annual report

**IX. Membership Filings**

* 20	April 2014 Membership Filing (ER14-1638)	Apr 1	<b>Terminations:</b> Ansonia Generation, Concord Steam, OBE Electric, ResCom Energy; <b>Involuntary Termination:</b> People's Power & Gas; comment date Apr 22
21	February 2014 Membership Filing (ER14-1244)	Mar 24	FERC accepts memberships of Champion Energy Marketing, eKapital Investments and Sunwave USA Holdings; and the termination of the Participant status of Easy Energy of Massachusetts, Maine Public Service Co., Pepco Energy Services, Wheelabrator Claremont, and the Corinth Companies
21	Suspension Notices (not docketed)	Mar 10 Mar 10	Acushnet Co. Gallop Power Greenville

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

* 21	FFT Report: March 2014 (NP14-35)	Mar 31	NERC files Report
* 21	Revised Reliability Standard: PER-005-2 (RD14-7)	Mar 7	NERC requests approval of PER-005-2 Standard, retirement of PER-005-1; comment date Apr 11
* 22	New Reliability Standard(s): Physical Security Measures (RD14-6)	Mar 7	FERC directs NERC to develop and file by Jun 5 one or more Reliability Standards to address physical security measures
22	Revised Reliability Standards: MOD-032-1, MOD-033-1 (RD14-5)	Mar 27	EEI intervenes
22	Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-011-1 (RD14-4)	Mar 7 Apr 1	EEI intervenes EPSA intervenes out-of-time
23	Revisions to BES Definition (RD14-2)	Mar 10 Mar 20	Xcel Energy answers AWEA and First Wind answers FERC approves Revised BES Definition
24	NOPR: Revised Reliability Standards: PRC-023-003 and -025-001 (RM14-3; RM13-19)	Mar 20	FERC issues NOPR proposing to approve revised PRD-023-3 and PRC-025-001; comment date Apr 28
24	NOPR: New Reliability Standard: EOP-010-1 (Geomagnetic Disturbance Operations) (RM14-1)	Mar 13-25	Over 20 parties file comments
24	Order 796: Revised Rel. Standards: MOD-025-2, 026-0, 027-0, PRC-019-1, 024-1 (RM13-16)	Mar 20	FERC issues final rule approving revised Reliability Standards; Standards effective May 27, 2014
25	NOPR: Revised TOP and IRO Reliability Standards (RM13-15, RM13-14, RM13-12)	Apr 1	NERC files first quarterly status report on status of revisions to Standards
27	Order 791-A: Version 5 CIP Reliability Standards (-002 through -011) (RM13-5)	Mar 18 Mar 19 Mar 20	NERC requests extension of time to file revised VRFs FERC grants extension of time to May 15, 2014 FERC issues Order 791-A FERC granting clarification in part and denying rehearing of Order 791
* 28	Rules of Procedure: BES Definition Update (RR14-2)	Apr 2	NERC files to update the BES Definition in the NERC Rules of Procedure; comment date May 1

**XI. Misc. - of Regional Interest**

28	203 Application: Edison Mission / NRG (EC14-14)	Mar 18 Apr 1	FERC authorizes NRG acquisition of EME Transaction consummated
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* 29	NGrid Termination of Lowell Cogen IA (ER14-1593)	Mar 26	NGrid requests termination of Lowell Cogen IA; comment date Apr 16
29	NU/UI Termination of Legacy Agreement (Black Pond Junction Coke Works) (ER14-1306)	Mar 11	FERC accepts termination of Black Pond Junction Coke Works agreement
29	Local Control Center Services Agreement – NSTAR/Norwood (ER14-1261; ER14-1191)	Mar 14	FERC accepts LCC Services Agreement
29	Champlain VT, LLC (ER14-966)	Mar 10	FERC conditionally authorizes the sale of transmission rights on the Quebec to Vermont HVDC line
* 30	FERC Enforcement Action: Staff Notices of Alleged Violations (IN__-__)	Apr 1	Staff issues notice of preliminary determination that IPL violated the MISO Tariff by failing to update the real-time offer for its Petersburg 2 generating unit to reflect a de-rate
30	Termination of Fitchburg Mandatory PURPA QF Purchase Obligation from Pinetree QF (QM14-1)	Mar 14	FERC grants Fitchburg request to terminate its mandatory purchase obligation with respect to the 16 MW Pinetree QF

**XII. Misc. - Administrative & Rulemaking Proceedings**



31	RTO/ISO Winter 2013/14 Ops, Market Performance (AD14-8)	Mar 19, 31 Apr 1	FERC issues supplemental notices of technical conference FERC holds technical conference; post-conference comment date May 15, 2014
32	Order 792: Revisions to Pro Forma SGIA and SGIP (RM13-2)	Mar 20	FERC issues Order 792-A clarifying procedures for compliance with Order 792
33	Revisions to EQR Filing Process (RM12-3)	Mar 10 Mar 24 Mar 26	FERC issues order updating EQR Data Dictionary for new EQR system FERC issues errata to Mar 10 order FERC holds technical conference to demonstrate new EQR system

**XIII. Natural Gas Proceedings**



* 35	Natural Gas and Electric Market Coordination (AD12-12)	Mar 31	New England Gas-Electric Focus Group files final report
* 35	NOPR: Coord. of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utils (RM14-2)	Mar 20	FERC issues NOPR; comment date Nov 28, 2014
* 37	Posting of Offers to Purchase Capacity (Section 5 Proceeding) (RP14-442)	Mar 20	FERC issues order directing pipelines to demonstrate how they provide notice of offers to purchase released pipeline capacity in accordance with FERC regulations

**XIV. State Proceedings & Federal Legislative Proceedings**



*No Activity to Report*

**XV. Federal Courts**



38	Orders 1000 and 1000-A (12-1232)	Mar 20	Oral argument held
39	PPL EnergyPlus, LLC v. Nazarian (4th Cir., 13-2424)	Mar 10 Mar 17 Mar 20	PPL et al. files Reply Brief EPSA, PJM Power Providers file Amicus Curiae Briefs Oral argument set for May 13; EEI/EPSCA file Amicus Curiae Briefs
39	PPL EnergyPlus, LLC v. Hanna (3d Cir., 13-4330)	Mar 18 Mar 24 Mar 27	APPA/NRECA file Amicus Curiae Brief FERC files Amicus Curiae Brief Oral argument held

## M E M O R A N D U M

**TO:** NEPOOL Participants Committee Member and Alternates

**FROM:** Patrick M. Gerity, NEPOOL Counsel

**DATE:** April 3, 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 April 3, 2014. If you have questions, please contact us.<sup>1</sup>

**I. Complaints**

- **206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 (EL14-23)**

As reported at the March 21 Participants Committee meeting, on March 20, 2014, the FERC initiated this proceeding, pursuant to section 206 of the Federal Power Act (“FPA”), to ensure that ISO-NE’s scheduling, particularly its Day-Ahead scheduling practices, correlate with any revisions to the natural gas scheduling practices to be ultimately adopted by the FERC in RM14-2 (*see* Section XIII below).<sup>2</sup> Noting its concern about the lack of synchronization between the day-ahead scheduling practices of interstate natural gas pipelines and electricity markets, the FERC directed each ISO and RTO, including ISO-NE, within 90 days after publication of a Final Rule in Docket RM14-2 in the *Federal Register*:

(1) to make a filing that proposes tariff changes to adjust the time at which the results of its day-ahead energy market and reliability unit commitment process (or equivalent) are posted to a time that is sufficiently in advance of the Timely and Evening Nomination Cycles, respectively, to allow gas-fired generators to procure natural gas supply and pipeline transportation capacity to serve their obligations, or (2) to show cause why such changes are not necessary. In their responses, each ISO and RTO must explain how its proposed scheduling modifications are sufficient for gas-fired generators to secure natural gas pipeline capacity prior to the Timely and Evening Nomination Cycles.<sup>3</sup>

The Commission expects to issue a final order in this section 206 proceeding within 90 days of the filings required under the March 20 order. Those interested in being heard in this (or the other) proceeding(s) should file a notice of intervention listing each docket in which they wish to intervene on or before April 10, 2014. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)), Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

<sup>1</sup> 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”).

<sup>2</sup> *Cal. Indep. Sys. Op. Corp. et al.*, 146 FERC ¶ 61,202 (Mar. 20, 2014). The New England 206 proceeding was docketed as EL14-23.

<sup>3</sup> *Id.* at P 19.

