

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of October 1, 2014

The following activity, as more fully described in the attached litigation report, has occurred since the report dated September 11, 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 Proceeding: Importers’ FCA Offers Review/Mitigation (EL14-99) | Sep 16 Sep 17 Sep 17- Oct 1 | FERC initiates 206 proceeding; interventions due Oct 7 FERC notices proceeding; sets Sep 24, 2014 refund effective date NEPOOL, Casco Bay, Champlain VT, CMEEC/MMWEC/NHEC, ConEd, CT PURA, Essential Power, HQ US, MA AG, National Grid, NESCOE, NRG, NU, PSEG intervene |
| 1 | Base ROE Complaint (2014) (EL14-86) | Sep 25 Sep 26 | Complainants and Intervenors answer TO’s Sep 10 response EMCOS answer TO’s Sep 10 response |
| 4 | Base ROE Complaint (2012) (EL13-33) | Sep 11 Sep 19 Sep 22 Sep 25-26 | TOs move for summary disposition or, alternatively, consolidation with EL14-86 Chief Judge Wagner issues order continuing settlement judge procedures; 2nd Settlement conference scheduled for Oct 9 Judge Wagner issues status report on behalf of Judge Dring Complainant-Intervenors, FERC Trial Staff, EMCOS oppose Sep 11 motion for summary disposition, but support alternative request for consolidation with EL14-86 |

II. Rate, ICR, FCA, Cost Recovery Filings

| | | | |
|---|---------------------------------|--------|---|
| 6 | FCA8 Results Filing (ER14-1409) | Sep 16 | FCA8 Results Filing becomes effective by operation of law |
|---|---------------------------------|--------|---|

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

| | | | |
|-----|--|--------------------------------|---|
| * 7 | Fuel Price Adjustment Changes (ER14-2929) | Sep 23 Sep 24- Oct 1 | ISO and NEPOOL jointly file changes to revise the provision addressing automated fuel price adjustments in Market Rule 1; comment date Oct 14 Calpine, Dominion, NRG intervene |
| * 7 | Regulation Market Dispatch Changes (ER14-2918) | Sep 22 | ISO and NEPOOL jointly file Regulation Market Dispatch Changes; comment date Oct 14 |
| * 8 | Waiver Request: Deadline for QDN Challenge (GDF SUEZ) (ER14-2886) | Sep 15 | GDF SUEZ requests waiver of deadlines for FCA9 QDN challenges; comment date Oct 6 |
| 8 | Waiver Request: New Capacity Qualification Deadlines (MMWEC) (ER14-2771) | Sep 12 Sep 24 | ISO intervenes and opposes waiver request FERC denies waiver request |
| 8 | ISO CSO Deferral Proposal (ER14-2440) | Sep 12 | FERC accepts proposal, effective Jul 17, 2014 |
| 12 | Order 755 Regulation Market Changes (ER12-1643) | Sep 30 | FERC accepts tariff sheets extending effective date of new Regulation Market to Mar 31, 2015 |

IV. OATT Amendments / TOAs / Coordination Agreements

| | | | |
|----|--|--------|--|
| 13 | Order 784 Compliance Filing (ER14-877) | Sep 23 | Transmission Committee recommends NPC support for compliance changes |
|----|--|--------|--|

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

| | | | |
|----|---|--------|--|
| 16 | Schedule 21-NEP: Centennial Island Hydro SGIA (ER14-2534) | Sep 17 | FERC accepts Centennial Island Hydro SGIA filing |
|----|---|--------|--|

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

| | | | |
|------|---|--------|-------------------------------------|
| 16 | Capital Projects Report - 2014 Q2 (ER14-2656) | Sep 25 | FERC accepts Q2 2014 Report |
| * 17 | Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54) | Sep 19 | ISO files its 24th quarterly report |
| * 17 | Reserve Market Compliance (17th) Semi-Annual Report (ER06-613) | Oct 1 | ISO submits 17th semi-annual report |

IX. Membership Filings

| | | | |
|------|--|--------|--|
| * 17 | October 2014 Membership Filing (ER14-2980) | Sep 30 | Memberships: Plant-E, Fisher Road Solar, Nordic Energy Services; Terminations: Blue Pilot; comment date Oct 21 |
| 17 | September 2014 Membership Filing (ER14-2749) | Sep 29 | FERC accepts BlueRock Energy and E.ON Global Commodities North America memberships; SBR Energy, Dragon Products and Dragon Energy LLC terminations |
| 18 | August 2014 Membership Filing (ER14-2541) | Sep 18 | FERC accepts SFE Energy Connecticut and SFE Energy Massachusetts memberships |

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

| | | | |
|------|---|--------|---|
| * 18 | FFT Report: Sep 2014 (NP14-50) | Sep 30 | NERC files report |
| * 18 | Revised Reliability Standard: PRC-004-3 (RD14-14) | Sep 15 | NERC files revised Standard for approval; comment date Oct 20 |
| * 18 | Revised Reliability Standard: NUC-001-3 (RD14-13) | Sep 15 | NERC files revised Standard for approval; comment date Oct 15 |
| 19 | NOPR: New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15) | Sep 22 | NIPSCO, SmartSenseCom, City of Tallahassee - Electric Utility, and the Foundation for Resilient Societies file reply comments |
| 19 | NOPR: Revised Reliability Standard: COM-001-2 and COM-002-4 (RM14-13) | Sep 18 | FERC issues NOPR; comment date Dec 1, 2014 |
| 20 | NOPR: Revised Reliability Standard: MOD-031-1 (RM14-12) | Sep 18 | FERC issues NOPR; comment date Dec 1, 2014 |
| 20 | NOPR: Revised Reliability Standard: PRC-005-3 (RM14-8) | Sep 29 | NERC, EEI, Idaho Power Company, ITC, and G&T Cooperatives file comments |
| 21 | NOPR: Revised TOP and IRO Reliability Standards (RM13-15, RM13-14, RM13-12) | Oct 1 | NERC files 3rd quarterly status report on status of revisions to IRO and TOP Standards |

| | | | |
|------|--|------------------|---|
| * 23 | Revised NPCC Regional Reliability Standards Development Procedure (RR14-7) | Sep 15 | NERC files amendments to NPCC's Regional Reliability Standards Development Procedure; comment date Oct 6 |
| 24 | 2015 NERC/NPCC Business Plans and Budgets (RR14-6) | Sep 12 Sep 16 | Exelon supports filing Western Interconnection Regional Advisory Body recommends approval of WECC's proposed 2015 budget |

XI. Misc. - of Regional Interest

| | | | |
|------|--|-----------------------------|--|
| * 24 | 203 Application: Dynegy/EquiPower (EC14-140) | Sep 11 Sep 24 Sep 25 | Dynegy/EquiPower request authorization for transfer of EquiPower's New England and PJM generating assets; comment date Nov 11 PJM IMM requests consolidation with Dynegy/Duke Energy transaction (EC14-141) Dynegy opposes PJM IMM consolidation request |
| 24 | PURPA Complaint v. MA DPU (EL14-84 et al.) | Sep 19 Sep 26 | MA DPU answers Allco Sep 8 answer FERC issues notice of its intention not to initiate an enforcement action (clearing way for Allco to itself bring an enforcement action against the MA DPU) |
| 25 | FirstEnergy PJM DR Complaint (EL14-55) | Sep 22 Sep 25 – Oct 1 | FirstEnergy files amended complaint; comments due Oct 22 Environmental Law and Policy Center, EDF, NRDC/Sustainable FERC Project, Dynegy intervene |
| 25 | E&P Agreements: Blue Sky West & CMP (ER14-2743; ER14-2744) | Sep 30 | CMP supplements its Blue Sky West E&P Agreements filing with redlined agreements |

XII. Misc. - Administrative & Rulemaking Proceedings

| | | | |
|----|--|-----------|--|
| 28 | NOPR: MBR Authorization Refinements (RM14-14) | Sep 23-24 | Parties submit comments |
| 28 | Order 676-H: Incorporation of WEQ Version 003 Standards (RM05-5) | Sep 18 | FERC issues final rule, effective Oct 24, 2014 |

XIII. Natural Gas Proceedings

| | | | |
|------|--|-----------------|---|
| * 30 | Inquiry Into Natural Gas Trading, and Proposal to Establish an Electronic Information and Trading Platform (AD14-19) | Sep 18 Oct 1 | Commissioner Moeller convenes meeting to explore ideas to facilitate and improve natural gas trading, and the concept of establishing a centralized natural gas information and trading platform Parties submit written comments |
| 31 | NOPR: Scheduling Coordination (RM14-2) | Sep 29 | NAESB issues Report |
| 32 | Natural Gas-Related Enforcement Actions: BP (IN13-15) | Sep 22 | FERC Trial Staff submits pre-filed direct testimony |

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

| | | | |
|----|--|------------------|--|
| 34 | 2013/14 Winter Reliability Program and Bid Results (14-1104 (consol.)) | Sep 29 | TransCanada, RESA, FERC, ISO-NE, Essential Power MA, PSEG and NEPGA filed proposed joint, unopposed briefing format and schedule |
| 34 | Orders 773 and 773-A (2nd Cir., 13-2316) | Sep 24 Sep 25 | FERC, NY/NY PSC file final briefs; NY/NY PSC files reply brief NERC, NARUC file intervenor briefs |
| 35 | Orders 1000 and 1000-A (12-1232 (consol.)) | Sep 29 | Large Public Power Council petitions DC Circuit for rehearing <i>en banc</i> |

- | | | | |
|----|--|----------------------------|--|
| 35 | <i>Orders 745 and 745-A</i> (11-1486) | Sep 17 Sep 22 Sep 30 | Court denies request for rehearing <i>en banc</i> of May 23 Decision FERC and intervenors move for Court to stay issuance of its mandate Petitioners oppose motion to stay mandate |
| 36 | PPL EnergyPlus, LLC v. Nazarian (4th Cir., 13-2424) | Sep 15 | Supreme Court extends time to file a petition for a writ of certiorari to and including Nov 27, 2014. |

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: October 2, 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 October 1, 2014. If you have questions, please contact us.¹

| |
|----------------------|
| I. Complaints |
|----------------------|

- **206 Proceeding: Importers’ FCA Offers Review/Mitigation (EL14-99)**

On September 16, 2014, the FERC initiated this proceeding, pursuant to Section 206 of the FPA, directing the ISO to either revise its Tariff to provide for the review and potential mitigation of importers’ offers prior to each annual Forward Capacity Auction (“FCA”) or show cause why it should not be required to do so.² The FERC directed the ISO to submit those Tariff revisions or support for why Tariff revisions should not be required on or before October 16, 2014. September 24, 2014 is the refund effective date.³ We understand that the ISO will propose Tariff revisions, and those revisions are to be considered first at the October 8-9 Markets Committee meeting. A special Participants Committee meeting will be scheduled the following week to consider the proposed Tariff changes and Markets Committee developments with respect to those changes. Interventions in this proceeding are due on or before October 7, 2014 and have thus far been filed by: NEPOOL, Casco Bay, Champlain VT, CMEEC/MMWEC/NHEC, ConEd, CT PURA, Essential Power, HQ US, MA AG, National Grid, NESCOE, NRG, NU, and PSEG. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Base ROE Complaint (2014) (EL14-86)**

The Massachusetts Attorney General (“MA AG”), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the “2014 ROE Complainants”),⁴ filed a

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

² *ISO New England Inc.*, 148 FERC ¶ 61,201 (Sep. 16, 2014) (“September 16 Order”).

³ The Sep. 17 notice of this proceeding was published in the *Fed. Reg.* on Sep. 24, 2014 (Vol. 79, No. 185) p. 57,075.

⁴ “2014 Complainants” are: the MA AG, Connecticut Public Utilities Regulatory Authority (“CT PURA”), Massachusetts Municipal Wholesale Electric Company (“MMWEC”), New Hampshire Electric Cooperative, Inc. (“NHEC”), Massachusetts Department of Public Utilities (“MA DPU”), New Hampshire Public Utilities Commission (“NH PUC”), the Attorney General of the State of Connecticut (“CT AG”), Connecticut Office of Consumer Counsel (“CT OCC”), Maine Office of the Public Advocate (“MOPA”), New Hampshire Office of the Consumer Advocate (“NH OCA”), Rhode Island Division of Public Utilities and Carriers (“RI PUC”), Vermont Department of Public Service (“VT DPS”), Associated Industries of Massachusetts (“AIM”), The Energy Consortium (“TEC”), Power Options, Inc., Western Massachusetts Industrial Group, Environment Northeast (“ENE”), National Consumer Law Center, the Greater Boston Real Estate Board, and the Industrial Energy Consumer Group (“IECG”).

complaint on July 31, 2014 to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings. The TOs responded to the Complaint on September 10, and have requested that this Complaint be dismissed or, in the alternative, consolidated with the 2012 Complaint (EL13-33). In addition, the MPUC submitted comments supporting the Complaint, and interventions were filed by NEPOOL, APPA, and EMCOS. Motions opposing those requests and the TO's answer were filed by Complainants and Intervenor and EMCOS on September 26 and 26, respectively. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

• **206 Investigation: FCM Performance Incentives (Compliance Proceeding) (EL14-52)**

As more fully explained in Section III below (ER14-1050), the FERC instituted this proceeding, pursuant to section 206 of the Federal Power Act ("FPA"), in its May 30 *PI Order*, having concluded in the *PI Order* that the ISO's existing Tariff, specifically the current FCM payment design, "is unjust and unreasonable, because it fails to provide adequate incentives for resource performance, thereby threatening reliable operation of the system and forcing consumers to pay for capacity without receiving commensurate reliability benefits."⁵ The FERC directed the ISO to submit in this proceeding "Tariff revisions reflecting a modified version of its [PFP] proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL's proposal."⁶ The FERC-established refund effective date will be June 9, 2014.⁷ Interventions were filed by NEPOOL, CT AG, CT DEEP, CT OCC, CT PURA, Dynegy, Essential Power, Exelon, MPUC, PSEG, RI PUC, and UI. Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island,⁸ Dominion, MMWEC, Indicated Generators,⁹ NEPGA, NextEra, Potomac Economics, and PSEG/NERG. On July 28, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. Developments with respect to the ISO's compliance filing will be reported in "FCM PI Jump Ball Compliance Filing (ER14-2419)", Section III below.

