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

The following activity, as more fully described in the attached litigation report, has occurred since the report dated October 1, 2014 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

## I. Complaints

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| | 1 | 206 Proceeding: Importers' FCA Offers Review/Mitigation (EL14-99; ER15-117) | Oct 7 | Public Citizen requests that proceeding be expanded to include just & reasonableness of FCA8 rates and stakeholder reform |
| | | | Oct 16 | ISO submits filing in response to Show Cause Order |
| | | | Oct 22 | NEPOOL urges Public Citizen stakeholder request be rejected |
| | | | Oct 31 | NEPOOL files comments, including request that NEPOOL Changes, in addition to ISO-NE changes, be accepted |
| | | | Oct 20 - Nov 6 | ConEd, Dominion, Emera, Entergy, Exelon, GDF, HQUS, NEPGA, NESCOE, NRG, NU, PSEG intervene |
| | | | Nov 6 | Brookfield, NEPGA, Public Citizen submit protests and comments |
| | 2 | Base ROE Complaint (2014) (EL14-86) | Oct 15 | TOs withdraw request for summary disposition |
| | 2 | 206 Investigation: FCM PI Compliance Proceedings (EL14-52; ER14-2419) | Oct 2 | FERC accepts in part, subject to condition, and rejects in part, Compliance Filing I, directing second, 30-day compliance filing |
| | | | Nov 3 | ISO files Compliance Filing II; comment date Nov 25; CT/RI and Public Systems request rehearing of Oct 2 order |
| | 5 | Base ROE Complaint (2012) (EL13-33) | Oct 6 | Oct 9 (second) settlement conference cancelled |
| | | | Oct 15 | TOs withdraw request for summary disposition |
| | | | Oct 21 | Settlement Judge Dring reports parties at an impasse and recommends settlement judge procedures be terminated |
| | | | Oct 24 | Chief Judge Wagner issues order terminating settlement judge procedures, designating Judge Steven L. Sterner as trial judge, and setting initial decision due date at Oct 26, 2015 |
| | | | Oct 31 | Trial Judge Sterner grants late intervention requested by Belmont, Concord, Georgetown, Groveland, Littleton (MA), Merrimac, Middleton, Rowley, and Wellesley |
| | | | Nov 6 | Prehearing (procedural schedule) conference held; Judge Sterner issues order establishing procedural schedule and rules of procedure for the hearings |
| | 6 | Base ROE Complaint (2011) (EL11-66) | Oct 16 | FERC issues *Opinion 531-A*, setting TOs' base ROE at 10.57% and max ROE (including Incentives) at 11.74%, and directing, by Nov 17, a compliance filing reflecting those ROEs and refunds, with interest, for the 15-month (Oct 2011 through Dec 2012) refund period |
| | | | Nov 6 | TOs request extension of time to complete and file regional and local refunds |

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

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| * | 7 | FCA9 Qualification Informational Filing (ER15-328) | Nov 4 | ISO submits required informational filing for FCA9; comment date Nov 19 |
| * | 7 | ICR, HQICCs and Related Values - 2018/2019 Power Year (ER15-325) | Nov 4 | ISO files ICR, HQICCs, and related values for the 2017/2018 Capability Year; comment date Nov 26 |
| * | 8 | 2015 NESCOE Budget (ER15-113) | Oct 16 | ISO files budget for funding NESCOE's 2015 operations |
| | | | Oct 27 | NEPOOL intervenes |
| | | | Nov 6 | NU intervenes; NEPOOL files comments supporting Budget |

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| * | 8 | 2015 ISO-NE Administrative Costs and Capital Budgets (ER15-112) | Oct 16<br>Oct 27 | ISO files 2015 administrative costs and capital budgets<br>NEPOOL intervenes |
| | 9 | FCA8 Results Filing (ER14-1409) | Oct 14<br><br><br>Oct 15-16<br>Oct 24 | MA Congressman J. Kennedy and Senator E. Markey submit letter requesting FERC rehear and reevaluate FCA8 results and fundamentally reexamine New England's FCM<br>Public Citizen, Connecticut request rehearing of Sep 16 Notice<br>FERC dismisses rehearing requests as procedurally improper |