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

Rehearing and clarification has been requested and remains pending on both of the FERC's January 24 orders FCM Administrative Pricing-related orders that (i) granted in part, and denied in part, NEPGA's Administrative Pricing Rules Complaint in this proceeding,<sup>4</sup> and (ii) accepted changes to the FCM Administrative Pricing Rules in ER14-463 (*see* Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463) below).<sup>5</sup> 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.<sup>6</sup> 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. On March 24, 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 Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto: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 Complaint<sup>7</sup> was requested and remains pending before the FERC. As previously reported, NESCOE instituted this December 28, 2012 complaint in response to the ISO's December 3, 2012 FCM compliance filing (*see* ER12-953 in Section III below) that implemented buyer-side mitigation without an exemption for state-sponsored public policy resources. NESCOE asserted that the ISO's proposed Minimum Offer Price Rule ("MOPR") would likely exclude from the FCM new renewable resources developed pursuant to state statutes and regulations, and thereby result in customers being forced to purchase more capacity than is necessary for resource adequacy and proposed an alternative renewables exemption (the "Renewables Exemption Proposal"). In denying the Complaint, the FERC found that "NESCOE has failed to meet its burden under section 206 to demonstrate that ISO-NE's MOPR is unjust, unreasonable or unduly discriminatory" as applied to the New England Capacity Market.<sup>8</sup> 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),<sup>9</sup> 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](mailto:slombardi@daypitney.com)), Harold Blinderman (860-275-0357; [hblinderman@daypitney.com](mailto:hblinderman@daypitney.com)) or Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)).

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<sup>4</sup> *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*.

<sup>5</sup> *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*.

<sup>6</sup> *Id.* at P 1.

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

<sup>8</sup> *Id.* at P 32.

<sup>9</sup> *Id.* at P 30.

- **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”)<sup>10</sup> 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,<sup>11</sup> MA AG, MOPA, MPUC, TEC, and the VT DPS. On January 16, the TOs filed their answer, asserting that the FERC should dismiss the Complaint as contrary to Section 206’s 15-month refund limitation and that the Complaint failed to show that the TOs’ Base ROE is unjust and unreasonable. TOs argue that evidence relevant to their cost of capital for 2013 and beyond will only be relevant to this Complaint. MMWEC and NHEC filed joint comments supporting the complaint and urging the FERC to grant the relief requested therein and establish the earliest possible refund effective date. Substantively, MMWEC/NHEC provided additional evidence to counter TO arguments that they face substantial payment “risks” in connection either with the provision of transmission service or the construction of new facilities. On January 31, 2013, 2012 Complainants answered the TOs January 16 answer. The request to consolidate this proceeding with EL11-66, as well as the complaint, answers, and comments are pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto: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.<sup>12</sup> By way of reminder, the FERC established hearing and settlement judge procedures<sup>13</sup> following a complaint by a number of State, consumer, and consumer advocate parties (the “2011 Complainants”)<sup>14</sup>

<sup>10</sup> 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.

<sup>11</sup> EMCOS or the “Eastern Massachusetts Consumer-Owned Systems” are Braintree, Hingham, Reading, and Taunton.

<sup>12</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, 144 FERC ¶ 61,012 (2013) (“2011 Base ROE Initial Decision”).

<sup>13</sup> *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.

<sup>14</sup> 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

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.”<sup>15</sup> 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.<sup>16</sup> If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto: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. On March 25, 2014, the ISO supplemented the FCA8 Results filing to include a Groton Wind CSO (9.751 MW summer; 19.771 MW winter) in Attachment A.

Comments on this filing and the March 25 supplement thereto are due on or before April 14, 2014. Thus far, doc-less interventions have been filed by NEPOOL, Dominion, Exelon, NESCOE, and NRG. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

Rehearing remains pending of the FERC’s October 7 order conditionally accepting the list of 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.<sup>17</sup> An ISO compliance filing directed by the *Bid Results Order*, further detailing its evaluation process in selecting winning bids,<sup>18</sup> as well as to reflect corrections identified by Essential Power and Exelon,<sup>19</sup> was accepted by the FERC on November 13. TransCanada challenged the *Bid Results Order*<sup>20</sup> on November 6, 2013. On December 2, the FERC issued a tolling order

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.

<sup>15</sup> 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.

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

<sup>17</sup> *ISO New England Inc.*, 145 FERC ¶ 61,023 (Oct. 7, 2013) (“*Bid Results Order*”), *reh’g requested*.

<sup>18</sup> *Bid Results Order* at PP 23, 26-30.

<sup>19</sup> *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.

<sup>20</sup> 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.



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](mailto:slombardi@daypitney.com)).

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order<sup>21</sup> that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding<sup>22</sup> 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 Generators<sup>23</sup> 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.

- **ISO Securities: Authorization for Future Drawdowns (ES14-31)**

On March 31, the ISO requested the necessary continued FERC authorization for drawdowns under its previously authorized \$20 million Revolving Credit Line and \$4 million line of credit supporting the Payment Default Shortfall Fund.<sup>24</sup> (ISO authorization under the 2012 Order otherwise terminates on June 30, 2014). Comments on this filing are due on or before April 21. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

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

- **Demand Curve Changes (ER14-1639)**

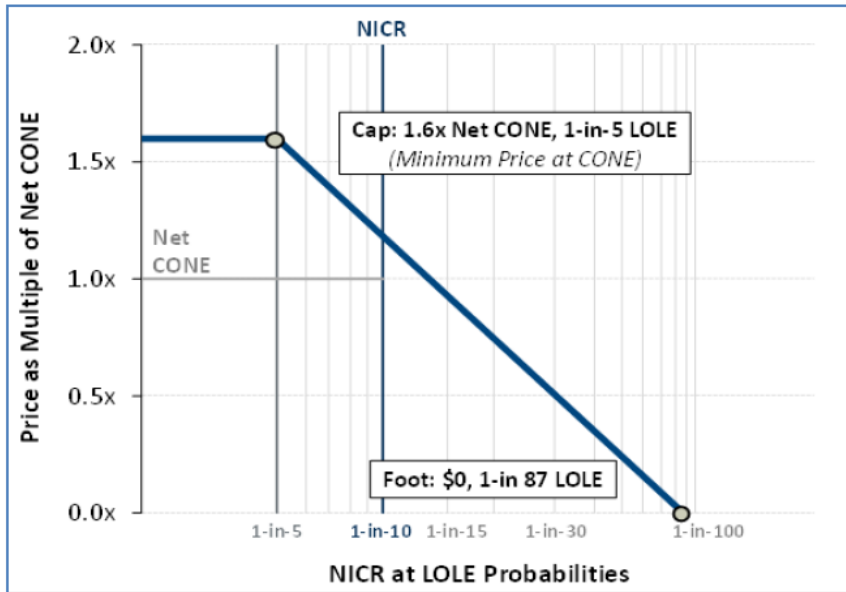
On April 1, the ISO and NEPOOL jointly submitted revisions to the FCM rules to establish a system-wide sloped demand curve ("Demand Curve Changes"). The Demand Curve Changes define the shape of the system-wide sloped demand curve (with key points defined by CONE and the 0.1 days/year LOLE target) illustrated below, extend the period during which a Market Participant may "lock-in" the capacity price for a new resource from five to seven years, establish a limited renewables, and eliminate, at the system-wide level, the administrative pricing rules that were necessary in certain market conditions under the vertical demand curve construct.

<sup>21</sup> *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).

<sup>22</sup> *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).

<sup>23</sup> "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.

<sup>24</sup> *See ISO New England Inc.*, 139 FERC ¶ 62,248 (2010) ("2012 Order").



A June 1, 2014 effective date, for implementation prior to associated FCA9 deadlines, was requested. The Demand Curve Changes were supported by the Participants Committee at its March 21, 2014 meeting. Comments on this filing are due on or before April 22, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Regulation Market Changes (ER14-1537)**

On March 20, the ISO and NEPOOL jointly submitted revisions to the new Regulation Market, including a new May 21, 2014 effective date<sup>25</sup> for that market (“Regulation Market Changes”). The Regulation Market Changes (i) change the Automatic Generation Control (“AGC”) dispatch method such that all resources will be dispatched using the same dispatch method; (ii) clarify the rules concerning how Alternative Technology Regulation Resources (“ATRRs”) that do not participate directly in the energy market may be registered as combinations of various asset types to provide for appropriate settlement of energy injections or withdrawals related to providing regulation; (iii) defer the 1 MW minimum size requirement for ATRRs that were active participants in the Alternative Technology Regulation Pilot Program until October 1, 2014; and (iv) eliminate ambiguities and correct errors in the Regulation Market rules and tariff language. The Regulation Market changes were supported by the Participants Committee at the March 7, 2014 meeting. Comments on this filing are due on or before April 10, 2014. Thus far, a doc-less intervention has been filed by NRG; no comments have yet been submitted. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **FCA9 ORTP Rules for On-Shore Wind and DR with DG (ER14-1477)**

On March 13, the ISO and NEPOOL jointly submitted revisions to recalculate, for FCA9, the ORTP for on-shore wind resources (\$10.32/kW-mo. after removing the Production Tax Credit (“PTC”)) and Demand Resources (“DR”) with Distributed Generation (“DG”) (for DR with new DG, an ORTP value based on the ORTP of a newly installed generator of the same technology type; for DR with previously installed DG, \$1.145/kW-mo. -- the ORTP value for Load Management) (“ORTP Revisions”). The ORTP Revisions also add a provision that requires the IMM to consider any reinstatement of the PTC when the IMM performs an annual update of the ORTP value for on-shore wind resources. A May 13, 2014 effective date was requested. These ORTP Revisions were supported by the Participants Committee at the March 7, 2014 meeting. Comments on this filing were due on or before April 3, 2014. Doc-less interventions were filed by First Wind, NRG and NU; NEPGA submitted a limited protest (opposing the requirement that the IMM decrease the ORTP for on-shore wind resources without stakeholder deliberation of the propriety and accuracy of the IMM’s changes to the ORTP). 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](mailto:slombardi@daypitney.com)).