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

As previously reported, on March 20, 2014, the FERC initiated this proceeding, pursuant to Section 206 of the FPA, to ensure that the ISO'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).¹⁰ 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

⁵ *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 at P 23 (May 30, 2014) ("*PI Order*").

⁶ *Id.* at P 1.

⁷ The June 3 notice of this proceeding was published in the *Fed. Reg.* on June 9, 2014 (Vol. 79, No. 110) pp. 32,937-89.

⁸ "Connecticut and Rhode Island" are: the Connecticut Public Utilities Regulatory Authority ("CT PURA"), the Conn. Office of Consumer Counsel ("CT OCC"), George Jepsen, Att'y Gen. for the State of Conn. ("CT AG"), the Conn. Department of Energy and Environmental Protection ("CT DEEP"), the United Illuminating Company ("UI") and the Rhode Island Div. of Pub. Utils. and Carriers ("RI PUC").

⁹ "Indicated Generators" are: Exelon Corp. ("Exelon"), EquiPower Resources Management, LLC ("EquiPower"), Essential Power, LLC ("Essential Power"), and Dynegy Marketing and Trade, LLC and Casco Bay Energy Company, LLC (together, "Dynegy").

¹⁰ *Cal. Indep. Sys. Op. Corp. et al.*, 146 FERC ¶ 61,202 (Mar. 20, 2014). The New England 206 proceeding was docketed as EL14-23.

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.¹¹

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. Interventions by over 40 parties, including one by NEPOOL, were filed in the New England-specific docket. On April 10, Puget Sound submitted comments addressing the changing of RTO/ISO practices, including a request that RTO/ISOs be required “to adopt consistent timelines that require bids awards to be submitted prior to the natural gas timely and evening scheduling deadlines”. This matter is pending action in RM14-2. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Joe Fagan (202-218-3901; jfagan@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Rehearing and clarification remains pending on both of the FERC’s January 24 FCM Administrative Pricing-related orders that (i) granted in part, and denied in part, NEPGA’s Administrative Pricing Rules Complaint in this proceeding,¹² and (ii) accepted changes to the FCM Administrative Pricing Rules in ER14-463 (*see* Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463) below).¹³ 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 its Exigent Circumstances Filing in ER14-463 and also declined to find the existing Capacity Carry Forward Rule unjust and unreasonable.¹⁴ In its request for rehearing and clarification of the *Jan 24 Orders*, NEPGA requested the FERC: (i) require prospective auctions to utilize ORTP-based prices; (ii) direct ISO-NE to implement for FCA9 a sloped demand curve for all aspects of the FCM, including for individual capacity zones; 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) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Rehearing of the FERC’s February 12, 2013 order denying NESCOE’s FCM Renewable Exemption Complaint¹⁵ 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 that implemented

¹¹ *Id.* at P 19.

¹² *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*.

¹³ *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*.

¹⁴ *Id.* at P 1.

¹⁵ *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013), *reh’g requested*.

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.¹⁶ 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),¹⁷ on which it concurrently issued an order conditionally accepting in part and dismissing in part the ISO's proposed compliance filing. Rehearing was requested by NESCOE, the CT PURA, and the MA DPU on March 14, 2013. On March 29, 2013, NEPGA filed an answer challenging NESCOE's request for rehearing. On April 15, 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 this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

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

As previously reported, the FERC, on June 19, 2014, established hearing and settlement judge procedures¹⁸ in response to the December 2012 Complaint by Environment Northeast ("ENE"), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"). The 2012 Base ROE Complaint challenged the TOs' 11.14% return on equity ("Base ROE"), and seeks a reduction of the Base ROE to 8.7%. In the *2012 Base ROE Initial Order*, the FERC found that the Complaint "raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered."¹⁹ The FERC rejected Complainants' request to consolidate this proceeding with the 2011 Base ROE Complaint, though it noted the change in its' practice for determining public utilities' ROE announced in that proceeding. Accordingly, the FERC directed the parties to present evidence and any discounted cash flow ("DCF") analyses in accordance with that guidance.²⁰ Hearing in this proceeding has been held in abeyance pending the outcome of settlement judge procedures. On July 21, the TOs requested rehearing of the *2012 Base ROE Initial Order*. On August 20, the FERC issued a tolling order affording it additional time to consider the TOs' rehearing request, which remains pending before the FERC.

Since the last Report, the TOs requested that the FERC admit into evidence in this proceeding the 2014 Base ROE Complaint (EL14-86) and the TOs' September 10, 2014 answer to that complaint, including all testimony and exhibits. The TOs asserted that with that evidence, the FERC would have a full record to address all open substantive issues in this proceeding, and could find just and reasonable a 10.99% base ROE, eliminating the need for the hearing previously directed and being held in abeyance. Alternatively, should the FERC deny summary disposition of this proceeding, the TOs requested that this proceeding be consolidated with the 2014 Base ROE Complaint in EL14-86. In response, Complainants-Intervenors,²¹ FERC Trial Staff and EMCOS all opposed summary disposition but supported consolidation of the proceedings. These motions are pending before the FERC.

¹⁶ *Id.* at P 32.

¹⁷ *Id.* at P 30.

¹⁸ *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al.*, 147 FERC ¶ 61,235 (June 19, 2014) ("*2012 Base ROE Initial Order*"), *reh'g requested*.

¹⁹ *Id.* at P 26.

²⁰ *Id.*

²¹ As previously reported, NICC withdrew as a complainant in the case on July 15, explaining that NICC members had decided to disband NICC and cease all functions, including advocacy before the FERC.

As previously reported, Judge John P. Dring was appointed the settlement judge in this case. A first settlement conference was held on July 24; a second settlement conference is scheduled for Thursday, October 9, 2014. On behalf of Judge Dring, Chief Judge Wagner issued a status report on September 22 indicating that the parties were making progress toward settlement. Judge Wagner also issued an order continuing settlement procedures on September 19. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Base ROE Complaint (2011) (EL11-66)**

Also on June 19, 2014, the FERC issued *Opinion 531*,²² affirming in part, and reversing in part, Judge Cianci's Initial Decision²³ in this proceeding. In *Opinion 531*, the FERC announced a new approach that it will use for determining public utilities' base ROE and a change in its' practice on post-hearing ROE adjustments. With respect to the New England TOs', the FERC applied its new that approach to the facts of this proceeding to determine the NETOs' base ROE, and established a paper hearing to allow the participants an opportunity to submit briefs on a limited issue regarding application of the new ROE approach.²⁴

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.²⁵ By way of reminder, the FERC established hearing and settlement judge procedures²⁶ following a complaint by a number of State, consumer, and consumer advocate parties (the "2011 Complainants")²⁷ 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."²⁸ After settlement judge procedures before Judge Judith A. Dowd were ultimately unsuccessful and terminated, these proceedings proceeded to now-completed hearings before Judge Cianci.

In *Opinion 531*, the FERC concluded that it is now appropriate to use the same two-step DCF methodology model for the electric industry as it has used for the natural gas and oil pipeline industries.²⁹ The FERC also made a tentative finding that the required long-term growth projection should be based on projected long-term growth in gross domestic product ("GDP"), but established a paper hearing to permit participants to present evidence on the appropriate long-term growth projection to be used in the two-step DCF methodology.³⁰ Applying the two-step DCF methodology to the facts of this proceeding, the FERC found that the TOs' starting proxy group was consistent with FERC precedent, and after taking official notice of the necessary GDP growth

²² *Martha Coakley, Mass. Att'y Gen. et al.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), *reh'g requested*.

²³ *Martha Coakley, Mass. Att'y Gen. et al.*, 144 FERC ¶ 61,012 (2013) ("*Initial Decision*").

²⁴ *Opinion 531* at P 1.

²⁵ *See 2011 Base ROE Initial Decision*.

²⁶ *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.

²⁷ Complainants are Martha Coakley, Mass. Att'y Gen. ("MA AG"), CT PURA, Mass. Dep't of Pub. Utils. ("MA DPU"), New Hampshire Pub. Utils. Comm. ("NH PUC"), CT AG, CT OCC, Maine Off. of the Pub. Advocate ("ME OPA"), New Hampshire Off. of the Consumer Advocate, ("NH OCA"), RI PUC, Vermont Dep't of Pub. Srvc. ("VT DPS"), MMWEC, AIM, TEC, Power Options, and the IECG.

²⁸ *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.

²⁹ *Opinion 531* at P 8.

³⁰ *Id.*

projections, the FERC's analysis produced a zone of reasonableness of from 7.03% to 11.74%.³¹ Accordingly, the FERC that found it appropriate, based on record evidence, to place the TOs' base ROE halfway between the midpoint of the zone of reasonableness and the top of that zone (or at the two-thirds point), resulting in a 10.57% Base ROE (subject to adjustment based on the outcome of the paper hearing on long-term growth projections to be used).³² The FERC also indicated that, based on the record in this proceeding and economic trends since 2008 more generally, it would end its practice of updating the ROE based on changes in U.S. bond yields during the proceeding.³³ Several parties requested rehearing and/or clarification of *Opinion 531*, including: the TOs, EMCOS, American Municipal Power ("AMP"), and NRECA/APPA.³⁴ On August 20, the FERC issued a tolling order affording it additional time to consider the requests for rehearing of *Opinion 531*, which remain pending before the FERC.

In other procedural matters since the last Report, On August 5, 2014, the TOs moved to strike evidence submitted in Complainants' July 21 Petition for Rehearing, urged dismissal of the APPA, NRECA and AMP motions to intervene out-of-time, and answered EMCOS' motion for clarification. Also on August 5, Complainants, APPA, NRECA, and NHEC jointly answered the TOs' July 21 motion for clarification. On August 12, NRECA and APPA answered the TOs' Aug 5 dismissal motion. Complainants answered the TOs' August 5 motion to strike the materials provided with their July 21 request for rehearing on August 20, 2014. Also on August 20, the TOs answered Complainants Aug 5 answer. Finally, Complainants, APPA, NRECA, and NHEC jointly answered the TOs' Aug 5 motion for clarification.

Paper Hearing. On August 4, Complainants, TOs, and FERC Trial Staff submitted their initial briefs on the appropriate long-term growth projection to be used in the two-step DCF methodology. On September 4, Complainants, TOs, and FERC Trial Staff each submitted reply briefs. The paper hearing is pending before the FERC.

If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

• FCA8 Results Filing (ER14-1409)

On September 16, 2014, the results of the eighth FCA ("FCA8") held February 3, 2014 and filed February 28 (as amended by the additional information filed July 17, 2014 in response to the FERC's June 27 deficiency letter) became effective by operation of law. Challenges, if any, to the finality of the FCA8 Results must be filed in Federal Court on or before November 17, 2014.

As noted in Section I above (EL14-99), the FERC, in its companion *September 16 Order*, initiated a 206 proceeding directing the ISO to either revise its Tariff to provide for the review and potential mitigation of importers' offers prior to each annual FCA or show cause why it should not be required to do so. In the *September 16 Order*, the FERC also addressed Brayton Point, reporting that the Office of Enforcement ("OE") conducted a limited review of Brayton Point's bidding behavior and found "credible justifications for the owners' retirement decision" and elected not to further investigate Brayton Point. However, OE's non-public investigation into FCA8 bidding behavior, initiated following a non-public referral from the ISO and the IMM,

³¹ *Id.* at P 9.

³² *Id.* at PP 9-10.

³³ *Id.* at P 11.

³⁴ NHEC and MPUC joined as Petitioners in the NRECA/APPA request.

continues.³⁵ If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order³⁶ that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding³⁷ 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 Generators³⁸ submitted comments supporting PSEG's request and a few of the Connecticut Generators moved to intervene out-of-time. As noted, this matter remains pending before the FERC.

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

- **Fuel Price Adjustment Revisions (ER14-2929)**

On September 23, the ISO and NEPOOL jointly filed changes to revise the provision addressing automated fuel price adjustments in Section III.A.3.4 of Appendix A to Market Rule 1 and to make a number of clean-up changes (collectively, the "Fuel Price Adjustment Revisions"), in preparation for the December 3, 2014 implementation of the energy market offer flexibility ("EMOF") rules. The Fuel Price Adjustment Revisions expand the types of information Market Participants can provide to support their submitted fuel prices and limit the conditions under which the IMM will restrict a Market Participant from submitting fuel price adjustments through the automated interface. A December 3, 2014 effective date was requested. The Fuel Price Adjustment Revisions were unanimously supported by the Participants Committee at its September 12, 2014 meeting. Comments on the Fuel Price Adjustment Revisions are due on or before October 14. Thus far, interventions have been filed by Calpine, Dominion, and NRG. If you have any questions, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Regulation Market Dispatch Changes (ER14-2918)**

On September 22, the ISO and NEPOOL jointly filed Market Rule changes to provide an energy-neutral dispatch option for non-generation resources ("Regulation Market Dispatch Changes"). This approach addresses the FERC's concerns about the non-discriminatory participation of limited energy resources in the Regulation Market by relying on the use of separate but coordinated dispatch signals. The Regulation Market Dispatch Changes also include additional revisions to the previously-accepted rules to clarify certain provisions, correct errors and to conform the rules to the expected December 3, 2014 implementation of the

³⁵ *September 16 Order* at P 11.

³⁶ *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).

³⁷ *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).

³⁸ "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.