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

| | | | | |
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| * | 10 | PRD Reserve Market Changes (ER15-257) | Oct 31 | ISO and NEPOOL jointly file changes; comment date Nov 21 |
| * | 10 | FCM Administrative Clarifications (ER15-195) | Oct 27 | ISO and NEPOOL jointly file changes; comment date Nov 17 |
| * | 10 | CSO Termination: Brookfield White Plain Hydro (ER15-150) | Oct 21 | ISO files to terminate CSO for Resource 617 held by Brookfield White Plain Hydro; comment date Nov 12 |
| * | 10 | CSO Terminations: Constellation New Energy (ER15-149) | Oct 21 | ISO files to terminate 32 CSOs held by Constellation; comment date Nov 12 |
| * | 10 | CSO Terminations: Direct Energy Business (ER15-148) | Oct 21 | ISO files to terminate 13 CSOs held by Direct Energy Business; comment date Nov 12 |
| * | 11 | CSO Terminations: Enerwise (ER15-147) | Oct 21 | ISO files to terminate 4 CSOs held by Enerwise; comment date Nov 12 |
| * | 11 | CSO Terminations: Plainfield Renewable Energy (ER15-146) | Oct 21 | ISO files to terminate CSO for Resource 15509 held by Plainfield Renewable Energy; comment date Nov 12 |
| * | 11 | CSO Deferral Request: Footprint Power Salem Harbor (ER15-60) | Oct 7<br>Oct 10-Nov 4<br>Oct 28 | Footprint files deferral request<br>ISO-NE, NEPOOL, Calpine, Emera, NESCOE intervene<br>MA AG and City of Salem, MA DPU, MA State Senator J. Lovely (2d Essex) file comments supporting the deferral request; Exelon and PSEG/NRG submit comments/protests to the deferral request |
| | 11 | Fuel Price Adjustment Changes (ER14-2929) | Oct 8-14 | Emera, Exelon, NU intervene |
| | 11 | Regulation Market Dispatch Changes (ER14-2918) | Oct 14 | Beacon, Exelon, NU intervene |
| | 12 | Waiver Request: Deadline for QDN Challenge (GDF SUEZ) (ER14-2886) | Oct 6 | ISO opposes GDF SUEZ request for waiver of deadlines for FCA9 QDN challenges |
| | 12 | Competitive Offer Test Revisions (ER14-2686) | Oct 7 | FERC accepts revisions, effective Dec 3, 2014 |
| | 12 | CSO Deferral: ISO Proposal (ER14-2440) | Oct 14 | PSEG/NRG request rehearing of Sep 12 order |
| | 12 | Winter 2014/15 Reliability Program (ER14-2407) | Oct 8<br>Oct 9<br><br>Oct 24 | ISO submits stakeholder meeting schedule<br>NEPGA requests clarification of *Winter 2014/15 Reliability Program Order*<br>ISO urges FERC to dismiss NEPGA request |

## IV. OATT Amendments / TOAs / Coordination Agreements

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| | 16 | Additional *Order 784* Compliance Filing (ER15-64) | Oct 9<br>Oct 27 | ISO and NEPOOL jointly file changes to Schedule 3 of the ISO OATT in response to Sep 9 order rejecting the ISO's Dec 27, 2013 *Order 784* compliance filing<br>Exelon intervenes |

## V. Financial Assurance/Billing Policy Amendments

***No Activity to Report***

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

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| * | 18 | Schedule 21-NU: LCRA Cancellations (ER15-332 et al.) | Nov 5 | NU cancels all individually filed LCRAs (standardized LCRAs having been executed and reported in EQRs); comment date Nov 26 |
| * | 19 | LGIA – NU/CPV Towantic (ER15-200) | Oct 27 | ISO and NU file unexecuted LGIA with CPV Towantic; comment date Nov 17 |
| | 19 | Schedule 21- NSTAR: MBTA LSA (ER14-2596) | Oct 20 | FERC accepts LSA, effective May 1, 2014 |
| | 19 | Order 792 Compliance Filing (ER14-2583) | Oct 6<br>Oct 21 | FERC issues deficiency letter<br>Filing Parties submit additional information and justification requested |
| | 19 | Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304) | Nov 6 | FERC accepts compliance filings, effective Oct 1, 2012 and Aug 4, 2014, as requested |
| * | 20 | Schedule 21-GMP: Annual True Up Calculation Informational Filing (ER12-2304) | Oct 30 | GMP submits annual info filing containing true-up recalculation of its actual costs for the Jan 1, 2013 through Dec 31, 2013 time period |