<sup>25</sup> The Regulation Market were planned to become effective Oct. 1, 2014. The Regulation Market Changes would support the earlier, accelerated effective date of May 21, 2014.

- **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 filing, the ISO will draw down the amount of financial assurance provided by Constellation with respect to the CSOs. Doc-less interventions were filed by NEPOOL and Exelon; no comments were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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. A doc-less intervention was filed by NEPOOL; no comments were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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. A doc-less intervention was filed by NEPOOL; no comments were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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. A doc-less intervention was filed by NEPOOL; no comments were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On March 26, the FERC accepted 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. The changes were accepted as of April 8, 2014, as requested. Unless the March 26 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto: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](mailto: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/EPISA, NESCOE, NE Nat. Gas. Industry, N.E. Efficiency Partnerships, NextERA, NGSA, 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](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. Since the last Report, the Connecticut and Rhode Island parties filed on March 7 an answer to the ISO's March 3 answer, urging the FERC to reject the entirety of the ISO's late filing and the new expert testimony of R. Mudge. On March 12, AWEA submitted a motion to intervene and comments out of time. On March 18, NEPOOL filed an answer to the ISO's March 3 answer. NextEra also filed, on March 28, an answer to the ISO's March 3 answer. These matters are pending before the FERC. Links to all of the documents filed in this proceeding, other than interventions, can be found on the NEPOOL website at <http://nepool.com/ER14-1050.php>.

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

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

On April 1, the FERC conditionally accepted revisions to Market Rule 1 and Appendix E1 (the "DR 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).<sup>26</sup> As previously reported, the DR Baseline Changes address the potential distortion of baselines due to scheduled or forced curtailments by requiring demand response (“DR”) providers to submit meter data values during a curtailment that are equal to the last unadjusted baseline computed prior to the curtailment instead of actual meter readings. The DR Baseline 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. In accepting the DR Baseline Changes, the FERC found that the Changes improve the accuracy of and preserve Demand Response Baselines during periods of forced and scheduled curtailments, provide for a more accurate representation of asset availability for dispatch and appropriate compensation, and the other proposed clarifications just and reasonable.<sup>27</sup> The FERC conditioned its acceptance of the DR Baseline Changes on (i) further explanation (or Tariff changes) explaining how a Demand Response Asset with a cleared Demand Reduction Offer that experiences an unanticipated forced curtailment during the period in which it was scheduled to reduce load, will receive an energy payment, and (ii) a correction to Market Rule Section 13.7.1.5.10.2(a)(ii).<sup>28</sup> In an April 3 memo to the Markets Committee, the ISO indicated that it would not propose any Market Rule changes with respect to (i) and provided an explanation as to how the previously proposed Tariff language provides for energy payments to a Demand Response Asset with a cleared Demand Reduction Offer during the period in which it was scheduled to reduce demand on the first day of an unanticipated forced curtailment.<sup>29</sup> The DR Baseline Changes were accepted effective as of June 1, 2014, as requested. The compliance filing directed, as well as any challenges to the order, are due on or before April 30, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC issued an order, on February 11, 2014, 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”).<sup>30</sup> 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”<sup>31</sup>); 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”<sup>32</sup>) 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 type<sup>33</sup>). The accepted Tariff revisions became effective February 11, 2014.

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<sup>26</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,006 (Apr. 1, 2014).

<sup>27</sup> *Id.* at P 5.

<sup>28</sup> *Id.* at P 6.

<sup>29</sup> The ISO’s memo is available with the April 8 Markets Committee materials at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrkt\\_comm/mrkt/mtrls/2014/apr82014/a\\_09\\_iso\\_memo.pdf](http://www.iso-ne.com/committees/comm_wkgrps/mrkt_comm/mrkt/mtrls/2014/apr82014/a_09_iso_memo.pdf).

<sup>30</sup> *ISO New England Inc.*, 146 FERC ¶ 61,084 (Feb. 11, 2014) (“*ORTP Order*”).

<sup>31</sup> *Id.* at P 39.

<sup>32</sup> *Id.* at P 33.

<sup>33</sup> *Id.* at PP 47-49.

**Request for Rehearing (-002).** On March 13, Renewable Parties<sup>34</sup> requested rehearing of the *ORTP Order*, asserting that the FERC (i) erred in finding the PTC should not be considered a source of expected non-capacity revenue for new wind resources participating in FCA9 and (ii) erred in assuming that an onshore wind resource participating as a new resource in FCA9 will not qualify for the PTC available for projects starting construction in 2013 or earlier. The Renewable Parties' request for rehearing is pending before the FERC, with FERC action required on or before April 14, 2014, or the request will be deemed denied.

**March 13 Compliance Filing (-001).** As directed, the ISO and NEPOOL jointly submitted, on March 13, a revised Section III.A.21.1.1 of Appendix A to Market Rule 1 to strike the ORTP values for on-shore wind resources and Demand Resources comprised of Distributed Generation. The compliance changes were supported by the Participants Committee at the March 7, 2014 meeting (Agenda Item # 9). Comments on this compliance filing were due on or before April 3; none were filed. The compliance filing is pending before the FERC. As noted above, replacement FCA9 ORTPs for on-shore wind and Demand Resources with Distributed Generation were separately proposed in a contemporaneous filing in ER14-1477 and are also pending before the FERC.

If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto: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](mailto:slombardi@daypitney.com)).

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

Rehearing and clarification has been requested and remains pending on the *Jan 24 Exigent Circumstances Order* in this proceeding. As previously reported, the FERC accepted, on January 24, 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”).<sup>35</sup> The FCM Pricing Rule Changes became effective January 24, 2014, as requested.

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

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<sup>34</sup> “Renewable Parties” are Renewable Energy New England, Inc. (“RENEW”) First Wind and CLF.

<sup>35</sup> *Jan 24 Exigent Circumstances Order*.

Administrative Pricing Rules Complaint order (*see* EL14-7 in Section I above).<sup>36</sup> 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 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.<sup>37</sup>

Demand Curve Changes were filed by April 1 as directed (*see* ER14-1639 above).

Also in response to the *Jan 24 Exigent Circumstances Order*, the ISO and NEPOOL jointly filed, on March 25, a revised Section III.13.2.8.2 to Market Rule 1 to clarify the precedence of the Inadequate Supply rule over the Insufficient Competition rule in the event that both conditions are triggered simultaneously. That change was unanimously supported by the Participants Committee at the March 21 meeting. Comments on the March 25 compliance filing are due on or before April 15, 2014. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)), Harold Blinderman (860-275-0357; [hblinderman@daypitney.com](mailto:hblinderman@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

As previously reported, the FERC conditionally accepted, on October 3, 2013, energy market enhancements<sup>38</sup> 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").<sup>39</sup> 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

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<sup>36</sup> 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.

<sup>37</sup> *Id.* at P 30.

<sup>38</sup> 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.

<sup>39</sup> *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.

matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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.<sup>40</sup> 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).<sup>41</sup> 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.”<sup>42</sup> The FERC found unpersuasive the arguments that it would be more appropriate to allocate Program costs to Regional Network Load.<sup>43</sup> 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](mailto:ekrunge@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

On March 12, 2014, the FERC accepted the ISO’s March 15, 2013 compliance filing.<sup>44</sup> 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).<sup>45</sup> 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-

<sup>40</sup> *ISO New England et al.*, 144 FERC ¶ 61,204 (Sep. 16, 2013) (“2013/2014 Winter Reliability Program Order”), *reh’g requested*.

<sup>41</sup> 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.

<sup>42</sup> *Id.* at P 70.

<sup>43</sup> *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).

<sup>44</sup> *ISO New England Inc.*, 146 FERC ¶ 61,175 (Mar. 12, 2014) (“FCM PRD Integration Compliance Filing Order”).

<sup>45</sup> *ISO New England Inc.*, 142 FERC ¶ 61,027 (Jan. 14, 2013) (“January 14 Order”).



offer requirement for demand response resources with a capacity supply obligation in ISO-NE's FCM,"<sup>46</sup> agreed that "the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties,"<sup>47</sup> and found the "proposal will be beneficial to both demand response providers and wholesale electricity customers".<sup>48</sup> 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.<sup>49</sup> 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 Supporters<sup>50</sup> 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.