EMOF changes. The Regulation Market Dispatch Changes were unanimously supported by the Participants Committee at its September 12, 2014 meeting. Comments on the Regulation Market Dispatch Changes are due on or before October 14. If you have any questions, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Waiver Request: Deadline for QDN Challenge (GDF SUEZ) (ER14-2886)**

On September 15, GDF SUEZ requested a waiver of the deadline to challenge a portion of an FCA9 Qualification Determination Notification (“QDN”). GDF SUEZ seeks the waiver in order to qualify Northfield Mountain at its full winter capacity (22 MW more than identified in the QDN). Comments on this waiver request are due on or before October 6, 2014. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request: New Capacity Qualification Deadlines (MMWEC) (ER14-2771)**

On September 24, the FERC denied MMWEC’s requested waiver of the FCA9 New Capacity Qualification Deadlines.³⁹ As previously reported, the waiver would have enabled ISO consideration of the 2 MW Ipswich Wind Independence Project qualification package. The ISO, in a September 12 pleading, opposed the waiver request, asserting that the MMWEC request did not meet the FERC’s requirements for waivers. The FERC did not find that MMWEC’s statement that its underlying error was made in good faith a sufficient basis to justify waiving an express deadline. The FERC reiterated that it “will not automatically grant waiver of ISO-NE’s Tariff requirements merely because we are asked to do so – especially given ISO-NE’s objection to waiver of its tariff.” Similarly, the FERC was unpersuaded that the requested waiver was of limited scope or would not have adverse consequences on any third party or the FCM.⁴⁰ Challenges, if any, to the September 24 order must be filed on or before October 24. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Competitive Offer Test Revisions (ER14-2686)**

On August 22, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 Appendix A to ensure the competitive offer test, which is used by the ISO to determine whether Market Participants are exempt from certain Shortage Event availability penalties, functions as intended when the Energy Market Offer Flexibility (“EMOF”) changes are implemented. While a December 3, 2014 effective was requested, the parties requested a FERC order on this filing by October 21 to facilitate implementation of the Competitive Offer Test Revisions software and process changes together with the EMOF changes. The Competitive Offer Test Revisions were unanimously supported by the Participants Committee at its August 1, 2014 meeting. Doc-less interventions were filed by Dominion, NRG and NU. Comments on this filing were due on or before September 12, 2014; none were filed. 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).

- **ISO CSO Deferral Proposal (ER14-2440)**

As announced at the last Participants Committee meeting, the FERC accepted on September 12, 2014 revisions to the FCM Market Rules and Financial Assurance Policy to allow a new capacity resource to seek a one-year deferral of the start of its Capacity Supply Obligation (“CSO”).⁴¹ The revisions were accepted without change or condition, effective July 17, 2014, as requested. Unless the September 12 order is challenged, with any challenges due on or before October 14, 2014, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

³⁹ *Mass. Mun. Wholesale Elec. Co.*, 148 FERC ¶ 61,227 (Sep. 24, 2014).

⁴⁰ *Id.* at PP 13-14.

⁴¹ *ISO New England Inc.*, 148 FERC ¶ 61,185 (Sep. 12, 2014).

- **FCM PI Jump Ball Compliance Filing (ER14-2419)**

The ISO's July 14 compliance filing remains pending before the FERC. As previously reported, in response to directives in the FERC's May 30, 2014 *Order on Tariff Filing and Instituting Section 206 Proceeding* (the "*PI Order*"),⁴² the ISO submitted, on July 14, 2014, proposed Market Rule changes to its "pay-for-performance" ("PFP") design. The July 14 compliance filing included changes to address FERC directives in the *PI Order* concerning the treatment of Energy Efficiency resources, higher Reserve Constraint Penalty Factor ("RCPF") values, and exemptions in instances of certain transmission-related constraints ("ISO PI Compliance Changes"). The ISO PI Compliance Changes were considered by the Participants Committee at its July 10 special meeting. Not a single Participant supported the ISO PI Compliance Changes.⁴³ Interventions were submitted by Calpine, Dynegy, Emera, Exelon, GDF SUEZ, MPUC, NRG, and UI. Protests were filed by NEPOOL, Brookfield, CT/RI,⁴⁴ First Wind, NESCOE, NEPGA/EPISA, Public Systems,⁴⁵ NU, PSEG, Renewable Energy New England, Inc. ("RENEW"), and Verso. On August 15, the ISO answered the August 4 protests. On August 28, NEPOOL answered the ISO's August 15 protest. If you have any questions related to this proceeding, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Winter 2014/15 Reliability Program (ER14-2407)**

As previously reported, the FERC conditionally accepted, on September 9, the Tariff revisions jointly filed by the ISO and NEPOOL intended to maintain reliability through fuel adequacy by creating incentives for dual-fuel resource capability and participation, offsetting the carrying costs of unused firm fuel purchased by generators and providing compensation for demand response services ("Winter 2014/15 Reliability Program").⁴⁶ In its *Winter 2014/15 Reliability Program Order*, the FERC required the ISO to initiate a stakeholder process by January 1, 2015 to develop a "market-based" proposal to address reliability concerns for the 2015/16 Winter and future winters, as necessary. As part of those efforts, the FERC also directed the ISO to submit a stakeholder meeting schedule on or before October 9 and progress reports every 60 days thereafter for the next 12 months. No Section 206 proceeding was initiated despite requests made in comments (summarized in previous Reports). The FERC also directed the ISO to continue to analyze the appropriateness of the 1.75 volatility ratio of the higher-priced fuel index (included as part of new market monitoring changes) and include its analysis and recommendations as part of the IMM's Annual Markets Report. The Winter 2014/15 Reliability Program was accepted effective as of December 3, 2014, as requested. Any challenges to the *Winter 2014/15 Reliability Program Order* will be due on or before October 9, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC conditionally accepted on May 30, 2014, the April 1 revisions to the FCM rules jointly submitted by the ISO and NEPOOL that establish a system-wide sloped demand curve ("Demand Curve Changes").⁴⁷ 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

⁴² *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (May 30, 2014) ("*PI Order*"), clarification and reh'g requested.

⁴³ Comments by NEPOOL members during the Participant Processes made clear that there was either no opposition to the other compliance changes filed by ISO-NE or opposition was limited to the ISO's proposed approach to address the issue of inefficient price signals in instances of intra-zonal transmission constraints.

⁴⁴ "CT/RI" are CT PURA, CT OCC, CT AG, CT DEEP, and the RI PUC.

⁴⁵ "Public Systems" are CMEEC, MMWEC, NHEC, and VEC.

⁴⁶ *ISO New England Inc. and New England Power Pool Participants Comm.*, 148 FERC ¶ 61,179 (Sep. 9, 2014) ("*Winter 2014/15 Reliability Program Order*").

⁴⁷ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("*Demand Curve Order*"), reh'g requested.

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. The Demand Curve Changes were accepted effective June 1, 2014, as requested, for implementation prior to associated FCA9 deadlines. As a condition to its acceptance, the FERC directed the ISO, in a 60-day compliance filing, to clarify how new resources could qualify for the Renewable Technology Resources MOPR exemption in future auctions.⁴⁸ Requests for rehearing of the *Demand Curve Order* were filed by Exelon/Entergy, MMWEC/NHEC, NextEra, NEPGA, PSEG, and TransCanada. On July 28, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

Compliance Filing. On July 11, the ISO submitted the required 60-day compliance filing to clarify how new resources could qualify for the renewables exemption in future auctions. In that filing, the ISO explained that “new resources could qualify for the exemption in future auctions, but only as long as the new resources qualify as a renewable technology project (e.g., solar power) under a renewable standard or goal that was in effect on January 1, 2014.” NEPGA submitted comments supporting the compliance filing on August 1, 2014. The compliance filing is pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the ISO and NEPOOL submitted on January 17, 2014, 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 sought to further address existing reliability, investment and resource performance challenges in New England. However, the two proposals offered 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 abandoned 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, built upon a series of Market Rule changes, either made or are pending, proposed changes that would enhance the current market design and achieved 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).

On May 30, 2014, the FERC issued an order in response to the jump ball filing.⁴⁹ As more fully summarized in the May 31 memorandum circulated to the Committee and posted on the NEPOOL website (http://www.NEPOOL.com/Litigation_Reports.php), the FERC concluded that the existing Tariff, specifically the current FCM payment design, “is unjust and unreasonable, because it fails to provide adequate incentives for resource performance, thereby threatening reliable operation of the system and forcing consumers to pay for capacity without receiving commensurate reliability benefits” and instituted a proceeding under Section 206 of the FPA (see EL14-52 in Section I above). Concluding that neither the ISO-NE Proposal nor the NEPOOL Proposal, standing alone, had been shown to be just and reasonable, the FERC, drawing features from each Proposal, went on to direct the ISO to submit by July 14, 2014 Tariff revisions reflecting a modified version of the ISO-NE Proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL’s Proposal. Specifically, the compliance filing was to include (1) changes to implement ISO-NE’s proposed two-settlement capacity market design with certain modifications, and (2) changes to increase the RCPF values for Thirty-Minute Operating Reserves to \$1,000/MWh and for Ten-

⁴⁸ *Id.* at P 88.

⁴⁹ *See PI Order.*

Minute Non-Spinning Operating Reserves to \$1,500/MWh. The FERC established a June 9, 2014 refund effective date.⁵⁰ Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island, Dominion, MMWEC, Indicated Generators, NEPGA, NextEra, Potomac Economics, and PSEG/NERG. On July 28, 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.

Compliance Filing (ER14-2419). On July 14, the ISO submitted a filing in response to the PI Order. That filing is summarized under ER14-2419 above.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

NEPGA's request for rehearing and clarification of the *Jan 24 Exigent Circumstances Order* in this proceeding remains pending. 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").⁵¹ 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 Administrative Pricing Rules Complaint order (*see* EL14-7 in Section I above).⁵² 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 Summer 2014 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 FCA9.⁵³

Demand Curve Changes were filed by April 1, as directed, and conditionally accepted (*see* ER14-1639 above). NEPGA requested clarification and rehearing of the *Jan 24 Exigent Circumstances Order* on February 24, 2014. The FERC issued on tolling order on March 24, 2014 affording it additional time to consider the NEPGA rehearing request, which remains pending before the FERC.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁵⁰ *See* n. 4 *supra*.

⁵¹ *Jan 24 Exigent Circumstances Order*.

⁵² 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.

⁵³ *Id.* at P 30.

- **Order 755 Regulation Market Changes (ER12-1643)**

On September 30, the FERC accepted tariff sheets extending the effective date of the new Regulation Market design to March 31, 2015 (rather than October 1, 2014).⁵⁴ As previously reported, the ISO explained that among the reasons for the March 31, 2015 requested effective date were to allow the ISO time to: (i) receive a FERC order on the Regulation Market Dispatch Changes (*see* ER14-2918 above); (ii) develop the necessary software to accomplish the energy neutral dispatch of Regulation resources; and (iii) not interfere with higher priority market and reliability projects underway now and continuing through Winter 2014/15. Unless the September 30 order is challenged, with any challenges due on or before October 20, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC, on February 12, 2013, conditionally accepted in part, and rejected in part, revisions to the FCM and FCM-related rules in the Tariff (“FCA8 Revisions”) filed by the ISO and the PTO AC.⁵⁵ 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;⁵⁶ unit specific offer review;⁵⁷ the ISO’s proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports’ treatment under MOPR;⁵⁸ no exemptions to MOPR for new Self-Supplied Resources;⁵⁹ the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;⁶⁰ \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;⁶¹ and a number of other additional revisions.⁶² 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);⁶³ and the ISO’s request to model only 4 capacity zones for FCA8 (the ISO’s Capacity Zones Changes were accepted in *ISO New England Inc.*, 147 FERC ¶ 61,071 (2014)). 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, 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 Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

⁵⁴ *ISO New England Inc.*, 148 FERC ¶ 61,253 (Sep. 30, 2014).

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

⁵⁶ *FCA8 Revisions Order* at PP 37-38.

⁵⁷ *Id.* at P 53.

⁵⁸ *Id.* at P 70.

⁵⁹ *Id.* at P 80.

⁶⁰ *Id.* at P 97.

⁶¹ *Id.* at P 126.

⁶² *Id.* at P 127.

⁶³ *Id.* at PP 63-64.

IV. OATT Amendments / TOAs / Coordination Agreements

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

As previously reported, the FERC *rejected* on September 9 the ISO's December 27, 2013 filing in response to *Order 784*.⁶⁴ The September 9 order (i) found (and explained why) the ISO had failed to demonstrate that the ISO Tariff is consistent with or superior to the reforms directed by *Order 784*,⁶⁵ and (ii) denied the ISO's request to waive *Order 784*'s new Area Control Error ("ACE") data posting requirements.⁶⁶ Accordingly, the FERC directed the ISO on or before October 9, 2014 (a) to submit a compliance filing inserting the new *pro forma* Schedule 3 language regarding consideration of the speed and accuracy of resources into Schedule 3 of the Tariff and (b) to post historical one-minute and ten-minute ACE data on its OASIS, consistent with *Order 784*'s requirements. Any challenges to the FERC's September 9 order will also be due on or before October 9, 2014. The Participants Committee will be asked at its October 3 meeting to support Transmission Committee-recommended revisions to Schedule 3 of Section II of the ISO Tariff to respond to the September 9 order (agenda item # 6). If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On July 10, 2013, the ISO, NEPOOL and the PTO AC jointly filed revisions to Sections I and II of the Tariff to comply with the interregional coordination and cost allocation requirements of *Orders 1000* and *1000-A* (the "*Order 1000* Interregional Compliance Changes") (ER13-1960). In addition, the ISO, on behalf of itself, NYISO and PJM, filed an Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol ("*Amended Protocol*") as part of its compliance changes (ER13-1957). The *Order 1000 Interregional Compliance Changes* include (i) revisions to Attachment K to add provisions describing the interregional coordination provisions included in the Amended Protocol, as well as adding other provisions facilitating the consideration of interregional solutions to regional needs; (ii) a new Schedule 15 reflecting the methodology for allocation among ISO-NE and NYISO of the costs of approved interregional transmission projects; (iii) revisions to Schedule 12 describing the regional cost allocation within New England of the costs of approved interregional transmission projects; and (iv) conforming changes to Tariff Section I. The *Order 1000* Interregional Compliance Changes and the Amended Protocol were supported by the Participants Committee at its June 27 Summer Meeting. On August 7, the FERC extended the comment deadline on these filings to and including September 9, 2013. Doc-less motions to intervene were filed by a number of New England parties in both proceedings, including Dominion, Exelon, PPL, PSEG, and NEPOOL (in the Protocol proceeding (in which it was not a filing party)). On August 26, 2013, 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 Organizations⁶⁷ 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, 2013, the ISO answered Public Interest Organizations' and NEPOOL's

⁶⁴ *ISO New England Inc.*, 148 FERC ¶ 61,180 (Sep. 9, 2014).