## VII. NEPOOL Agreement/Participants Agreement Amendments

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| * | 20 | 126th Agreement: Common Provisional Member Group Seat (ER15-238) | Oct 30 | NEPOOL files amendments to NEPOOL Agreement; comment date Nov 20 |

## VIII. Regional Reports

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| * | 20 | Capital Projects Report - 2014 Q3 (ER15-115) | Oct 16<br>Oct 27<br>Nov 6 | ISO files Report<br>NEPOOL intervenes<br>NEPOOL files comments; NU intervenes |
| * | 20 | LFTR Implementation: 24th Quarterly Status Report (ER07-476) | Oct 15 | ISO files its 24th quarterly report |

## IX. Membership Filings

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| * | 21 | November 2014 Membership Filing (ER15-278) | Oct 31 | ***New Members***: Aesir Power, Agera Energy, Inspire Energy Holdings, TrailStone Power; comment date Nov 21 |
| * | 21 | Suspension Notices (not docketed) | Oct 31 | Advanced Power Services |

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

| | | | | |
|---|---|---|---|---|
| | 21 | FFT Report: Oct 2014 (NP15-7) | Oct 30 | NERC files report |
| | 21 | Revised Reliability Standard: PRC-004-3 (RD14-14) | Oct 10 | Dominion intervenes |
| | 22 | Revised Reliability Standard: NUC-001-3 (RD14-13) | Oct 10<br>Nov 4 | Dominion intervenes<br>FERC approves Standard |

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| | 22 | NOPR: New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15) | Nov 6 | FERC approves Standard |
| | 24 | *Order 797-A*: New Reliability Standard: EOP-010-1 (Geomagnetic Disturbance Operations) (RM14-1) | Oct 16 | FERC denies rehearing of *Order 797* |
| | 27 | Revised NPCC Regional Reliability Standards Development Procedure (RR14-7) | Oct 29 | NERC files amendments to NPCC's Regional Reliability Standards Development Procedure; comment date Nov 18 |
| | 27 | 2015 NERC/NPCC Business Plans and Budgets (RR14-6) | Oct 14<br>Oct 16<br>Oct 28 | NERC files changes to Peak Reliability, Inc. Budget<br>FERC accepts 2015 Business Plans and Budgets<br>FERC accepts Oct 14 changes to Peak Reliability Budget |

## XI. Misc. - of Regional Interest

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|---|---|---|---|---|
| * | 28 | 203 Application: Calpine/Constellat'n (Fore River) (EC14-135) | Oct 27 | FERC authorizes Calpine acquisition of Fore River |
| * | 28 | LVA/PSNH IA Complaint (EL15-9) | Oct 23 | Lower Village Hydroelectric Associates files complaint against PSNH; comment date Nov 12 |
| | 28 | FirstEnergy PJM DR Complaint (EL14-55) | Oct 7<br>Oct 3-Nov 4 | PJM submits informational filing assessing possible pathways for the evolution of DR in the PJM markets<br>Parties intervene (e.g., NEPOOL, Dominion, Duke, Dynegy, Essential Power, Macquarie, NEPGA, NESCOE, NextEra) and submit comments supporting (e.g. Calpine, Exelon, NRG, PSEG, PPL) and opposing (e.g. Direct Energy and Enerwise) Complaint |
| * | 28 | IA - NEP: NEP/Centennial Island Hydro Cancellation (ER15-210) | Oct 28 | NEP files notice of cancellation of superseded IA; comment date Nov 18 |
| * | 29 | SGIAs – PSNH/QFs (ER15-65) | Oct 9 | NU files SGIAs with 8 QFs |
| | 29 | E&P Agreements: Blue Sky West & CMP (ER14-2743; ER14-2744) | Oct 27 | FERC accepts agreements, each effective Oct 28; orders refunds, as appropriate, to be made by Nov 26 |
| * | 30 | FERC Enforcement Action: Southern California Edison (IN14-8) | Oct 21 | FERC approves Agreement resolving NERC/OE's investigation of SCE's role in the 2011 Southwest Blackout; SCE agrees to pay $650,000 civil penalty |
| | 30 | FERC Enforcement Actions Pending: Staff Notices of Alleged Violations (IN__-___) | Nov 3 | FERC issues notice of preliminarily Staff determination that Maxim (Pawtucket Power Related Person) engaged in three schemes in New England that violated the FERC's Anti-Manipulation Rule |