On March 12, 2014, the FERC accepted the compliance filing, finding "the compliance filing sufficiently addresses monitoring and evaluation of demand response resources for purposes of the must-offer requirement."<sup>51</sup> The FERC found that "ISO-NE's compliance filing has provided sufficient explanation for the proposal to continue using the 3 of Last 10 Days baseline refreshment methodology in light of the addition of the must-offer requirement for demand response resources with a Capacity Supply Obligation"<sup>52</sup> and rejected Verso's request for the creation of a "safe harbor" for its bidding strategies and extension of the baseline refreshment rule from "3 of Last 10 Days" to "3 of Last 20 Days."<sup>53</sup> Although the FERC declined "to direct ISO-NE to revise its Tariff to reflect its explanation of the monitoring and evaluation process for demand response resources, we note that ISO-NE expresses willingness ... to explore tariff changes through its stakeholder process and we strongly encourage ISO-NE to do so."<sup>54</sup> Unless the *FCM PRD Integration Compliance Filing Order* is challenged, with any challenges due on or before , this proceeding will be concluded.

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

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<sup>46</sup> *Id.* at P 27.

<sup>47</sup> *Id.* at P 28.

<sup>48</sup> *Id.* at P 29.

<sup>49</sup> *Id.* at PP 44-46.

<sup>50</sup> "DR Supporters" are Comverge, EnerNOC, NICC, Wal-Mart, and the IECG.

<sup>51</sup> *Id.* at P 23.

<sup>52</sup> *Id.* at P 26.

<sup>53</sup> *Id.* at P 27.

<sup>54</sup> *Id.* at P 25.

- **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.<sup>55</sup> 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;<sup>56</sup> unit specific offer review;<sup>57</sup> the ISO’s proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports’ treatment under MOPR;<sup>58</sup> no exemptions to MOPR for new Self-Supplied Resources;<sup>59</sup> the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;<sup>60</sup> \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;<sup>61</sup> and a number of other additional revisions.<sup>62</sup> The *FCA8 Revisions Order* rejected: the ISO’s proposed methodology for reducing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA (directing the ISO to submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market)<sup>63</sup>; 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,<sup>64</sup> and protests were filed by EMCOS, NEPGA, NRG, NU, and PSEG. On March 10, the ISO answered the February 21 protests. On March 25, NRG answered the ISO’s March 10 answer. 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](mailto:slombardi@daypitney.com)), Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)).

<sup>55</sup> *ISO New England Inc.*, 142 FERC ¶ 61,107 (Feb. 12, 2013) (“*FCA8 Revisions Order*”).

<sup>56</sup> *FCA8 Revisions Order* at PP 37-38.

<sup>57</sup> *Id.* at P 53.

<sup>58</sup> *Id.* at P 70.

<sup>59</sup> *Id.* at P 80.

<sup>60</sup> *Id.* at P 97.

<sup>61</sup> *Id.* at P 126.

<sup>62</sup> *Id.* at P 127.

<sup>63</sup> *Id.* at PP 63-64.

<sup>64</sup> NEPOOL filed a correction to its comments on February 24.

## IV. OATT Amendments / TOAs / Coordination Agreements

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

On December 27, the ISO submitted a compliance filing in response to *Order 784*. In its December 27 filing, the ISO explained how the Tariff's deviations from the FERC's *pro forma* Open Access Transmission Tariff ("OATT"), including the Regulation Market Rules, already meet the requirements and policy goals of *Order 784* and therefore meet the FERC's requirements for a showing of provisions that are "consistent with or superior to" the *pro forma* OATT. In addition, the ISO asked for a waiver of the new requirement to post on its OASIS historical one-minute and ten-minute certain Area Control Error ("ACE") data for the most recent calendar year, and to update this posting once per year. 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](mailto:ekrunge@daypitney.com)).

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

On March 20, the FERC accepted in part and rejected in part the revisions filed November 12 by the ISO, NEPOOL, the PTO AC, CSC, and the Schedule 20A service providers ("SSPs") to comply with the requirements of *Orders 764* and *764-A* (the "*Order 764 Compliance Changes*").<sup>65</sup> While the FERC accepted the changes to the LGIA that use "Intermittent Power Resource" and "System Operator" rather than the *pro forma* Tariff terms,<sup>66</sup> the FERC rejected the proposal to place the details of meteorological and forced outage data reporting requirements in OP-14, rather than in Appendix C of the LGIA (concerned that the could "unilaterally change those reporting requirements without having to make at least some showing that the change is just and reasonable").<sup>67</sup> Accordingly, the FERC directed the ISO to submit an additional compliance filing on or before April 21 that places the details of VERs' meteorological and forced outage data reporting requirements found in OP-14 (which it otherwise found satisfies the substantive reporting requirements of *Order 764*) in Appendix C of the LGIA in the Tariff.<sup>68</sup> The Reliability Committee will consider the proposed compliance changes at its April 16 meeting, and any recommendation will be considered by the Participants Committee at its May 2 meeting. If you have any comments or concerns, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto: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

<sup>65</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 146 FERC ¶ 61,190 (Mar. 20, 2014).

<sup>66</sup> *Id.* at P 30.

<sup>67</sup> *Id.* at P 31.

<sup>68</sup> *Id.* at P 32.

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 Organizations<sup>69</sup> 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](mailto:ekrunge@daypitney.com)).

- **Order 1000 Compliance Filing (ER13-193; ER13-196)**

Rehearing of the FERC’s May 17, 2013 order on the region’s *Order 1000* compliance filing<sup>70</sup> (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”)

<sup>69</sup> “Public Interest Organizations” are Conservation Law Foundation, Environment Northeast, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

<sup>70</sup> *ISO New England Inc.*, 143 FERC ¶ 61,150 (May 17, 2013) (“*Order 1000 Compliance Order*”).

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*<sup>71</sup> (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 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*<sup>72</sup> (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*<sup>73</sup> (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](mailto:ekrunge@daypitney.com)).

## V. Financial Assurance/Billing Policy Amendments

- **Revised Security Agreement (ER14-1448)**

On March 7, the ISO and NEPOOL jointly submitted revisions to the Financial Assurance Policy to revise the current form of Security Agreement to more accurately reflect the financial relationship among the parties to that Agreement (Participant, Black Rock, and the ISO), to clarify the authorization for the ISO to file a financing statement (as described in the Uniform Commercial Code) regarding the security interest granted in the Security Agreement, and to make certain “clean-up” changes. A March 7, 2014 effective date was requested. These changes were unanimously supported by the Participants Committee at the March 7, 2014 meeting. At the request of the ISO, comments on this filing were due on an expedited basis, on or before March 17, 2014. A doc-less intervention was filed by 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; [pnbval@daypitney.com](mailto:pnbval@daypitney.com)).

- **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

<sup>71</sup> “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.

<sup>72</sup> In this proceeding, “Public Systems” are MMWEC and NHEC.

<sup>73</sup> “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”).

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](mailto:pnbelval@daypitney.com)).

## VI. Schedule 20/21/22/23 Changes

- **LGIA (Amended) – CMP/Warren (ER14-1473)**

On March 12, CMP filed an amended non-conforming LGIA (IA-CMP-12-03) under Schedule 22 of the ISO Tariff governing the interconnection of the 108.5 MW facility of S.D. Warren Company, d/b/a Sappi Fine Paper North America (“Warren”) in Somerset, Maine. CMP reports that the amended LGIA reflects an agreed-upon replacement Voltage Schedule and an increase in the term of the agreement from three to 20 years. A March 13, 2014 effective date for the amended LGIA was requested. Comments on this filing were due on or before April 2, 2014; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On March 26, the FERC accepted the February 25 notice of cancellation submitted by Narragansett of its IA with Pontiac Energy Corporation (“Pontiac”). The notice was accepted effective as of April 27, 2014, as requested. 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. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

As previously reported, the FERC accepted on December 5 a revised, non-conforming<sup>74</sup> LGIA (LGIA-ISONNE/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.<sup>75</sup> That compliance filing was submitted on December 20, 2013 and accepted on March 7, 2014. Unless the March 7 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

<sup>74</sup> Emera Maine 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).

<sup>75</sup> *ISO New England Inc. and Bangor Hydro Elec. Co.*, 145 FERC ¶ 61,197 (Dec. 5, 2013).

- **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.<sup>76</sup> 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.”<sup>77</sup> Requests for clarification and/or rehearing of the *GMP Merger Order* requested by VEC and WEC (“Cooperatives”)<sup>78</sup> were denied on February 25, 2013.<sup>79</sup> 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.<sup>80</sup>

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. Since the last report, Judge Johnson certified the uncontested settlement to the Commission.<sup>81</sup> This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VII. NEPOOL Agreement/Participants Agreement Amendments

*No Activity to Report*

## VIII. Regional Reports

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

On March 14, the FERC accepted the ISO’s 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 included 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

<sup>76</sup> *ISO New England, Inc., Central Vt. Pub. Svc. 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).

<sup>77</sup> *Id.* at PP 21-22.

<sup>78</sup> 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.

<sup>79</sup> *ISO New England, Inc., Central Vt. Pub. Svc. Corp. and Green Mountain Power Corp.*, 142 FERC ¶ 61,146 (2013).