⁶⁵ *Id.* at PP 14-15 (explaining why it disagreed that inclusion of the Schedule 3 language was unnecessary or would introduce confusion).

⁶⁶ *Id.* at P 21 ("So long as a market participant in New England may opt to self-supply Regulation Service and access to Area Control Error data may provide some positive value to that participant, we find it appropriate for ISO-NE to post such data")

⁶⁷ "Public Interest Organizations" are Conservation Law Foundation, ENE, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

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

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

Rehearing of the FERC's May 17, 2013 order on the region's *Order 1000* compliance filing⁶⁸ (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, 2013, the ISO and the PTO AC jointly submitted proposed revisions to Sections I and II of the 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, 2013 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 ("QTSPs") 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**⁶⁹ (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

⁶⁸ *ISO New England Inc.*, 143 FERC ¶ 61,150 (May 17, 2013) ("*Order 1000 Compliance Order*").

⁶⁹ "Environmental Groups" are ENE, 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.

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**⁷⁰ (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**⁷¹ (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, 2014, NHT filed an answer to the January 15 answers by the ISO and PTO AC. The ISO answered the NHT February 4 answer on February 18, 2014.

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

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 21- NSTAR: MBTA LSA (ER14-2596)**

On August 5, as amended September 5, NSTAR and the ISO filed a non-conforming Local Service Agreement ("LSA") by and among NSTAR, Massachusetts Bay Transportation Authority ("MBTA"), and the ISO for Local Network Service under Schedule 21-NSTAR of the ISO OATT (the "MBTA LSA"). The MBTA LSA replaces a long-standing bilateral *pro forma* Service Agreement ("Current Agreement") between MBTA and NSTAR for service under Schedule 21-NSTAR. While the MBTA LSA is based on the form of LSA contained in Schedule 21-Common under the ISO OATT, it is non-conforming and is being filed insofar as it reflects different rates from those set forth in Schedule 21-NSTAR, i.e., a Direct Assignment Charge for the K Street Point of Delivery. A May 1, 2014 effective date was requested. No comments on the initial LSA filing were filed. Comments on the amendments to the LSA were due on or before September 26, 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).

- **Order 792 Compliance Filing (ER14-2583)**

On August 4, the ISO, NEPOOL, and the PTO AC jointly submitted revisions to the Small Generator Interconnection Procedures ("SGIP") and Small Generator Interconnection Agreement ("SGIA") set forth in Schedule 23 of the ISO Tariff in response to the requirements of *Order 792*.⁷² The *Order 792* changes were unanimously supported by the Participants Committee at the June 26, 2014 Summer Meeting. Comments on this filing were due on or before August 25, 2014. Doc-less interventions were filed by Dominion, Exelon and NRG,

⁷⁰ In this proceeding, "Public Systems" are MMWEC and NHEC.

⁷¹ "VT/RI Parties" are the State of New Hampshire Public Utilities Commission ("NHPU"), 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").

⁷² *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).

but no comments were filed. This matter remains pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 21-NEP Centennial Island Hydro SGIA (ER14-2534)**

On September 17, the FERC accepted a non-conforming SGIA between New England Power Company (“NEP”) and Centennial Island Hydroelectric Company (“Centennial Island Hydro”). The SGIA addresses the interconnection of Centennial Island Hydro’s 0.64 MW hydroelectric generating facility located in Lowell, Massachusetts. The facility is already subject to a 1989 IA with NEP (which will be cancelled upon the acceptance of the SGIA). The SGIA is non-conforming, among other reasons, because the ISO is not a party to the SGIA and this interconnection was not processed under the ISO’s SGIPs. The SGIA was accepted effective as of June 23, 2014, as requested. Unless the September 17 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, the FERC approved, on August 4, 2014, a November 13, 2013 Settlement Agreement and Offer of Settlement (“Settlement”)⁷³ reported to resolve all disputes in these proceedings (related to concerns with Schedules 21-GMP and 20A-GMP and notices of cancellation filed in 2012 by GMP).⁷⁴ On August 22, GMP submitted 2 compliance filings (reflecting 2 separate effective dates), consistent with the approved Settlement. Comments on the compliance filings were due on or before September 12; none were filed. This matter is pending before the FERC. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Capital Projects Report - 2014 Q2 (ER14-2656)**

On September 25, the FERC accepted the ISO’s Capital Projects Report and Unamortized Cost Schedule covering the second quarter (“Q2”) of calendar year 2014 (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 Tariff. Highlights included the following new projects: FCA9 (\$2.064 million); Enhance Control Room Flat Panel Displays (\$169,000); and Financial Assurance Business Intelligence Integration (\$150,000); and Passive Asset Data Repository (\$78,900). Projects reported to have significant changes include: (i) EMOF changes (\$240,000 increase, reflecting removal of Regulation Market changes from EMOF changes to be implemented December 3); (ii) Divisional Accounting (\$417,200 (deferred to 2015)); and (iii) Control Room Visualization (\$328,600 due to underestimation of costs and consultant turnover). NU filed a doc-less motion to intervene on September 3. NEPOOL filed comments on August 27 supporting the filing. Unless the September 25 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).

⁷³ *ISO New England Inc., et al.*, 148 FERC ¶ 61,097 (Aug. 4, 2014).

⁷⁴ *See ISO New England, Inc., Central Vt. Pub. Srvc. 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).

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

The ISO filed its twenty-fourth report on September 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.⁷⁵ In the 24th report, the ISO reported that, it was planning with NEPOOL to jointly submit later in September Tariff changes to adopt an energy-neutral dispatch method and to re-submit non-controversial parts of the Regulation Market Rule changes that were rejected by the May 20, 2014 Order. The ISO said that, assuming the FERC accepts the new tariff changes, including the energy-neutral dispatch method, the ISO expects to implement the new regulation market design that fully complies with *Order 755* on March 31, 2015. These reports are not noticed for public comment.

- **Reserve Market Compliance (17th) Semi-Annual Report (ER06-613)**

As directed by the original ASM II Order,⁷⁶ as modified,⁷⁷ the ISO submitted its 17th semi-annual reserve market compliance report on October 1, 2014. In the 17th report, the ISO explained, as in its prior compliance reports, that work on the forward TMSR market issues continues to be on hold due to its efforts on other priority projects (e.g. design and implementation of FCM-related changes (specifically, development of zonal sloped demand curve and elective transmission upgrade proposals and review of the Peak Energy Rent mechanism), development of a “do not exceed” dispatch mechanism for intermittent resources and a proposed design for sub-hourly settlement of the Real-Time Energy Markets. Other higher priority projects include demand resources integration into the Energy Market to comply with *Order 745* and Regulation Market enhancements required to comply with *Order 755*. In addition, the ISO expects to focus on Energy and Reserve Market price formation issues during the next year, as well as complete an ongoing review of NCPC cost allocation rules). The ISO reports that it does not expect to have the available resources needed to revisit this issue until at least 2016. 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; dt_doot@daypitney.com).

IX. Membership Filings

- **October 2014 Membership Filing (ER14-2980)**

On September 30, NEPOOL requested that the FERC accept: (i) the memberships of Fisher Road Solar I (AR Sector, RG Sub-Sector), Nordic Energy Services (Supplier Sector); and Plant-E Corp. (Supplier Sector) (each effective October 1, 2014); and (ii) the termination of the Participant status of Blue Pilot Energy. Comments on this filing are due on or before November 21.

- **September 2014 Membership Filing (ER14-2749)**

On September 29, the FERC accepted: (i) the memberships of BlueRock Energy, Inc. and E.ON Global Commodities North America LLC (Supplier Sector, each effective September 1, 2014); and (ii) the termination of the Participant status of SBR Energy, Dragon Products and Dragon Energy LLC.

⁷⁵ 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”).

⁷⁶ 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).

⁷⁷ 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”).

- **August 2014 Membership Filing (ER14-2541)**

On September 18, the FERC accepted the memberships of SFE Energy Connecticut Inc. and SFE Energy Massachusetts Inc. (each effective August 1, 2014).

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

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

- **FFT Report: September 2014 (NP14-50)**

NERC submitted on September 30, 2014 its Find, Fix, Track and Report (“FFT”) informational filing for the month of September 2014. The August FFT resolves 30 possible violations of 20 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁷⁸ The 10 Registered Entities involved each submitted a mitigation activities statement of completion. FFT filings are for information only and will not be noticed for public comment by the FERC.

- **Revised Reliability Standard: PRC-004-3 (RD14-14)**

On September 15, 2014, NERC filed for approval changes to PRC-004-3 (Protection System Misoperation Identification and Correction) as well as a revised definition of “Misoperation” and a new definition of “Composite Protection System” for inclusion in the NERC Glossary of Terms, and the retirement of Reliability Standards PRC-004-2.1a (Analysis and Mitigation of Transmission and Generation Protection System Misoperations) and PRC-003-1 (Regional Procedure for Analysis of Misoperations of Transmission and Generation Protection System) as listed in the Implementation Plan (“PRC-004 Changes”). NERC stated that the PRC-004 Changes address outstanding Commission concerns and directives related to PRC-004 and PRC-003 and create a single Reliability Standard requiring Transmission Owners, Generator Owners, and Distribution Providers to identify and correct causes of Misoperations of certain Protection Systems for Bulk Electric System Elements. NERC requested that the PRC-004 Changes be approved, and the existing PRC-004-2.1a and PRC-003-1 be retired, effective on the first day of the first calendar quarter that is one year after the date of FERC approval. Comments on the PRC-004 Changes are due on or before October 20, 2014.

- **Revised Reliability Standard: NUC-001-3 (RD14-13)**

Also on September 15, 2014, NERC filed for approval changes to NUC-001-3 (Nuclear Plant Interface Coordination) as well as the associated VRFs and VSLs, and the retirement of NUC-001-2 as listed in the Implementation Plan (“NUC-001 Changes”). NERC stated that the NUC-001 Changes represent the implementation of recommendations made following a Standards Processes Manual-mandated periodic review. NERC requested that the NUC-001 Changes be approved, and existing NUC-001-2 be retired, effective on the first day of the first calendar quarter that is one year after the date of FERC approval. Comments on the NUC-001 Changes are due on or before October 15, 2014.

- **Revised Reliability Standards: FAC-001-2 and FAC-002-2 (RD14-12)**

On August 22, 2014, NERC filed for approval changes to FAC-001-2 (Facility Interconnection Requirements) and FAC-002-2 (Facility Interconnection Studies) (“FAC Changes”). NERC stated that the FAC Changes are designed to eliminate redundancies between the two Standards and to clarify the actions required under each. NERC added that “the proposed revisions are designed to maintain the existing reliability goals, while providing responsible entities with flexibility regarding how they fulfill the actions required.” NERC requested that the FAC Changes be approved, and the existing FAC-001-1 and FAC-002-1 be retired, effective on

⁷⁸ 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.

the first day of the first calendar quarter that is one year after the date of FERC approval. Comments on the FAC Changes were due on or before September 25, 2014; none were filed. 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)**

As previously reported, the FERC approved, on June 30, 2014, uncontested changes to five Interchange and Coordination Standards (“INT Changes”).⁷⁹ On August 22, 2014, NERC submitted an errata filing replacing the language in the effective date section of the INT Reliability Standards with “See implementation plan” in order to clarify that the implementation plan contains the correct effective date language. Comments on the errata filing were due on or before September 25, 2014; none were filed. This matter is pending before the FERC.

- **NOPR: New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15)**

On July 17, 2014, the FERC issued a NOPR proposing to approve NERC’s proposed Physical Security Reliability Standard (CIP-014-1).⁸⁰ NERC has reported that CIP-014 is designed to enhance physical security measures for the most critical Bulk-Power System facilities and thereby lessen the overall vulnerability of the Bulk-Power System to physical attacks. CIP-014 requires Transmission Owners and Transmission Operators to protect those critical Transmission stations and Transmission substations, and their associated primary control centers that if rendered inoperable or damaged as a result of a physical attack could result in widespread instability, uncontrolled separation, or cascading within an Interconnection. CIP-014 also includes requirements for: (i) the protection of sensitive or confidential information from public disclosure; (ii) third party verification of the identification of critical facilities as well as third party review of the evaluation of threats and vulnerabilities and the security plans; and (iii) the periodic reevaluation and revision of the identification of critical facilities, the evaluation of threats and vulnerabilities, and the security plans to help ensure their continued effectiveness. NERC proposed to make CIP-014 effective as of the first day of the first calendar quarter that is 6 months after the date that CIP-014 is approved, as requested. Comments on this NOPR were due on or before September 8, 2014, and were filed by over 30 parties, including a number of industry organizations, Entergy, and NU. Reply comments were due September 22, 2014⁸¹ and were filed by NIPSCO, SmartSenseCom, City of Tallahassee - Electric Utility, and the Foundation for Resilient Societies (“FRS”). This matter is pending before the FERC.

- **NOPR: Revised Reliability Standard: COM-001-2 and COM-002-4 (RM14-13)**

On September 18, 2014, the FERC issued a NOPR proposing to approve changes to COM-1 (Communications) and COM-2 (Operating Personnel Communications Protocols) (together, “COM Changes”).⁸² Proposed COM-001 establishes a clear set of requirements for what communications capabilities various functional entities must maintain for reliable communications. Proposed COM-002 improves communications surrounding operating instructions by setting predefined communications protocols, requiring use of the same protocols regardless of the current operating condition (whether normal, alert, and Emergency operating conditions), and requiring entities to reinforce the use of the documented communication protocols through training, assessment, and feedback. NERC requested that the COM Changes be approved effective as of the first day of the first calendar quarter that is 12 months after the date that the COM Changes are approved by the FERC. Comments on this NOPR are due on or before December 1, 2014.⁸³

⁷⁹ The INT Changes revised: (1) INT-004-3 (Dynamic Transfers); (2) INT-006-4 (Evaluation of Interchange Transactions); (3) INT-009-2 (Implementation of Interchange); (4) INT-010-2 (Interchange Initiation and Modification for Reliability); and (5) INT-011-1 (Intra-Balancing Authority Transaction Identification).

⁸⁰ *Physical Security Reliability Standard*, 148 FERC ¶ 61,040 (Jul. 17, 2014).

⁸¹ The Physical Security NOPR was published in the *Fed. Reg.* on July 23, 2014 (Vol. 79, No. 141) pp. 42,734-42,743.

⁸² *Communications Reliability Standards*, 148 FERC ¶ 61,210 (Sep. 18, 2014).

⁸³ The *Communications Reliability Standards* NOPR was published in the *Fed. Reg.* on Sep. 30, 2014 (Vol. 79, No. 189) pp. 58,709-58,716.

- **NOPR: Revised Reliability Standard: MOD-031-1 (RM14-12)**

On September 18, 2014, the FERC issued a NOPR proposing to approve changes to MOD-31 (Demand and Energy Data) (“MOD-031 Changes”).⁸⁴ The MOD-031 Changes are designed to replace, consolidate and improve upon the “existing MOD-C Standards”⁸⁵ in addressing the collection and aggregation of Demand and energy data necessary to support reliability assessments performed by the ERO and Bulk-Power System planners and operators. Specifically, the MOD-031 Changes, in response to *Order 693*, (1) streamline the MOD Reliability Standards to clarify data collection requirements; (2) include Transmission Planners as applicable entities that must report Demand and energy data; (3) require applicable entities to report weather-normalized annual peak hour actual Demand data from the previous year to allow for meaningful comparison with forecasted values; and (4) require applicable entities to provide an explanation of, among other things: (i) how their Demand Side Management forecasts compare to actual Demand Side Management for the prior calendar year and, if applicable, how the assumptions and methods for future forecasts were adjusted.; and (ii) how their peak Demand forecasts compare to actual Demand for the prior calendar year with due regard to any relevant weather-related variations (e.g., temperature, humidity, or wind speed) and, if applicable, how the assumptions and methods for future forecasts were adjusted. Consistent with FERC’s directives, NERC is also proposing to revise the definition of Demand-Side Management to include activities or programs undertaken by any applicable entity, not just a Load Serving Entity or its customers, to achieve a reduction in Demand. NERC requested that the MOD-031 Changes be approved, and the existing MOD-C Standards be retired, effective on the first day of the first calendar quarter that is 12 months after the date that the MOD-031 Changes are approved by the FERC. Comments on this NOPR are due on or before December 1, 2014.⁸⁶

- **Revised Reliability Standard: BAL-001-2 (RM14-10)**

On May 9, 2014, NERC filed for approval changes to BAL-001-2 (Real Power Balancing Control Performance) (“BAL-001 Changes”). The BAL-001 Changes add a frequency component to the measurement of a Balancing Authority’s Area Control Error (“ACE”) and allows for the formation of “Regulation Reserve Sharing Groups.” NERC requested that the BAL-001 Changes be approved, and the existing BAL-001-1 Standard be retired, effective on the first day of the first calendar quarter that is 12 months after the date that the BAL-001 Changes are approved by the FERC. As of the date of this report, a comment date has not been set for this filing.

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

On July 17, 2014, the FERC issued a NOPR proposing to approve changes to PRC-005-3 (Protection System and Automatic Reclosing Maintenance) (“PRC-005 Changes”).⁸⁷ The PRC-005 Changes include in PRC-005 the maintenance and testing of reclosing relays that can affect the reliable operation of the BPS. The FERC also proposes to approve one new definition and six revised definitions, the assigned VRFs and VSLs, and NERC’s proposed implementation plan. The FERC also proposes to direct NERC to submit a report based on actual performance data, and simulated system conditions from planning assessments, two years after the effective date of the proposed standard (to address whether PRC-005-3 applies to an appropriate set of auto-reclosing relays that can affect BPS reliability. Further, the FERC proposes to direct NERC to modify PRC-005-3 to include maintenance and testing of supervisory relays.⁸⁸ The PRC-005 Changes are to become effective, and the existing PRC-005-2 retired, as of 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. Comments on the PRC-005-3 NOPR were due on or before

⁸⁴ *Demand and Energy Data Reliability Standard*, 148 FERC ¶ 61,192 (Sep. 18, 2014).

⁸⁵ The “existing Mod-C Standards” are: MOD-016-1.1, MOD-017-0.1, MOD-018-0, MOD-019-0.1, and MOD-021-1.

⁸⁶ The *Demand and Energy Data Reliability Standard* NOPR was published in the *Fed. Reg.* on Sep. 30, 2014 (Vol. 79, No. 189) pp. 58,716-58,720.

⁸⁷ *Protection System Maintenance Reliability Standard*, 148 FERC ¶ 61,041 (Jul. 17, 2014).

⁸⁸ *Id.* at PP 1-2.

September 23, 2014⁸⁹ and were filed by NERC, EEI, Idaho Power Company, ITC, and the G&T Cooperatives.⁹⁰ This NOPR is pending before the FERC.

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

On June 19, 2014, the FERC issued a NOPR proposing to approve changes to MOD-001-2 (Modeling, Data, and Analysis — Available Transmission System Capability) (“MOD Changes”) proposed by NERC. The MOD Changes 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 will replace the six Existing MOD Standards⁹¹ to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2’s effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC seeks comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also seeks further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this NOPR were due August 25, 2014,⁹² and were filed by NERC, Bonneville, Duke, MISO, and NAESB. The MOD-001-2 NOPR remains pending before the FERC.

- **Order 797: New Reliability Standard: EOP-010-1 (Geomagnetic Disturbance Operations) (RM14-1)**

As previously reported, the FERC approved on June 19, 2014 new Reliability Standard EOP-010-1 (Geomagnetic Disturbance Operations).⁹³ The new Reliability Standard requires BPS owners and operators to develop and implement operational procedures to mitigate the effects of Geomagnetic Disturbances consistent with the reliable operation of the BPS. The FERC also approved the associated VRFs and VSLs, implementation plan, and effective dates proposed by NERC. Accordingly, EOP-010-1 will become effective January 1, 2015. On July 21, 2014, FRS requested rehearing of *Order 797*. On August 20, the FERC issued a tolling order affording it additional time to consider the FRS request, which remains pending before the FERC.

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

On November 21, 2013, the FERC issued a NOPR⁹⁴ 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);

⁸⁹ The PRC-005-3 NOPR was published in the *Fed. Reg.* on July 24, 2014 (Vol. 79, No. 142) pp. 44,475-44,483.

⁹⁰ The “G&T Cooperatives” are Assoc. Elec. Coop., Basin Elec. Power Coop. and Tri-State Generation and Transmission Assoc.

⁹¹ 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.

⁹² The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁹³ *Reliability Standard for Geomagnetic Disturbance Operations*, Order No. 797, 147 FERC ¶ 61,209 (June 19, 2014) (“*Order 797*”), *reh’g requested*.

⁹⁴ *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*”).

- ▶ 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).⁹⁵

As previously reported, the changes to TOP-006-3 filed April 5, 2013 are targeted to address the respective monitoring role and notification obligation of Reliability Coordinators (“RCs”), Balancing Authorities (“BAs”) and Transmission Operators (“TOPs”) by clarifying that TOPs are responsible for monitoring and reporting available transmission resources and that BAs are responsible for monitoring and reporting available generation resources. In addition, the changes confirm that RCs, TOPs, and BAs are required to supply their operating personnel with appropriate technical information concerning protective relays located within their respective areas.

The changes to the IRO Standards were to achieve two important overall reliability benefits: (1) delineate a clean division of responsibilities between the Reliability Coordinator and Transmission Operators; and (2) improve system performance by raising the bar on monitoring of Interconnection Reliability Operating Limits (“IROLs”) and System Operating Limits (“SOLs”) in order to focus monitoring on IROLs and SOLs that are important to reliability.

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

Because the proposed TOP and IRO Reliability Standards were interrelated, and because the proposed revisions to Reliability Standard TOP-006-3 involved similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the FERC addressed all three proposals together in the one NOPR. Although the FERC acknowledged that the proposed TOP and IRO Reliability Standards contain some improvements over the current Standards, concerns that the changes would create reliability gaps in the Standards that are critical to reliable operation of the BPS resulted in the proposed remand of the proposed TOP Standards.⁹⁶ 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.⁹⁷

⁹⁵ 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.

⁹⁶ *Id.* at P 4.

⁹⁷ *Id.*

Initially, comments are the *Nov 21 NOPR* were due on or before February 3, 2014.⁹⁸ 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 October 1, 2014, NERC submitted the third of its promised quarterly status reports regarding the status of revisions. In the October report, NERC reported that standard drafting team and NERC Staff are diligently working to revise the IRO and TOP Reliability Standards, with a meeting held in late July and a technical conference held in August. NERC reported on ballots of the standards, definitions, and proposed implementation plan taken during the quarter. A drafting team meeting was held September 30 – October 2, 2014.

- **NOPR: BAL-002-1a Interpretation Remand (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.⁹⁹ NERC asserted that the proposed interpretation clarifies that BAL-002-1 is intended to be read as an integrated whole and relies in part on information in the Compliance section of the Reliability Standard. Specifically, the proposed interpretation would clarify that: (1) a Disturbance that exceeds the most severe single Contingency, regardless if it is a simultaneous Contingency or non-simultaneous multiple Contingency, would be a reportable event, but would be excluded from compliance evaluation; (2) a pre-acknowledged Reserve Sharing Group would be treated in the same manner as an individual Balancing Authority; however, in a dynamically allocated Reserve Sharing Group, exclusions are only provided on a Balancing Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,¹⁰⁰ and were filed by NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. This NOPR remains pending before the FERC.

- **Revised NPCC Regional Reliability Standards Development Procedure (RR14-7)**

On September 15, 2014, NERC requested approval of amendments to NPCC's Regional Reliability Standards Development Procedure ("RRSDP"). The amendments (1) change the name of the RRSDP to the Northeast Power Coordinating Council, Inc. ("NPCC") Regional Standard Processes Manual ("RSPM"), (2) provide organization and clarity to the RSPM by developing separate sections for: (i) the withdrawal of a request for approval of a regional standard before it has been approved, (ii) retirement of an approved NPCC regional standard, (iii) requirements for approval of a process waiver, and (iv) process for correcting errata; (3) incorporate NPCC's Cost Effectiveness Analysis Procedure ("CEAP") into the RSPM; (4) further develop NPCC's clarification process for regional standards, (5) create new appendices for the newly revised RSPM, and (6) recognize the Reliability Standard Audit Worksheet ("RSAW") as necessary to a regional standard developed by the NPCC Standard Drafting Team and the NPCC. Comments on the RRSDP amendments are due on or before October 6, 2014.

⁹⁸ The *Nov 21 NOPR* was published in the *Fed. Reg.* on Dec. 5, 2013 (Vol. 78, No. 234) pp. 73,112-73,128.

⁹⁹ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

¹⁰⁰ 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.

- **2015 NERC/NPCC Business Plans and Budgets (RR14-6)**

On August 22, 2014, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2015. FERC regulations¹⁰¹ require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reported that its proposed 2015 Funding requirement represents an overall increase of approximately \$10.3 million (18.2%) over NERC's 2014 Funding requirement. NERC reported that a significant portion of its budget increase is for NERC's costs to participate in the Cyber Risk Information Sharing Program ("CRISP"); \$8.94 million of NERC's costs for CRISP will be funded by participating utilities and other entities. The NPCC U.S. allocation of NERC's net funding requirement is \$3.7 million. NPCC requested \$14.78 million in statutory funding (a U.S. assessment per kWh (2013 NEL) of \$0.0000425) and \$1.13 million for non-statutory functions. Comments on this filing were due on or before September 12, 2014. On September 12, Exelon filed comments supporting NERC's requesting NERC's 2015 Business Plan and Budget. This matter is pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: Dynegy/EquiPower (EC14-140)**

On September 11, 2014, Dynegy and EquiPower requested FERC authorization for Dynegy's acquisition of EquiPower's generating assets (Dighton, Elwood, Kincaid, Lake Road, Liberty, MASSPOWER, Milford, Richland-Stryker Generation and Brayton Point). Comments on this filing are due on or before November 11. On September 24, PJM's IMM requested that this proceeding be consolidated with EC14-141 (the acquisition of certain Midwest generating assets from Duke Energy), citing common issues of law and fact and the need to evaluate the impact of the combined transactions on PJM markets. Dynegy opposed that request on September 25. That request is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: Calpine/Constellation (Fore River) (EC14-135)**

On September 5, 2014, Calpine Fore River Energy Center, LLC ("Calpine") and Constellation Mystic Power, LLC ("Constellation") requested FERC authorization for the acquisition by Calpine of the Fore River Generating Station and certain associated assets from Constellation. Comments on this filing were due on or before September 26, 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).

- **PURPA Complaint v. MA DPU (Allco Renewable Energy) (EL14-84 et al.)**

As previously reported, Allco Renewable Energy Limited ("Allco") petitioned the FERC on July 28, 2014, to pursue an enforcement action against the MA DPU under the Public Utility Regulatory Policies Act of 1978 ("PURPA").¹⁰² Allco sought a FERC order that would invalidate the MA DPU's regulations that Allco asserted prevented Allco's affiliate QFs from recovering their long-run avoided cost rate (a rate fixed at the outset for the entirety of a QF contract based upon the utility's projected future avoided costs). On August 15, MA DPU requested an extension of time, to November 1, 2014, to respond. National Grid supported the MA DPU's request and Allco indicated it had no objection to an extension that would not prevent the FERC from issuing a decision within the 60-day period provided for in PURPA. On August 18, the FERC granted

¹⁰¹ 18 CFR § 39.4(b) (2014).