<sup>80</sup> *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.

<sup>81</sup> *ISO New England, Inc., Central Vt. Pub. Svc. Corp. and Green Mountain Power Corp.*, 146 FERC ¶ 63,025 (Mar. 24, 2014).

(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). Unless the March 14 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

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

The ISO filed its twenty-second report on March 19, 2014. As previously reported, the ISO committed in the August 5, 2008 Regulation Filing to provide the FERC with quarterly reports on its progress in implementing and carrying out market rule revisions to allow non-generating resources to provide Regulation, including the Alternative Technologies Pilot Program.<sup>82</sup> In the 22<sup>nd</sup> report, the ISO reported its expectation that modifications to the *Order 755*-compliant Regulation Market design that had been scheduled to become effective on October 1, 2014 would be filed soon (*see* ER14-1537, Section III above) and an earlier May 2014 effective for the new Regulation Market design proposed. The ISO noted that the new Regulation Market design would accomplish the objective of incorporating non-generating resources into the Regulation Market and the rule changes that were originally filed in Docket No. ER08-54 have been subsumed within the market rules implementing the new *Order 755*-compliant Regulation Market. If the new Regulation Market is implemented in late May 2014 as planned, the Pilot Program will terminate as will the ISO's obligation to submit progress reports in ER08-54. These reports are not noticed for public comment.

- **Reserve Market Compliance (16<sup>th</sup>) Semi-Annual Report (ER06-613)**

As directed by the original ASM II Order,<sup>83</sup> as modified,<sup>84</sup> the ISO submitted its 16th semi-annual reserve market compliance report on April 1, 2014. In the 16th report, the ISO explained, as in its prior compliance reports, that due to its efforts on other priority projects (e.g. Order Nos. 745 and 755-related efforts, and CTS implementation), work on the forward TMSR market issues continues to be on hold. The ISO reports that it does not expect to have the available resources needed to revisit this issue until at least 2015. As per the May 9, 2011 letter order in this proceeding, the FERC no longer issues public notices, acts on, or issues orders on these informational filings. If there are questions on this matter, please contact Dave Doot (860-275-0102; [dttdoot@daypitney.com](mailto:dttdoot@daypitney.com)).

## IX. Membership Filings

- **April 2014 Membership Filing (ER14-1638)**

On April 1, NEPOOL requested that the FERC accept the voluntary terminations of Ansonia Generation (Generation Group Seat, March 1, 2014), Concord Steam (Generation Group Seat, March 1, 2014), OBE Electric (Supplier Sector, April 1, 2014), and ResCom Energy (Supplier Sector, April 1, 2014). NEPOOL also requested that the FERC accept the involuntary termination of People's Power & Gas (Supplier Sector, Apr 1, 2014). Comments on this filing are due on or before April 22.

<sup>82</sup> *See* Market Rule 1 revisions regarding the provision of Regulation by non-generating resources, *ISO New England Inc. and New England Power Pool*, Docket Nos. ER08-54-000 and -001 (filed Aug. 5, 2008) (the "Regulation Filing").

<sup>83</sup> *See NEPOOL and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006) ("ASM II Order") (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh'g denied* 117 FERC ¶ 61,106 (2006).

<sup>84</sup> *See NEPOOL and ISO New England Inc.*, 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve ("TMSR")).



- **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 Converge (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). This filing is pending before the FERC.

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

On March 24, the FERC accepted: (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).

- **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>
Mar 10	Acushnet Co.	Mar 12
Mar 10	Gallop Power Greenville	Apr 1

These notices were for the FERC’s information only and were not docketed or noticed for public comment.

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

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

- **FFT Report: March 2014 (NP14-35)**

NERC submitted on March 31, 2014, its Find, Fix, Track and Report (“FFT”) informational filing for the month of March 2014. The February FFT resolves 18 possible violations of 8 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.<sup>85</sup> The 6 Registered Entities involved each submitted a mitigation activities statement of completion. These filings are for information only and will not be noticed for public comment by the FERC.

- **Revised Reliability Standard: PER-005-2 (RD14-7)**

On March 7, 2014, NERC filed for approval changes to PER-005-2 (Operations Personnel Training) (“PER-005 Changes”). The PER-005 Changes are designed to expand training requirements to include local transmission control center operator personnel, Operations Support Personnel and the applicable Generator Operator dispatch personnel. NERC requested that the PER-005 Changes be approved, and the existing PER-005-1 be retired, effective on the first day of the first calendar quarter that is 24 months after the date that the

<sup>85</sup> 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.

PER-005 Changes are approved by the FERC. NERC suggested that the implementation period is appropriate because the revised Standard will be applicable to functional entities (Transmission Owners and Generator Operators) that are not currently subject to PER-005-1 and those entities will for the first time be required to develop and implement a systematic approach to training process for their applicable personnel. Comments on the PER-005 Changes are due on or before April 11, 2014.

- **New Reliability Standard(s): Physical Security Measures (RD14-6)**

On March 7, 2014, citing its ongoing oversight of the BPS, and pursuant to section 215(d)(5) of the FPA, the FERC directed NERC to submit for approval, on or before June 5, 2014, one or more Reliability Standards that will require certain registered entities to take steps or demonstrate that they have taken steps to address physical security risks and vulnerabilities related to the reliable operation of the BPS.<sup>86</sup> The new Standard(s) should require owners or operators of the BPS to identify facilities on the BPS that are critical to the reliable operation of the BPS and then to develop, validate and implement plans to protect against physical attacks that may compromise the operability or recovery of such facilities. The FERC clarified that “[i]n directing NERC to submit these proposed Reliability Standards, we are not proposing specific requirements or otherwise pre-judging what NERC may submit ... The Commission will consider the Reliability Standards that NERC submits for approval in a rulemaking docket, which will include an opportunity for comment.”<sup>87</sup> Over 40 parties has so far intervened or submitted comments.

- **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 Standards<sup>88</sup>” 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 were due on or before March 27, 2014; no comments were filed. A doc-less intervention was filed by EEI. This matter is pending before the FERC.

- **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”):

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<sup>86</sup> *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166 (Mar. 7, 2014).

<sup>87</sup> *Id.* at P 13.

<sup>88</sup> 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.

- ▶ 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 Standards<sup>89</sup> 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 definitions<sup>90</sup> 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 were due on or before March 31, 2014; no comments were filed. Interventions were filed by EEI and EPSA. This matter is pending before the FERC.

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

On March 20, the FERC approved NERC’s revisions to the definition of the term “Bulk Electric System” (“BES Definition”) in the *NERC Glossary of Terms Used in Reliability Standards*.<sup>91</sup> As previously reported, 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*. The BES Definition will become effective July 1, 2014, as requested. Unless the March 20 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standard: PRC-005-3 (RM14-8)**

On February 14, 2014, NERC filed for approval changes to PRC-005-3 (Protection System and Automatic Reclosing Maintenance) (“PRC-005 Changes”). The PRC-005 Changes are designed to include in PRC-005 the maintenance and testing of reclosing relays that can affect the reliable operation of the BPS. NERC requested that the PRC-005 Changes be approved, and the existing PRC-005-2 be retired, effective on the first day of the first calendar quarter that is 12 months after the date that the PRC-005 Changes are approved by the FERC. As of the date of this report, a comment date has not been set for this filing.

- **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 Standards<sup>92</sup> to exclusively focus on the reliability aspects of

<sup>89</sup> 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).

<sup>90</sup> 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.

<sup>91</sup> *N. Amer. Elec. Rel. Corp.*, 146 FERC ¶ 61,199 (Mar. 20, 2014) (“BES Definition Order”).

<sup>92</sup> 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.

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 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.

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

On March 20, the FERC issued a NOPR proposing to approve changes to PRC-023 (Transmission Relay Loadability) and changes to PRC-025 (Generator Relay Loadability) filed by NERC in Docket Nos. RM14-3 and RM13-19.<sup>93</sup> PRC-025-1 was proposed in response to FERC directives in Order 733<sup>94</sup> 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. Comments on the NOPR are due on or before April 28, 2014.<sup>95</sup>

- **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).<sup>96</sup> 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* were due on or before March 24, 2014,<sup>97</sup> and were filed by over 20 parties, including NERC, the ISO/RTO Council, Dominion, and EEI.

- **Order 796: Revised Reliability Standards: MOD-025-2, MOD-026-0, MOD-027-0, PRC-019-1 and PRC-024-1 (RM13-16)**

On March 20, the FERC approved 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:<sup>98</sup>

- ▶ 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).

<sup>93</sup> *Generator Relay Loadability and Revised Transmission Relay Loadability Reliability Standards*, 146 FERC ¶ 61,189 (Mar. 20, 2014) (“*Loadability NOPR*”).

<sup>94</sup> *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).

<sup>95</sup> The Loadability NOPR was published in the *Fed. Reg.* on Mar. 27, 2014 (Vol. 79, No. 59) pp. 17,077-17,082.

<sup>96</sup> *Reliability Standard for Geomagnetic Disturbance Operations*, 146 FERC ¶ 61,015 (Jan. 16, 2014) (“*GDO NOPR*”).

<sup>97</sup> The *GDO 21 NOPR* was published in the *Fed. Reg.* on Jan. 22, 2014 (Vol. 79, No. 14) pp. 3,547-3,552.

<sup>98</sup> *Generator Verification Rel. Standards*, Order No. 796, 146 FERC ¶ 61,213 (Mar. 20, 2014) (“*Order 796*”).

The FERC also approved, with modifications, the associated implementation plans, Violation Risk Factors (“VRFs”) and Violation Severity Levels (“VSLs”), as well as 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. As previously reported, NERC 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. In *Order 796*, the FERC rejected ISO-NE’s arguments that the applicability threshold is inconsistent with the directive to NERC in *Order 786* to raise the violation severity level from “medium” to “high” for Standard TPL-001-4, R1, which requires transmission planners and planning coordinators to maintain system models.<sup>99</sup> The FERC also reject ISO-NE’s comments regarding application of the capacity factor exemption.<sup>100</sup> *Order 796* will become effective May 27, 2014.<sup>101</sup> Unless *Order 796* is challenged, this proceeding will be concluded.

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

On November 21, 2013, the FERC issued a NOPR<sup>102</sup> 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).<sup>103</sup>

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.

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<sup>99</sup> *Id.* at P 38.

<sup>100</sup> *Id.* at n. 66.

<sup>101</sup> *Order 796* was published in the *Fed. Reg.* on Mar. 27, 2014 (Vol. 79, No. 59) pp. 17,011-17,023.

<sup>102</sup> *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*”).

<sup>103</sup> 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.

The changes to the remaining TOP Standards were to upgrade the overall quality of the Standards, eliminate gaps in the requirements, eliminate ambiguity, eliminate redundancies, and address Order 693 directives. NERC indicated in its April filing that the proposed TOP Standards are also more efficient than the currently-enforceable TOP Reliability Standards because they incorporate the necessary requirements from the eight currently-effective TOP Reliability Standards (TOP-001-1a, TOP-002-2.1b, TOP-003-1, TOP-004-2, TOP-005-2a, TOP-006-2, TOP-007-0, TOP-008-1) and the PER-001-0.2 Reliability Standard into three cohesive, comprehensive Reliability Standards that are focused on achieving a specific result.

Because the proposed TOP and IRO Reliability Standards were interrelated, and because the proposed revisions to Reliability Standard TOP-006-3 involved similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the FERC addressed all three proposals together in the one NOPR. Although the FERC acknowledged that the proposed TOP and IRO Reliability Standards contain some improvements over the current Standards, concerns that the changes would create reliability gaps in the Standards that are critical to reliable operation of the BPS resulted in the proposed remand of the proposed TOP Standards.<sup>104</sup> 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.<sup>105</sup>

Initially, comments on the *Nov 21 NOPR* were due on or before February 3, 2014.<sup>106</sup> 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. On April 1, 2014, NERC submitted the first of its promised quarterly status reports regarding the status of revisions. In the report, NERC noted that two technical conferences were held by NERC in March, and the Standard Drafting team will meet at least twice in April to work on revisions to the Standards.

- **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.<sup>107</sup> 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

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<sup>104</sup> *Id.* at P 4.

<sup>105</sup> *Id.*

<sup>106</sup> The *Nov 21 NOPR* was published in the *Fed. Reg.* on Dec. 5, 2013 (Vol. 78, No. 234) pp. 73,112-73,128.

<sup>107</sup> *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) (“*BAL-002-1a Interpretation Remand NOPR*”).

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,<sup>108</sup> 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.

- **Order 791-A: 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.<sup>109</sup> 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* became effective February 3, 2014.<sup>110</sup>

Rehearing and/or clarification of Order 791 was requested on December 20, 2013 by APPA/NRECA, EEI/EPISA, and Utility Services. On March 20, the FERC granted clarification in part and denied rehearing.<sup>111</sup> The FERC clarified (i) that the implementation plan submitted by NERC and approved in *Order 791* requires responsible entities to comply with the High and Medium Impact asset requirements by April 1, 2016; and (ii) that *Order 791* did not direct NERC to conduct an inventory-type survey of all Cyber Assets impacted by the 15-minute parameter (leaving for NERC to determine the scope of the survey); and (iii) that, with respect to the directive concerning the development of Reliability Standards that “require appropriate and reasonable controls to protect the nonprogrammable aspects of communication networks,” *Order 791* does not require the development of controls for third-party communications networks. All other requests for clarification and rehearing were rejected.

As previously reported, 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.

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<sup>108</sup> 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.

<sup>109</sup> *Version 5 Critical Infrastructure Protection Reliability Standards*, Order No. 791, 145 FERC ¶ 61,160 (Nov. 22, 2013) (“*Order 791*”), *clarification granted in part and reh’g denied*, 146 FERC ¶ 61,188 (Mar. 20, 2014).

<sup>110</sup> *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).

<sup>111</sup> *Version 5 Critical Infrastructure Protection Reliability Standards*, Order No. 791-A, 146 FERC ¶ 61,188 (Mar. 20, 2014) (“*Order 791-A*”).

- **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,<sup>112</sup> which deferred the effective date for the revised BES definition as approved in *Order Nos. 773*<sup>113</sup> and *773-A*<sup>114</sup> 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.<sup>115</sup> 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.

- **Rules of Procedure: BES Definition Update (RR14-2)**

On April 1, 2014, NERC requested that the FERC approve an update to the Phase 2 BES definition (“BES Definition”) in the NERC Rules of Procedure to make that definition consistent with that approved in the March 20 *BES Definition Order* (see RD14-2 above). Comments on this filing are due on or before May 1, 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).<sup>116</sup> 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.<sup>117</sup> 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

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

On March 18, 2014, the FERC authorized the NRG acquisition of Edison Mission Energy (“EME”), including EME’s direct and indirect interests in EME’s public utility subsidiaries and other generation-owning entities, in exchange for cash and stock.<sup>118</sup> On April 2, the parties notified the FERC that the transaction was consummated on April 1, 2014, making EME a Related Person of NRG. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

<sup>112</sup> *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).

<sup>113</sup> *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).

<sup>114</sup> *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).

<sup>115</sup> *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 146 FERC ¶ 61,070 (2014).

<sup>116</sup> *Market Implications of Frequency Response and Frequency Bias Setting Reqs.*, 144 FERC ¶ 61,058 (July 18, 2013).

<sup>117</sup> *Id.* at P 2.

<sup>118</sup> *NRG Energy Holdings, Inc. and Edison Mission Energy*, 146 FERC ¶ 61,196 (Mar. 18, 2014).



- **NGrid Termination of Lowell Cogen IA (ER14-1593)**

On March 26, National Grid filed a notice of cancellation of its Interconnection Agreement (“IA”) with Lowell Cogeneration Company. National Grid indicated that the ISO accepted Lowell Cogen’s Non-Price Retirement for the retired facility on August 20, 2013 and that Lowell Cogen requested, on September 6, 2013, that the IA be terminated. NGrid requested that the IA be terminated effective as of May 26, 2014. Comments on this filing are due on or before April 16, 2014. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On March 11, the FERC accepted the termination of 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. The termination was accepted effective December 1, 2013, as requested. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On March 14, the FERC accepted the Local Control Center (“LCC”) Services Agreement between NSTAR 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 supersedes a 1993 Coordination Agreement between Boston Edison and Norwood, for which NSTAR filed a notice of Termination on February 4 (ER14-1261) and the FERC accepted in the March 14 order. The new LCC Services Agreement was accepted April 1, 2014, as requested. Unless the March 14 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](mailto:pmgerity@daypitney.com)).

- **HVDC Champlain VT (ER14-966)**

On March 10, the FERC conditionally authorized Champlain VT, LLC, d/b/a TDI New England (“Champlain VT”) to sell transmission rights on its proposed high-voltage direct current (“HVDC”) merchant transmission project, a 150-mile, 1,000 MW, HVDC transmission line, which will originate at a converter station in Quebec, Canada and terminate in Ludlow, Vermont.<sup>119</sup> Once completed, the transmission line will be operationally controlled by the ISO. The FERC’s order also granted a number of waivers of its regulations granted to other similarly situated entities. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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”,<sup>120</sup> 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.

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<sup>119</sup> *Champlain VT, LLC*, 146 FERC ¶ 61,167 (Mar. 10, 2014)

<sup>120</sup> *Midwest Indep. Trans. Sys.Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

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](mailto:ekrunge@daypitney.com)).

- **FERC Enforcement Action: Staff Notices of Alleged Violations (IN\_\_ - \_\_)**

**Generator.** On April 1, 2014, the FERC issued a notice that Staff has preliminarily determined that Indianapolis Power & Light Company (“IPL”) violated section 39.2.5 (c) of the MISO Tariff by failing to update the real-time offer for its Petersburg 2 generating unit to reflect a de-rate of that unit on July 5 and 6, 2012.