¹⁰² Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC's PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

the extension request, in part, extending the time to file interventions and comments, to and including August 28, 2014. On August 28, the MA DPU filed its protest to the Complaint. Allco answered the MA DPU protest on September 8 and the MA DPU answered the Allco answer on September 19, 2014. On September 26, the FERC issued a notice of its intention not to initiate an enforcement action, clearing the way for Allco to itself bring an enforcement action against the MA DPU in the appropriate court.¹⁰³ If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **FirstEnergy PJM DR Complaint (EL14-55)**

On May 23, 2014, the same day that DC Circuit vacated *Order 745* (see Section XV below), FirstEnergy filed a complaint against PJM requesting that the FERC require the “removal of all portions of the PJM Tariff allowing or requiring PJM to include demand response as suppliers to PJM’s capacity markets”. FirstEnergy also requested that the results of the PJM capacity auction due to be released that same day, to the extent it included and cleared demand response resources, be considered void and legally invalid. PJM’s response, and all comments and interventions were initially due on or before June 12, 2014. However, on June 11, the FERC extended that date to 30 days after the submission by FirstEnergy of an amended complaint. FirstEnergy filed its amended complaint on September 22, 2014. Comments on the FirstEnergy Complaint will be due October 22, 2014. Thus far, more than 60 parties have moved to intervene; no comments or responses have yet been filed. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **E&P Agreements: Blue Sky West & CMP (ER14-2743; ER14-2744)**

On August 29, Central Maine Power (“CMP”) filed Engineering and Procurement (“E&P”) Agreements between CMP and Blue Sky West II, LLC (“Blue Sky West”) to facilitate the interconnection of the Blue Sky West’s 191 MW wind farm in Bingham, Mayfield Township and Kingsbury Plantation, Maine. CMP requested that the Agreements be accepted as follows: (1) the Original E&P Agreement effective October 26, 2012; (2) the First Revised E&P Agreement effective March 20, 2014; and (3) the Second Revised E&P Agreement effective July 17, 2014. Comments on the E&P Agreement filing were due on or before September 19, 2014; none were filed. On September 30, CMP supplemented its filing with marked copies of: the First Revised E&P Agreement, showing differences between the original E&P Agreement and the First Revised E&P Agreement; and the Second Revised E&P Agreement, showing differences between the First Revised E&P Agreement and Second Revised E&P Agreement. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844)**

On December 18, 2012, Judge Sterner issued his 374-page initial decision which, following hearings described in previous reports, found at its core that “it is unjust, unreasonable, and unduly discriminatory to allocate costs of Phase Angle Regulating Transformers (“PARs”) of the International Transmission Company (“ITC”) to NYISO and PJM”,¹⁰⁴ which the Midwest ISO (“MISO”) and ITC proposed unilaterally to do (without the support of either PJM or NYISO) in its October 20, 2010 filing initiating this proceeding. For a summary of specific findings, please refer to any of the January to June 2013 Reports.

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. Briefs opposing exceptions were filed by the FERC Trial Staff, MISO TOs, NYISO, NY TOs, PJM, and the PJM TOs. On February 25, Joint Applicants moved to strike a portion of the PJM Brief Opposing Exceptions. On March 12, PJM answered Joint Applicants February 25 motion. MISO (now called “Midcontinent Independent System Operator, Inc.”) moved to lodge a NYISO “Broader Regional

¹⁰³ *Allco Renewable Energy Limited et al.*, 148 FERC ¶ 61,233 (Sep. 26, 2014).

¹⁰⁴ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

Markets Informational Report” filed March 19, 2014 in ER08-1281 and a related January 16, 2014 “Ontario-Michigan Interface PAR Performance Evaluation Report” (“Evaluation Report”) prepared by MISO, IESO and PJM. Oppositions to that motion to lodge were filed by FERC Staff, NYISO, NY TOs, PJM, and PSEG. This matter remains pending before the FERC. If there are any questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

City Power and K. Tsingas. On August 25, 2014, the FERC issued a notice that Staff has preliminarily determined that (i) City Power Marketing, LLC (“City Power”) and K. Stephen Tsingas violated the FERC’s Anti-Manipulation Rule by engaging in manipulative Up To Congestion trading in PJM during July 2010; and (ii) City Power violated the FERC’s market behavior rules (18 C.F.R. § 35.41 (2014)) by making false statements and omitting material information during the investigation.

Powhatan Energy, HEEP Fund, CU Fund, and H. Chen. On August 5, 2014, the FERC issued a notice that Staff has preliminarily determined that Houlihan (Alan) Chen, HEEP Fund Inc., and CU Fund Inc., and Powhatan Energy Fund, LLC, violated the FERC’s Anti-Manipulation Rule by engaging in manipulative Up To Congestion trading in PJM between June and August 2010. Staff alleges that Chen (on behalf of Powhatan, HEEP Fund, or CU Fund) engaged in Up To Congestion transactions in PJM designed to falsely appear to be spread trades, as a vehicle for collecting Marginal Loss Surplus Allocation (“MLSA”) payments from PJM, by placing millions of megawatt hours of offsetting trades between the same two trading points, in the same volumes and the same hours—an intentional effort to cancel out the financial consequences from any spread between the two trading points while capturing large amounts of MLSA payments. Staff alleges this strategy amounted to wash trading, long prohibited by the FERC.

Twin Cities. On June 12, 2014, the FERC issued a notice that Staff has preliminarily determined that Twin Cities Power-Canada, U.L.C. and certain affiliated companies, including Twin Cities Energy and Twin Cities Power, and individuals Allan Cho, Jason F. Vaccaro, and Gaurav Sharma each violated the FERC’s prohibition of electric energy market manipulation by scheduling and trading physical power in MISO to benefit related swap positions that settle off of real-time MISO prices, including the Cinergy Hub Balance-of-Day Swap traded on IntercontinentalExchange, Inc. (“ICE”), during the period January 1, 2010 through January 31, 2011.

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.¹⁰⁵ 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.¹⁰⁶ Bangor Hydro requested a limited waiver from the FERC’s Standards of Conduct requirements,¹⁰⁷ 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

¹⁰⁵ 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).

¹⁰⁶ *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (Sep. 15, 2011) (“*BHE Standards of Conduct Order*”).

¹⁰⁷ See 18 C.F.R. § 358 (2013) *et seq.*

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.

XII. Misc. - Administrative & Rulemaking Proceedings

• RTO/ISO Common Metrics Report (AD14-15)

On August 26, 2014, FERC Staff published a "Common Metrics" report, the primary purpose of which is to provide a platform for review of ISO, RTO and utility performance. The Common Metrics Report provides the following two components for a performance review: (1) an analysis of the metrics data to confirm that the data provided by ISOs, RTOs and utilities in regions outside ISO and RTO markets are consistent with the definitions of the common metrics; and (2) an evaluation and confirmation that the common metrics are measuring the same activities and have the same meaning across the industry. FERC Staff determined 30 metrics meeting the criteria for common metrics. FERC Staff reported that further analysis is needed, and indicated that it would request approval for further data collection on performance metrics for the 2008-2012 and 2010-2014 periods from the Office of Management and Budget ("OMB").

• Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14)

On June 19, 2014, the FERC initiated a proceeding to evaluate price formation issues in RTO/ISO energy and ancillary services markets. In its notice, the FERC announced a series of staff workshops to facilitate a discussion with market operators and their stakeholders on the existing market rules and operational practices related to:

- ▶ use of uplift payments;
- ▶ offer price mitigation and offer price caps;
- ▶ scarcity and shortage pricing; and
- ▶ operator actions that affect price.

Sep 8 Workshop. The FERC held its first workshop on September 8, 2014. The September 8 workshop focused on the technical, operational and market issues that give rise to uplift payments and the levels of transparency. The workshop also previewed the scope of the remaining price formation topics. The webcast of the September 8 workshop will be archived and available for 3 months on the FERC's website at <http://ferc.capitolconnection.org/>. Speaker materials have been posted in the FERC's eLibrary. Also posted in eLibrary is a FERC staff report issued August 21 that analyzes "Uplift in RTO and ISO Markets." Since the last report, CME Group filed post meeting comments on October 1.

Oct 28 Workshop. On September 5, the FERC announced that it will hold a second workshop addressing the technical, operational, and market issues related to offer price mitigation and offer price caps, and scarcity and shortage pricing in energy and ancillary services markets operated by RTOs and ISOs, on Tuesday, October 28, 2014 from 8:45 a.m. to 5:00 p.m. The workshop will be open for the public to attend. Further details and a formal agenda will be issued prior to the October 28 workshop. The FERC has established a web page for this issue at <http://www.ferc.gov/industries/electric/indus-act/rto/energy-price-formation.asp>.

- **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>.

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. Post-conference comments were filed by over 40 parties, including: ISO-NE, APPA, Dominion, EEI, Entergy, EPSA, Essential Power, Exelon, Macquarie, MMWEC/CMEEC, PSEG, Vitol. The Citizens Utility Board and 202 individuals filed comments on price spikes experienced by energy users during winter 2013/14.

- **NOPR: MBR Authorization Refinements (RM14-14)**

On June 19, the FERC issued a NOPR proposing to revise its current standards, and to streamline certain aspects of its filing requirements, for obtaining market-based rates ("MBR") for sales of electric energy, capacity, and ancillary services.¹⁰⁸ In addition, the FERC clarified certain standards for obtaining and retaining MBR authority. Among other changes, the FERC proposes (i) to permit sellers in RTO/ISO markets with Commission-approved market monitoring and mitigation to include a statement that they are relying on such mitigation to address any potential horizontal market power concerns in lieu of submitting the indicative screens; (ii) to permit sellers to explain that their qualified capacity is fully committed in lieu of including indicative screens in their filings in order to satisfy the FERC's horizontal market power tests and to submit a change in status filing when there is a net increase of 100 MW or more; (iii) to relieve sellers of their obligation to file quarterly land acquisition reports and of the obligation to provide information on sites for generation capacity development in market-based rate applications and triennial updated market power analyses; (iv) to require a change in status filing if there is a 100 MW increase in cumulative nameplate capacity added in any relevant geographic market; and (v) require corporate org charts with all MBR applications and notices of change in status. Comments on this NOPR were due September 23, 2014,¹⁰⁹ and were filed by over 25 parties. This NOPR is pending before the FERC.

- **NOPR: Open Access and Priority Rights on ICIF (RM14-11)**

On May 15, the FERC issued a NOPR proposing to waive the Open Access Transmission Tariff requirements of 18 CFR 35.28 (2013), the Open Access Same-Time Information System requirements of Part 37 of its regulations, 18 CFR 37 (2013), and the Standards of Conduct requirements of Part 358 of its regulations, 18 CFR 358 (2013), for any public utility that is subject to such requirements solely because it owns, controls, or operates Interconnection Customer's Interconnection Facilities ("ICIF"),¹¹⁰ in whole or in part, and sells electric energy from its Generating Facility. The Commission also proposes to find that requiring the filing of an OATT is not necessary to prevent unjust or unreasonable rates or unduly discriminatory behavior with respect to ICIF over which interconnection and transmission services can be ordered. The NOPR also proposes a 5-year safe harbor period during which an ICIF owner subject to the blanket waiver, who initially has excess capacity on its ICIF because it intends to serve its own or its affiliates' future phased generator additions or expansions, may establish a rebuttable presumption for priority right over third parties to use that excess capacity. Comments on this NOPR were due on or before July 29, 2014.¹¹¹ Comments were submitted by over 20 parties, including:

¹⁰⁸ *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Svcs. by Public Utils.*, 147 FERC ¶ 61,232 (June 19, 2014) ("MBR NOPR").

¹⁰⁹ The MBR NOPR was published in the *Fed. Reg.* on July 25, 2014 (Vol. 79, No. 143) pp. 43,536-43,572.

¹¹⁰ ICIF is the term used by the FERC in the NOPR to refer to "generator tie lines".

¹¹¹ The NOPR was published in the *Fed. Reg.* on May 30, 2014 (Vol. 79, No. 104) pp. 31,061-31,072.

APPA, AWEA, EEI, EPSA, First Wind, NextEra, NRECA, and NRG. Since the last Report, the MISO Transmission Owners filed comment replying to the comments of MISO and the ITC Companies. This matter is pending before the FERC.

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

On June 26, 2013, WIRES¹¹² 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. On October 3, 2013, WIRES submitted 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, 2013, 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 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, *Order 771*,¹¹³ issued December 20, 2012, granted the FERC access, on a non-public and ongoing basis, to the complete electronic tags (“e-Tags”) used to schedule the transmission of electric power interchange transactions in wholesale markets. *Order 771* requires e-Tag Authors (through their Agent Service) and Balancing Authorities (through their Authority Service) to take steps to ensure FERC access to the e-Tags covered by this Rule by designating the FERC as an addressee on the e-Tags. The FERC stated that the information made available under this Final Rule will bolster its market surveillance and analysis efforts by helping it detect and prevent market manipulation and anti-competitive behavior. In addition, *Order 771* requires e-Tag information be made available to RTO/ISOs and their Market Monitoring Units, upon request to e-Tag Authors and Authority Services, subject to appropriate confidentiality restrictions. *Order 771* became effective February 26, 2013.¹¹⁴ 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*.¹¹⁵ *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*.¹¹⁶ The FERC noted that it would issue an additional

¹¹² WIRES, the Working group for Investment in Reliable and Economic Electric Systems, describes itself as a national non-profit association of investor-, member-, and publicly-owned entities dedicated to promoting investment in a strong, well-planned, and environmentally beneficial high voltage electric transmission grid. Information about its principles and members is available on its website www.wiresgroup.com.