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.<sup>121</sup> 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.<sup>122</sup> Bangor Hydro requested a limited waiver from the FERC’s Standards of Conduct requirements,<sup>123</sup> to the extent necessary, to permit its transmission function personnel to undertake the actions necessary to re-sell into the New England Market energy from the Rollins Project which the MPUC has mandated it purchase but cannot otherwise sell at retail. The FERC stated that it would revisit its determination if Bangor Hydro brought forward information demonstrating that it met the criteria for waiver set forth in section 358.1(c) and summarized in the order (i.e. a demonstration that Bangor Hydro has no access to information concerning the operation of the transmission facilities by the ISO and that it obtains information about such matters only by viewing the ISO’s OASIS). In response to the *BHE Standards of Conduct Order*, Bangor Hydro amended its waiver request in 2 respects: First, Bangor Hydro revised its request to apply only to the energy required to be purchased from the Rollins Project and the Exeter Agri-Energy Project. Second, Bangor Hydro committed, as a condition of the waiver (if granted), not to engage in any purchases or sales of wholesale electric capacity or energy except for those required under Maine laws and/or regulations or orders of the MPUC. The MPUC filed comments supporting Bangor Hydro’s amended waiver request on November 15, 2011. This matter remains pending before the FERC.

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

On March 14, the FERC granted the request by Fitchburg Gas and Electric Light Company (“Fitchburg”) 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 granting the request, the FERC found that Fitchburg had rebutted the presumption that Pinetree lacks nondiscriminatory access to the New England Markets. Unless the Pinetree Order is

<sup>121</sup> 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).

<sup>122</sup> *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (Sep. 15, 2011) (“*BHE Standards of Conduct Order*”).

<sup>123</sup> See 18 C.F.R. § 358 (2013) *et seq.*

challenged, with any challenges due on or before April 14, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## XII. Misc. - Administrative & Rulemaking Proceedings

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

On April 1, 2014, the FERC held a technical conference to explore the impacts of and actions taken to respond to recent cold weather events by RTO/ISOs. Discussion focused 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. ISO-NE's materials were circulated to the Committee on April 1, and are posted with the composite materials for the April 4 meeting. Speaker materials are posted in the FERC's eLibrary as well as at:

<http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=7272&CalType=&CalendarID=116&Date=&View=Listview>. Post-conference comments may be filed on or before May 15, 2014. For those that may have missed the conference, a free recording of the conference will be archived at <http://ferc.capitolconnection.org/> for at least three months.

- **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*.<sup>124</sup> 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 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.<sup>125</sup>

- **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

<sup>124</sup> See *Chehalis Power Generating, L.P.*, 145 FERC ¶ 61,052 (Oct. 17, 2013) ("*Chehalis*").

<sup>125</sup> 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.

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, WIRES<sup>126</sup> petitioned the FERC to institute an expedited generic proceeding and to provide such policy and clarifications as necessary to provide “greater stability and predictability regarding regulated rates of return on equity for existing and future investments in high voltage electric transmission infrastructure.” Specifically, WIRES recommended a new policy that (1) standardizes selection of proxy groups; (2) denies complainants a hearing on rates of return for existing facilities unless it is shown that existing returns are at the extremes of the zone of reasonableness; (3) allows consideration of competing infrastructure investments of other industries; (4) permits use of other rate of return methodologies; and (5) supports use of more forward-looking data and modeling. In addition, WIRES urged the FERC to support consideration of a project’s actual and anticipated benefits when a complaint is filed against the ROE for an existing project. Although the WIRES petition has not been noticed for public comments, more than 16 sets of comments have been filed. Since the last report, WIRES submitted on October 3 a summary of the comments and analysis filed to that point in the proceeding. On October 16, the Organization of PJM States noted its position that the WIRES petition did not present a compelling reason for the FERC to initiate a generic rulemaking proceeding or abandon its Discounted Cash Flow methodology. On November 5, a letter from US Senator Angus King, urging the FERC to establish a more certain regulatory environment that provide investors the level of confidence necessary to support and encourage needed infrastructure investments, was posted in eLibrary. This matter is pending before the FERC.

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

On November 22, 2013, the FERC amended its *pro forma* Small Generator Interconnection Procedures (“SGIP”) and *pro forma* Small Generator Interconnection Agreement (“SGIA”), originally set forth in Order 2006, to: (1) incorporate provisions that would provide an Interconnection Customer with the option of requesting from the Transmission Provider a pre-application report providing existing information about system conditions at a possible Point of Interconnection; (2) revise the 2 MW threshold for participation in the Fast Track Process included in section 2 of the pro forma SGIP; (3) revise the customer options meeting and the supplemental review following failure of the Fast Track screens so that the supplemental review is performed at the discretion of the Interconnection Customer and includes minimum load and other screens to determine if a Small Generating Facility may be interconnected safely and reliably; (4) revise the *pro forma* SGIP Facilities Study Agreement to allow the Interconnection Customer the opportunity to provide written comments to the Transmission Provider on the upgrades required for interconnection; (5) revise the *pro forma* SGIP and the *pro forma* SGIA to specifically

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<sup>126</sup> 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](http://www.wiresgroup.com).

include energy storage devices; and (6) clarify certain sections of the *pro forma* SGIP and the *pro forma* SGIA.<sup>127</sup> *Order 792* will become effective February 3, 2014.<sup>128</sup>

On March 20, the FERC issued *Order 792-A*<sup>129</sup> clarifying the compliance procedures in response to *Order 792*:

**Compliance Filing.** Each Transmission Provider must file in compliance with *Order 792* the *pro forma* language included in *Order 792* **without variation**.<sup>130</sup> This compliance filing made pursuant to FPA Section 206 is required to be filed on or before August 4, 2014.

**Variation 205 Filing.** A Transmission Provider may submit an FPA section 205 filing to demonstrate that either a variation that has not been previously approved, or a previously-approved variation from the *pro forma* language that has been substantively affected by the reforms adopted in *Order 792*, meets one of the standards for variance provided for in the Final Rule, including independent entity variations, regional reliability variations, and variations that are “consistent with or superior to” the Final Rule. Such filings are also due on or before August 4, 2014.

As previously reported, the ISO and PTO AC notified the FERC that their 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 10, the FERC issued an order updating the EQR Data Dictionary for certain fields in the new system<sup>131</sup> and an errata to that order on March 24. The FERC held a technical conference on the revised EQR filing process on March 26.

- **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.<sup>132</sup> *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

<sup>127</sup> *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (Nov. 22, 2013) (“*Order 792*”), *order clarifying compliance procedures*, 146 FERC ¶ 61,214 (Mar. 20, 2014).

<sup>128</sup> *Order 792* was published in the *Fed. Reg.* on December 5, 2013 (Vol. 78, No. 234) pp. 73,240-73,354.

<sup>129</sup> *Small Generator Interconnection Agreements and Procedures*, Order No. 792-A, 146 FERC ¶ 61,214 (Mar. 20, 2014) (“*Order 792-A*”).

<sup>130</sup> Transmission Providers must either comply with *Order 792* or demonstrate that the FERC has previously approved variations that are not affected in a substantive manner by the reforms to the *pro forma* language

<sup>131</sup> *Order Updating Electric Quarterly Report Data Dictionary*, 146 FERC ¶ 61,169 (Mar. 10, 2014).

<sup>132</sup> *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).

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.<sup>133</sup> 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*.<sup>134</sup> *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*.<sup>135</sup> The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

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

Requests for rehearing and/or clarification of *Order 764-A* remain pending before the FERC. As previously reported, the FERC, in *Order 764-A*,<sup>136</sup> affirmed its basic *Order 764* determinations,<sup>137</sup> 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;<sup>138</sup> (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;<sup>139</sup> and (iii) that schedules for firm transmission service will continue to have curtailment priority over schedules for non-firm transmission service.<sup>140</sup> 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](mailto:ekrunge@daypitney.com)).

<sup>133</sup> *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

<sup>134</sup> *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

<sup>135</sup> *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.

<sup>136</sup> *Integration of Variable Energy Res.*, 141 FERC ¶ 61,232 (Dec. 20, 2012) (“*Order 764-A*”), *reh’g requested*.

<sup>137</sup> *Integration of Variable Energy Res.*, 139 FERC ¶ 61,246 (2012) (“*Order 764*”), *order on reh’g*, 141 FERC ¶ 61,232 (2012), *reh’g requested*.

<sup>138</sup> *Id.* at P 15.

<sup>139</sup> *Id.* at P 19.

<sup>140</sup> *Id.* at P 23.

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

On July 18, the FERC issued a NOPR<sup>141</sup> 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* and the recent Smart Grid Standards. Comments on the WEQ Version 003 Standards NOPR were due on or before September 24, 2013,<sup>142</sup> and were filed by 11 parties, including APPA, EEI, and the IRC. This matter is pending before the FERC.