¹¹³ *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).

¹¹⁴ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹¹⁵ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

¹¹⁶ *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

rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

- **Order 676-H: Incorporation of WEQ Version 003 Standards (RM05-5)**

On September 18, 2014, the FERC issued *Order 676-H*,¹¹⁷ which proposes to amend FERC regulations by incorporating by reference, with certain enumerated exceptions, **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. Order 676-H will become effective October 24, 2014.¹¹⁸

XIII. Natural Gas Proceedings

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

- **Inquiry Into Natural Gas Trading, and Proposal to Establish an Electronic Information and Trading Platform (AD14-19)**

On September 18, 2014, Commissioner Moeller convened a meeting to discuss issues related to how transactions are conducted on the natural gas system and potential transactional improvements to address the needs of electric generators for natural gas. The meeting included representatives/speakers from various sectors of the natural gas and electric industries (load, suppliers, marketers, exchanges, gas associations, and ISOs) and environmental interests. Representatives from NYISO and PJM were among the speakers on the electric side (ISO-NE was not present). A summary of that meeting is posted on the Litigation Updates & Reports webpage (http://nepool.com/uploads/Lit_Supp_AD14-19_20140918_Mtg_Summary.pdf). Written comments on issues discussed at the meeting, limited to 5 pages, were due on or before October 1, 2014. Comments were filed by nearly 30 parties.

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.

¹¹⁷ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-H, 148 FERC ¶ 61,205 (Sep. 18, 2014) (“*Order 676-H*”).

¹¹⁸ *Order 676-H* was published in the *Fed. Reg.* on Sep. 24, 2014 (Vol. 79, No. 185) pp. 56,939-56,955.

- **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.¹¹⁹ Specifically, the NOPR proposes to: (i) start the Gas Day earlier, at 4:00 a.m. Central Clock Time (“CCT”)¹²⁰ 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 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, 2014¹²¹ 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.

On September 29, NAESB submitted a status report and record of its activities in response to Gas-Electric Scheduling Coordination NOPR. In that report, NAESB identified the modifications to the NAESB Wholesale Gas Quadrant (WGQ) Business Practice Standards specific to the NOPR. The modified NAESB WGQ Business Practice Standards propose revisions to the nomination timeline that result in three intra-day nomination cycles in addition to the timely and evening nomination cycles. The nomination cycles are not dependent upon a specific start time to the gas day and are implementable with whichever time the FERC chooses as a start of the gas day.

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

On July 9, 2014, the FERC issued a notice that, in order to assess better whether the reporting requirement described in the NOI would enhance natural gas transparency, the FERC will seek additional

¹¹⁹ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

¹²⁰ CCT, pursuant to the NAESB WGQ standards, reflects daylight savings changes.

¹²¹ The NOPR was published in the *Fed. Reg.* on Apr. 1, 2014 (Vol. 79, No. 62) pp. 18,223-18,243.

information from certain natural gas marketers regarding what portion of their total natural gas sales are jurisdictional natural gas sales. To obtain that information, OE will send data requests to certain natural gas marketers who, in turn, will have 15 days to respond. The FERC indicated that, after those responses are received, it will consider what, if any, further action in this docket will be necessary and/or appropriate. As previously reported, in a November 15, 2012 NOI, the FERC sought 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”) to improve natural gas market transparency. Comments in response to the NOI were received from over 30 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.¹²² 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.¹²³ 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.¹²⁴

• **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. Since the last Report, there was a great deal of activity in the following on-going, gas-related enforcement proceeding:

| <u>Company</u> | <u>Alleged Violation(s)</u> | <u>Civil Penalty/Disgorgement</u> |
|---|---|---|
| BP America Inc. BP Corp. N. Amer. BP Amer. Production BP Energy Co. (together, “BP”) (IN13-15) | The FERC established a hearing to determine whether BP violated section 4A of the Natural Gas Act and the FERC’s Anti-Manipulation Rule as alleged by OE Staff. OE Staff alleged that BP traded physical natural gas at Houston Ship Channel (“HSC”) to increase the value of BP’s financial position at HSC, uneconomically using BP’s transportation capacity, making repeated early uneconomic sales at HSC, taking steps to increase BP’s market concentration at HSC. In doing so, OE staff alleged, BP suppressed the HSC Gas Daily index with the goal of increasing the value of BP’s financial position at HSC. The activity occurred from mid-September 2008 through November 2008. | Show Cause Order ¹²⁵ \$28 million (civil penalty) \$800,000 (disgorgement) |

¹²² *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

¹²³ *Id.* at P 6.

¹²⁴ *Id.*

¹²⁵ *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

- **New England Pipeline Proceedings**

The following New England pipeline projects are pending before the FERC:

- ***Algonquin Incremental Market Project (AIM Project) (CP14-96)***
 - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate Feb. 28, 2014
 - ▶ 342,000 dekatherms/day of firm capacity to NY, CT, RI and MA.
 - ▶ 37.6 miles of take-up, loop and lateral pipeline facilities in NY, CT, and MA and system modifications in NY, CT and RI. The system upgrades would also require the removal of some facilities.
 - ▶ 10 firm shippers: Yankee Gas, NSTAR, Connecticut Natural Gas, Southern Connecticut, Narragansett Electric, Colonial Gas, Boston Gas, Bay State, Norwich Public Utilities, and Middleborough Gas and Electric (eight LDCs and two municipal utilities).
 - ▶ Authorization Requested by Jan 1, 2015.
 - ▶ Construction to begin Mar 2015 (anticipated).
 - ▶ In-service: Nov 2016 (anticipated).
- ***Connecticut Expansion Project (CP14-529)***
 - ▶ Tennessee Gas Pipeline filed for Section 7(c) certificate July 31, 2014
 - ▶ 72,100 dekatherms/day of firm capacity.
 - ▶ 13.26 miles of three looping segments and facility upgrades/modifications in NY, MA and CT.
 - ▶ Three firm shippers: Connecticut Natural Gas, Southern Connecticut Gas, and Yankee Gas.
 - ▶ Authorization requested by July 31, 2015.
 - ▶ Construction to begin Winter 2015/2016.
 - ▶ In-service: Nov 2016 (anticipated).
- ***Constitution Pipeline (CP13-499)***
 - ▶ Constitution Pipeline Company filed for Section 7(c) certificate July 31, 2014.
 - ▶ 650,000 dekatherms/day of firm capacity from Susquehanna County, PA through NY to Iroquois/Tennessee interconnection.
 - ▶ New 122-mile interstate pipeline.
 - ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
 - ▶ EIS to be completed by Oct 24, 2014.
 - ▶ Authorization requested by Nov 25, 2014; Construction to begin Feb 2015.
- ***Wright Interconnect Project (with Constitution) (CP13-502)***
 - ▶ Iroquois Gas Transmission filed application Jun 13, 2014.
 - ▶ 650,000 dekatherms/day of firm capacity interconnect between Constitution and Iroquois/Tennessee.
 - ▶ New receipt point with Constitution, new facilities at Wright and modifications to Iroquois/Tennessee metering system.
 - ▶ All capacity to be leased to Constitution.
 - ▶ Authorization requested by May 1, 2014.
 - ▶ In-service: Mar 31, 2015.
 - ▶ Revised FERC schedule indicates FERC authorization in Jan. 2015.
 - ▶ FERC Aug 18, 2014 revised schedule calls for EIS completion by Oct 24, 2014.
- ***Salem Lateral Project (CP14-522)***
 - ▶ Algonquin Gas Transmission filed application Jul 10, 2013.

- ▶ 115,000 dekatherms/day of firm capacity.
- ▶ 1.2 miles of pipeline to 630 MW Salem Harbor Station and other Salem, MA facilities.
- ▶ Footprint Power sole firm customer.
- ▶ Authorization requested by Apr 17, 2015.
- ▶ In-Service: Nov 2015 (anticipated).

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).

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**
Underlying FERC Proceedings: ER13-1851¹²⁶ and ER13-2266¹²⁷
Appellants: TransCanada and RESA

On June 6, 2014, TransCanada and the Retail Energy Supply Association filed petitions for review of the FERC’s orders on the 2013/14 Winter Reliability Program (14-1104 and 14-1105, respectively). Also on June 6, 2014, TransCanada filed a petition for review of FERC’s orders on the 2013/14 Winter Reliability Program Bid Results Filings (ER14-1103). On July 3, 2014, these proceedings were consolidated. On July 7, the FERC requested a minimum of 60 days after Petitioners’ opening briefs to file its brief. On July 23, leave to intervene was granted to ISO-NE, NEPGA, PSEG and Essential Power. On September 29, TransCanada, RESA, FERC, ISO-NE, Essential Power MA, PSEG and NEPGA filed a proposed joint, unopposed briefing format and schedule.

- **Orders 773 and 773-A (2nd Cir., 13-2316)**
Underlying FERC Proceedings: RM12-6 and RM12-7¹²⁸
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). Briefs have thus far been filed as follows: NYPSC/State of NY (May 2, 2014); NARUC (May 28); FERC (August 22); NERC (August 27); NERC reply brief (September 10, 2014); FERC and NY/NY PSC final briefs (September 24); NERC and NARUC intervenor briefs.

¹²⁶ 144 FERC ¶ 61,204 (Sep. 16, 2013); 147 FERC ¶ 61,026 (Apr. 8, 2014).

¹²⁷ 145 FERC ¶ 61,023 (Oct. 7, 2013); 147 FERC ¶ 61,027 (Apr. 8, 2014).

¹²⁸ 141 FERC ¶ 61,236 (Dec. 20, 2012); 143 FERC ¶ 61,053 (Apr. 18, 2013).

- **New England's Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹²⁹
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 issuance of the mandate in the *Order 745* appeal.

- **Orders 1000 and 1000-A (12-1232 consolidated with 12-1233, 12-1250, 12-1276, 12-1279, 12-1280, 12-1285, 12-1292, 12-1293, 12-1296, 12-1299, 12-1300, 12-1304, 12-1448, 12-1478, and 7th Cir. 12-2248)**
Underlying FERC Proceedings: RM10-23¹³⁰
Appellants: SC PSA, Coalition for Fair Transmission, PSEG, and Sacramento Municipal Utility District

Petitions for review of FERC's Orders 1000, 1000-A, and 1000-B, as identified in previous reports, were denied by the DC Circuit in an August 15, 2014 order.¹³¹ The Court issued a companion order indicating that it would withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing or petition for rehearing *en banc*. On September 29, Large Public Power Council petitioned the Court for rehearing *en banc*. That request is pending before the Court.

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093)**
Underlying FERC Proceedings: RM10-17-000¹³²
Appellants: EPSA, CAISO, ODEC, EEI, CA PUC

As previously reported, the DC Circuit vacated *Order 745*¹³³ in its entirety as impermissibly encroaching on "states' exclusive jurisdiction to regulate the retail market" in a 2-1 decision ("Decision") issued on May 23, 2014. The DC Circuit vacated *Order 745* on two separate and independent grounds. First, it held that the FERC does not have jurisdiction to regulate demand response. The Court reasoned that: (i) the states retain exclusive authority to regulate the retail market; (ii) absent an express statutory grant of authority, the FERC cannot regulate areas left to the states; (iii) the FPA provides the FERC with authority over wholesale sales of electricity, but demand response is not such a sale; (iv) the authority of the FERC to regulate wholesale power rates under the FPA cannot be read so broadly as to allow direct regulation of demand response; and (v) demand response, while not necessarily a retail sale, is part of the retail market, involving retail customers, their decision whether to purchase at retail, and the levels of retail electricity consumption. Therefore, the Court concluded, the FERC has no authority to directly regulate demand response. "FERC's authority over demand response resources is limited: its role is to assist and advise state and regional programs."

As an alternative and secondary basis for its decision against *Order 745*, the Court concluded that the FERC order was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." The Court found that the FERC failed to reasonably consider and address arguments that *Order 745* will result in

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

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

¹³¹ *S. Car. Pub. Serv. Auth. v. Federal Energy Regulatory Commission*, 2014 U.S. App. LEXIS 15674 (Aug. 15, 2014).

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

¹³³ *Order 745* required RTOs and ISOs to include provisions in their tariffs that assured demand response would be paid at LMP for interrupting their loads when such interruption was cost effective.

over-compensation of demand response resources, resulting in unjust and discriminatory rates. The Court further found that the FERC failed to demonstrate how its proposed pricing construct would result in just compensation. The Decision and preliminary implications of the Decision were summarized in more detail in the memo included with the supplemental materials circulated and posted for the June 6 meeting.

On July 7, the FERC petitioned the Court for rehearing *en banc* of the May 23 Decision. On July 18, the Court, on its own motion, directed EPSA, APPA, NRECA, Old Dominion and EEI (“Petitioners”) to file a joint response to the FERC petition for rehearing. That response was filed on August 4, 2014. The petition for rehearing *en banc* was denied on September 17, 2014.

On September 22, the FERC and a group of intervenors¹³⁴ filed motions to stay the issuance of the mandate for at least a 90-day period, to accommodate the time during which they may file a petition for a writ of certiorari in the Supreme Court of the United States. On September 30, Petitioners filed a motion opposing the request for stay. The request for stay is pending before the Court of Appeals for the DC Circuit.