### XIII. Natural Gas Proceedings

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

- **Natural Gas and Electric Market Coordination (AD12-12)**

On March 31, the Gas-Electric Focus Group filed its final report in this docket. The submission will not be noticed for comment and no further FERC action is expected.

- **NOPR: Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (RM14-2)**

On March 20, 2014, the FERC issued a series of orders addressing gas-electric coordination. At the forefront, was this NOPR, in which the FERC proposes to revise its natural gas act regulations in order to better coordinate the scheduling of natural gas and electricity markets and to provide additional flexibility to natural gas shippers.<sup>143</sup> Specifically, the NOPR proposes to: (i) start the Gas Day earlier, at 4:00 a.m. Central Clock Time (“CCT”)<sup>144</sup> rather than 9:00 a.m., in order to ensure that gas-fired generators are not running short on gas supplies during the morning electric ramp periods; (ii) institute a later start to the first day-ahead gas nomination opportunity (called the Timely Nomination Cycle), from 11:30 a.m. to 1 p.m. The FERC said that because the Timely Nomination Cycle is the most liquid of the gas nomination cycles, this change will allow electric utilities to finalize their scheduling before gas-fired generators must make gas purchase arrangements and submit nomination requests for natural gas transportation service to the pipelines; and (iii) modify the current intraday nomination timeline to provide 4 (rather than 2) intraday nomination cycles in order to provide greater flexibility to all pipeline shippers. The NOPR adds an early morning nomination cycle with a mid-day effective flow time and a new late-afternoon nomination cycle during which firm nominations would

<sup>141</sup> *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 144 FERC ¶ 61,026 (Jul. 18, 2013) (“*WEQ Version 003 Standards NOPR*”).

<sup>142</sup> 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.

have precedence over or be permitted to bump already scheduled interruptible service. Ultimately, the standard cycles will be 8:00 a.m. CCT (bump), 10:30 a.m. CCT (bump), 4:00 p.m. CCT (bump) and 7:00 p.m. CCT (no-bump).

To provide shippers additional flexibility, the NOPR also proposes to: (i) clarify its policy with respect to the “No-Bump” Rule for Pipelines with Enhanced Nomination Services (the ability of a pipeline to permit firm shippers to bump an interruptible shipper’s nomination during any enhanced nomination opportunity proposed by the pipeline (beyond the standard nomination opportunities). The FERC indicated that under the revised intraday nomination timelines proposed here, pipelines offering enhanced nomination services should be permitted to bump interruptible shippers at least until the time when the bumping notice under the newly proposed Intra-Day 3 schedule is provided (in the Commission’s proposal 6:00 p.m. CCT); and (ii) require Multi-Party Transportation Contracts; and (ii) FERC proposes to require all interstate pipelines to offer multi-party service agreements, providing multiple shippers the flexibility to share interstate pipeline capacity to serve complementary needs in an efficient manner.

Noting that the natural gas and electricity industries are best positioned to work out the details of how changes in scheduling practices can most efficiently be made and implemented, consistent with the policies discussed in the NOPR, the FERC provided the industries 6 months to reach consensus on standards, consistent with FERC’s guidance in the NOPR, including any revisions or modifications to the proposals provided herein. Comments are due November 28, 2014<sup>145</sup> and should include the consensus standards or notifying the FERC of their inability to reach consensus on any revisions to the FERC’s proposals. The FERC also noted its expectation that the electric industry (particularly the ISO/RTOs) would participate in these efforts to help ensure that the resulting consensus reasonably accommodates the interests of both industries.

- **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.<sup>146</sup> 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.<sup>147</sup>

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

<sup>143</sup> *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

<sup>144</sup> CCT, pursuant to the NAESB WGQ standards, reflects daylight savings changes.

<sup>145</sup> The NOPR was published in the *Fed. Reg.* on Apr. 1, 2014 (Vol. 79, No. 62) pp. 18,223-18,243.

<sup>146</sup> *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 145 FERC ¶ 61,134 (Nov. 15, 2013) (“*Order 787*”), *reh’g requested*.

<sup>147</sup> *Order 787* was published in the *Fed. Reg.* on Nov. 22, 2013 (Vol. 78, No. 226) pp. 70,164-70,188.



requests, which remain pending before the FERC. Changes to the ISO New England Information Policy that allow the ISO, consistent with *Order 787*, to share Confidential 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.

- **Posting of Offers to Purchase Capacity (Section 5 Proceeding) (RP14-442)**

Similar to the ISO/RTO 206 Order in EL14-22 et al. (*see* Section I above), the FERC also instituted a proceeding under Section 5 of the Natural Gas Act to examine whether interstate natural gas pipelines are providing notice of offers to purchase released pipeline capacity in accordance with section 284.8(d) of the Commission's regulations.<sup>148</sup> On or before May 19, natural gas pipelines must either revise their respective tariffs to provide for the posting of offers to purchase released capacity, or otherwise demonstrate that they are in full compliance with FERC regulations.<sup>149</sup> The FERC also requested that NAESB develop business practice and communication standards specifying: (1) the information required for requests to acquire capacity; (2) the methods by which such information is to be exchanged; and (3) the location of the information on a pipeline's website. Each pipeline must explain in its compliance filing how it will fully comply with 18 CFR § 284.8(d) until NAESB develops, and the FERC implements, the requested standards, including how the pipeline will provide shippers the ability to post offers to purchase capacity on the Informational Posting section of its website.<sup>150</sup>

- **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](mailto:pmgerity@daypitney.com)).

<sup>148</sup> *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

<sup>149</sup> *Id.* at P 6.

<sup>150</sup> *Id.*

- **Orders 773 and 773-A (2nd Cir., 13-2316)**  
**Underlying FERC Proceedings: RM12-6 and RM12-7<sup>151</sup>**  
**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: ER11-4336<sup>152</sup>**  
**Appellants: EPSA and NEPGA**

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

- **Orders 1000 and 1000-A ((12-1232 consolidated with 12-1233, 12-1250, 12-1276, 12-1279, 12-1280, 12-1285, 12-1292, 12-1293, 12-1296, 12-1299, 12-1300, 12-1304, 12-1448, 12-1478, and 7<sup>th</sup> Cir. 12-2248)**  
**Underlying FERC Proceedings: RM10-23<sup>153</sup>**  
**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. Oral arguments before Justices Rogers, Griffith and Pillard were held on March 20, 2014.

- **FCM Re-Design (12-1060 consolidated with 12-1074, 12-1085, and 12-1149) \*\***  
**Underlying FERC Proceedings: ER10-787; EL10-57; EL10-50<sup>154</sup>**  
**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

<sup>151</sup> 141 FERC ¶ 61,236 (2012); 143 FERC ¶ 61,053 (2013).

<sup>152</sup> 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

<sup>153</sup> 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

<sup>154</sup> 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).

the Court of its intent to be aligned as an intervenor in support of NSTAR (12-1074) and MMWEC/NHEC (12-1085), reserving the right to join in an intervenors' brief in support of those petitioners. On October 9, briefs were filed by MMWEC/NHEC, NSTAR, and NEPGA. Supporting petitions were filed on October 23 by NECPUC and PSEG. NEPOOL indicated that it would not join in any intervenor's brief. On January 7, 2013, FERC filed its Respondent Brief. Intervenor for Respondent Briefs were filed on January 22, 2013 by NEPGA and jointly by the CT PURA, HQ US, NICC, NSTAR, and NECPUC. Reply Briefs for Generator Petitioners and Distribution Utility Petitioners were filed on February 5, 2013. Final Briefs were submitted on March 5, 2013. 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: RM10-17-000<sup>155</sup>  
Appellants: EPSA, CAISO, ODEC, EEI, CA PUC**

As previously reported, petitions for review of FERC's Order 745 (Demand Response Compensation) were filed by EPSA on December 23, 2011; by CAISO on December 27, 2011; by Old Dominion Electric Cooperative ("ODEC"); and by EEI and the California Public Utilities Commission ("CA PUC") on February 13, 2012. The DC Circuit consolidated the EPSA and CAISO cases on December 28. By orders dated February 13, 2012 and February 15, 2012, the Court consolidated Case Nos. 12-1088, 12-1091 and 12-1093 with 11-1486. All briefing has been completed. Oral argument in this case was held on September 23, 2013 and this matter is pending before the DC Circuit.

- **PPL EnergyPlus, LLC v. Nazarian (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,<sup>156</sup> 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. Since the last Report: Response Briefs were filed on March 10, 2014; EPSA, PJM Power Providers, and EEI/EPSA filed Amicus Curiae Briefs, and oral argument was set for May 13, 2014.

- **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"),<sup>157</sup> also summarized in previous reports, was appealed to the 3rd Circuit Court of Appeals. Amicus Curiae Briefs were filed by EEI/EPSA, PJM Power Providers Group, PA PUC; Reply Briefs by CPV, Hess and NJ BPU. Since the last report, APPA/NRECA and the FERC filed Amicus Curiae Briefs. Oral argument was held on March 27, 2014.

<sup>155</sup> 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

<sup>156</sup> *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").

<sup>157</sup> *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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