• **PPL EnergyPlus, LLC v. Nazarian (4th Cir., 13-2424)**

On June 2, 2014, the 4th Circuit Court of Appeals affirmed the September 30, 2013 decision of the United States District Court for the District of Maryland¹³⁵ which found that a Maryland Public Service Commission (“MD PSC”) order directing three Maryland distribution utilities to enter into a ‘contract for differences’ for capacity and energy in the PJM control area (the “CfD”) with a gas-fired merchant generator selected by the MD PSC (the “MD PSC Order”) violated the Supremacy Clause of the United States Constitution and cannot be enforced.¹³⁶ In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field¹³⁷ and conflict pre-empted.¹³⁸

With respect to field pre-emption, the 4th Circuit stated that a “wealth of case law confirms FERC’s exclusive power to regulate wholesale sales of energy in interstate commerce, including the justness and reasonableness of the rates charged.”¹³⁹ It found the federal scheme (i.e. the PJM Market) “carefully calibrated to protect a host of competing interests” (representing “a comprehensive program of regulation that is quite sensitive to external tampering”),¹⁴⁰ and leaving “no room either for direct state regulation of the prices of interstate wholesales of [energy], or for state regulations which would indirectly achieve the same result.” Accordingly, the

¹³⁴ Intervenors include: Coalition of MISO Transmission Customers; PJM Industrial Customer Coalition; EnerNOC, Inc.; Viridity Energy, Inc.; American Forest & Paper Association; EnergyConnect, Inc.; Wal-Mart Stores, Inc.; and Steel Producers.

¹³⁵ *PPL EnergyPlus, LLC v. Nazarian*, 974 F.Supp. 2d 790 (D. Md. Sep. 30, 2013); 2013 U.S. Dist. LEXIS 140210, 2013 WL 5432346 (“*District Court Decision*”). The *District Court Decision* was summarized in past Litigation Reports.

¹³⁶ *PPL EnergyPlus, LLC v. Nazarian*, 2014 U.S. App. LEXIS 10155.

¹³⁷ “Field preemption” is a doctrine based on the Supremacy Clause of the U.S. Constitution that holds that any federal law, including regulations of a federal agency, takes precedence over any conflicting state law. Preemption can be implied when federal law/regulation “occupies the field” in which the state is attempting to act/regulate. Field preemption occurs when there is “no room” left for state regulation. Accordingly, a state may not pass a law or take any action in a field, like the regulation of wholesale power sales, pervasively regulated by federal law/regulation.

¹³⁸ “Conflict preemption” occurs where there is a conflict between a state law and a federal law. (“[E]ven if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute.”). Such a conflict occurs when “the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The court must look to “the entire scheme of the statute” and determine “[i]f the purpose of the [federal] act cannot otherwise be accomplished—if its operation with its chosen field [would] be frustrated and its provisions be refused their natural effect. Where a state law conflicts with a federal law, the Court does not balance the competing federal and state interests. Any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.”

¹³⁹ Slip op. at p. 14.

¹⁴⁰ *Id.* at p. 10.

4th Circuit concluded that the MD PSC Order “field preempted because it functionally sets the rate that CPV receives for its sales in the PJM auction.”¹⁴¹ The MD PSC Order “compromises the integrity of the federal scheme and intrudes on FERC’s jurisdiction” because the MD PSC Order “effectively supplants the rate generated by the auction with an alternative rate preferred by the state.” The 4th Circuit rejected arguments that the CfD payments “represented a separate supply-side subsidy implemented entirely outside the federal market.”¹⁴² And, even if the presumption against preemption were to apply, the Court found that that it was “overcome by the text and structure of the FPA, which unambiguously apportions control over wholesale rates to FERC.”¹⁴³

With respect to conflict pre-emption, the 4th Circuit found that the MD PSC Order “presents a direct and transparent impediment to the functioning of the PJM markets, and is therefore preempted”.¹⁴⁴ Preemption was appropriate because of the “extensive and disruptive” impact of the MD PSC Order on matters within federal control (the PJM markets). It found that the MD PSC Order had “the potential to seriously distort the PJM’s auction’s price signals, thus ‘interfer[ing] with the method by which the federal statute (i.e. the PJM Markets) was designed to reach its goals.’”¹⁴⁵ “Maryland’s initiative disrupts [the PJM scheme] by substituting the state’s preferred incentive structure for that approved by FERC.”¹⁴⁶ “Maryland has sought to achieve through the backdoor of its own regulatory process what it could not achieve through the front door of FERC proceedings. Circumventing and displacing federal rules in this fashion is not permissible.”¹⁴⁷

Petitions for rehearing *en banc* were filed by MD PSC and CPV Maryland on June 16, 2014. On June 17, 2014, the 4th Circuit stayed the mandate pending the *en banc* ruling on the Petitions. On June 30, 2014, the 4th Circuit denied the petitions for rehearing *en banc*. On September 15, the Supreme Court extended the time to file a petition for a writ of certiorari to and including November 27, 2014.

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

On September 11, 2014, the 3rd Circuit Court of Appeals affirmed¹⁴⁸ 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”).¹⁴⁹ In affirming the New Jersey District Court’s decision, the 3rd Circuit concluded:

LCAPP compels participants in a federally-regulated marketplace to transact capacity at prices other than the price fixed by the marketplace. By legislating capacity prices, New Jersey has intruded into an area reserved exclusively for the federal government. Accordingly, federal statutory and regulatory law preempts and, thereby, invalidates LCAPP and the Standard Offer Capacity Agreements.¹⁵⁰

¹⁴¹ *Id.* at p. 16.

¹⁴² *Id.* at pp. 18-19.

¹⁴³ *Id.* at p. 20. The Court noted the limited scope of its holding, which “is addressed to the specific program at issue” and did not “express an opinion on other state efforts to encourage new generation.” *Id.* at p. 21.

¹⁴⁴ *Id.* at p. 27.

¹⁴⁵ *Id.* at p. 23.

¹⁴⁶ *Id.* at p. 24. (“Two features of the Order render its likely effect on federal markets particularly problematic. First, as noted, the CfDs are structured to actually set the price received at wholesale. They therefore directly conflict with the auction rates approved by FERC. Second, the duration of the subsidy -- twenty years -- is substantial.”)

¹⁴⁷ *Id.* at p. 25.

¹⁴⁸ *PPL EnergyPlus, LLC v. Hanna*, __ F.Supp.2d __ (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, (“*NJ Order*”).

¹⁴⁹ *PPL EnergyPlus, LLC v. Hanna*, 2014 U.S. App. LEXIS ____ (Sep. 11, 2014).

¹⁵⁰ *Id.* slip op. at 31.

Any petition for rehearing or rehearing *en banc* must be filed on or before September 25, 2014. If no petition for rehearing is filed, any petition for *certiorari* to the U.S. Supreme Court must be filed on or before December 10, 2014.

INDEX
Status Report of Current Regulatory and Legal Proceedings
as of October 1, 2014

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) | 2 |
| 206 Investigation: FCM Performance Incentives (Compliance Proceeding)..... | (EL14-52) | 2 |
| 206 Proceeding: Importers' FCA Offers Review/Mitigation | (EL14-99) | 1 |
| Base ROE Complaint (2011)..... | (EL11-66) | 5 |
| Base ROE Complaint (2012)..... | (EL13-33) | 4 |
| Base ROE Complaint (2014)..... | (EL14-86) | 1 |
| FCM Administrative Pricing Rules Complaint..... | (EL14-7) | 3 |
| NESCOE FCM Renewables Exemption Complaint..... | (EL13-34) | 3 |
| PURPA Complaint v. MA DPU (Allco Renewable Energy)..... | (EL14-84 et al.)..... | 24 |

II. Rate, ICR, FCA, Cost Recovery Filings

| | | |
|--------------------------------------|-------------------|---|
| Base ROE Complaint (2011)..... | (EL11-66) | 5 |
| Base ROE Complaint (2012)..... | (EL13-33) | 4 |
| Base ROE Complaint (2014)..... | (EL14-86) | 1 |
| FCA1 Results Remand Proceeding | (ER08-633) | 7 |
| FCA8 Results Filing..... | (ER14-1409) | 6 |

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

| | | |
|--|-------------------------|----|
| 206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 | (EL14-23) | 2 |
| 206 Investigation: FCM Performance Incentives (Compliance Proceeding)..... | (EL14-52) | 2 |
| 206 Proceeding: Importers' FCA Offers Review/Mitigation | (EL14-99) | 1 |
| Competitive Offer Test Revisions | (ER14-2686) | 8 |
| Demand Curve Changes | (ER14-1639) | 7 |
| Exigent Circumstances Filing – FCM Admin. Pricing Rules..... | (ER14-463) | 11 |
| FCM Administrative Pricing Rules Complaint..... | (EL14-7) | 3 |
| FCM Performance Incentives Jump Ball Filing | (ER14-1050) | 10 |
| FCM PI Jump Ball Compliance Filing | (ER14-2419) | 9 |
| FCM Redesign Compliance Filing: FCA8 Revisions..... | (ER12-953 et al.) | 12 |
| Fuel Price Adjustment Revisions..... | (ER14-2929) | 7 |
| ISO CSO Deferral Proposal..... | (ER14-2440) | 8 |
| NESCOE FCM Renewables Exemption Complaint..... | (EL13-34) | 3 |
| Order 755 Regulation Market Changes..... | (ER12-1643) | 12 |
| Regulation Market Dispatch Changes | (ER14-2918) | 7 |
| Waiver Request: New Capacity Qualification Deadlines (MMWEC)..... | (ER14-2771) | 8 |
| Waiver Request: QDN Challenge Deadlines (GDF SUEZ) | (ER14-2886) | 8 |
| Winter 2014/15 Reliability Program..... | (ER14-2407) | 9 |

IV. OATT Amendments/Coordination Agreements

| | | |
|---|----------------------------|----|
| Order 784 Compliance Filing..... | (ER14-877) | 13 |
| Order 1000 Compliance Filing..... | (ER13-193; ER13-196)..... | 14 |
| Order 1000 Interregional Requirements Compliance Filing | (ER13-1960; ER13-1957).... | 13 |
| Order 1000 November 15 Compliance Order Changes..... | (ER13-193; ER13-196)..... | 14 |

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Updates

Order 792 Compliance Filing..... (ER14-2583) 15
 Schedule 21- GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304) 16
 Schedule 21- NEP: Centennial Island Hydro SGIA (ER14-2534) 16
 Schedule 21- NSTAR: MBTA LSA (ER14-2596) 15

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

Capital Projects Report - 2014 Q2..... (ER14-2656) 16
 Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation . (ER08-54) 17
 Reserve Market Compliance (17th) Semi-Annual Report (ER06-613) 17

IX. Membership Filings

August 2014 Membership Filing (ER14-2541) 18
 October 2014 Membership Filing..... (ER14-2980) 17
 September 2014 Membership Filing..... (ER14-2749) 17

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

2015 NERC/NPCC Business Plans and Budgets..... (RR14-6) 24
 FFT Report: September 2014 (NP14-50) 18
 NOPR: BAL-002-1a Interpretation Remand (RM13-6) 23
 NOPR: New Reliability Standard: CIP-014-1 (Physical Security)..... (RM14-15) 19
 NOPR: Revised Rel. Standard: COM-001-2 and COM-002-4 (RM14-13) 19
 NOPR: Revised Rel. Standard: MOD-001-2 (RM14-7) 21
 NOPR: Revised Rel. Standard: MOD-031-1 (RM14-12) 20
 NOPR: Revised Rel. Standard: PRC-005-3..... (RM14-8) 20
 NOPR: Revised TOP and IRO Reliability Standards (RM13-15, -14, -12) 21
Order 797: New Reliability Standard: EOP-010-1 (Geomagnetic Disturbance Operations) (RM14-1) 21
 Revised NPCC Regional Reliability Standards Development Procedure..... (RR14-7) 23
 Revised Reliability Standard: BAL-001-2..... (RM14-10) 20
 Revised Reliability Standards: FAC-001-2 and FAC-002-2 (RD14-12) 18
 Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-11-1. (RD14-4) 19
 Revised Reliability Standard: NUC-001-3 (RD14-13) 18
 Revised Reliability Standard: PRC-004-3 (RD14-14) 18

XI. Misc. Regional Interest

203 Application: Calpine/Constellation (Fore River)..... (EC14-135) 24
 203 Application: Dynegy/EquiPower (EC14-140) 24
 E&P Agreements: Blue Sky West & CMP..... (ER14-2743; ER14-2744).... 25
 FERC Enforcement Action Pending: Staff Notice of Alleged Violations –Twin Cities 26
 FirstEnergy PJM DR Complaint..... (EL14-55) 25
 MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area .. (ER11-1844) 25
 PURPA Complaint v. MA DPU (Allco Renewable Energy)..... (EL14-84 et al.)..... 24
 Waiver of Transmission Standards of Conduct: Bangor Hydro Request..... (TS11-5)..... 26

XII. Misc: Administrative & Rulemaking Proceedings

NOPR: MBR Authorization Refinements (RM14-14) 28
 NOPR: Open Access and Priority Rights on ICIF..... (RM14-11) 28
Order 676-H: Incorporation of WEQ Version 003 Standards (RM05-5) 30
Order 771: Availability of E-Tag Information to FERC Staff (RM11-12) 29
 Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14) 27
 RTO/ISO Common Metrics Report..... (AD14-15) 27
 RTO/ISO Winter 2013-2014 Op and Market Performance (AD14-8) 28
 WIRES Request for Policy Statement on ROE for Electric Transmission (RM13-18) 29

XIII. Natural Gas Proceedings

206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with
 Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 (EL14-23) 2
 Enforcement Actions: BP (IN13-15) 32
 Inquiry Into Natural Gas Trading, and Proposal to Establish an Electronic Information
 and Trading Platform..... (AD14-19) 30
 NOI: Enhanced Natural Gas Market Transparency (RM13-1) 31
 NOPR: Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines
 and Public Utilities (RM14-2) 31
 Posting of Offers to Purchase Capacity (Section 5 Proceeding)..... (RP14-442) 32

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

2013/14 Winter Reliability Program and Bid Results 14-1104 (consol.) 34
 New England’s *Order 745* Compliance Filing 12-1306 35
Orders 1000/1000-A 12-1232 (consol.) 35
Orders 745/745-A 11-1486 (consol.) 35
Orders 773/773-A (2nd Cir., 13-2316) 34
PPL EnergyPlus, LLC v. Nazarian (4th Cir., 13-2424) 36
PPL EnergyPlus, LLC v. Hanna (3d Cir., 13-4330) 37