## XII. Misc. - Administrative & Rulemaking Proceedings

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| | 31 | RTO/ISO Common Metrics Report (AD14-15) | Nov 3 | APPA, AWEA, EEI, ITC, NYISO, NY TOs, Southern Co. file comments |
| | 31 | Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14) | Oct 10<br>Oct 21<br>Oct 28<br>Oct 29 | FERC issues supplemental notice of Oct 28 workshop<br>Staff issues reports on shortage pricing and energy offer mitigation<br>Workshop held<br>EPSA submits S. Pope paper on price formation in RTO/ISO markets |
| | 32 | RTO/ISO Winter 2013-2014 Op and Market Performance (AD14-8) | Oct 16 | FERC Staff provides update at Commission's Open Meeting on FERC/industry actions/continuing initiatives responding to severe cold weather events experienced in winter 2013/14 |
| | 32 | NOPR: MBR Authorization Refinements (RM14-14) | Oct 3<br>Oct 10-15 | National Hydropower Assoc. files comments<br>Berkshire Hathaway, Barrick Mines, EPSA file reply comments |
| | 33 | *Order 676-H*: Incorporation of WEQ Version 003 Standards (RM05-5) | Oct 20 | EPSA and NYISO request rehearing of *Order 676-H* |

## XIII. Natural Gas Proceedings

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| 35 | Inquiry Into Natural Gas Trading, and Proposal to Establish an Electronic Information and Trading Platform (AD14-19) | Oct 2, 6 | BTG Pactual Commodities, and EDF/Skipping Stone/CLF/The Sustainable FERC Project file comments |
| 35 | NOPR: Scheduling Coordination (RM14-2) | Oct 15 | FERC issues notice that comments on NAESB Sep 29 Report are due on or before Nov 28 |
| 37 | Natural Gas-Related Enforcement Actions: BP (IN13-15) | Oct 29 | Chief Judge Wagner issues order modifying procedural schedule |

## XIV. State Proceedings & Federal Legislative Proceedings

***No Activity to Report***

## XV. Federal Courts

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|---|---|---|---|
| 39 | 2013/14 Winter Reliability Program and Bid Results (14-1104 (consol.)) | Oct 2 | Court issues briefing format and scheduling order |
| 39 | *Orders 773 and 773-A* (2nd Cir., 13-2316) | Oct 17 | Court issues notice scheduling oral argument for Nov 20 |
| 40 | *Orders 1000 and 1000-A* (12-1232 (consol.)) | Oct 17 | DC Circuit denies Large Public Power Council petition for rehearing *en banc* |
| | | Oct 29 | Mandate issued |
| 40 | *Orders 745 and 745-A* (11-1486) | Oct 20 | Court grants the FERC's motion to stay issuance of the mandate |
| 42 | PPL EnergyPlus, LLC v. Hanna (3d Cir., 13-4330) | Oct 3 | Mandate issued |

# M E M O R A N D U M

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

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

**DATE:** November 6, 2014

**RE:** Status Report on Current Regional Wholesale Power and Transmission Arrangements Pending Before the Regulators, Legislatures, and Courts

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission ("FERC"), state regulatory commissions, and the Federal Courts and legislatures through November 6, 2014. If you have questions, please contact us.[1]

## I. Complaints

- **206 Proceeding: Importers' FCA Offers Review/Mitigation (EL14-99; ER15-117)**

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]

On October 16, Public Citizen submitted a pleading requesting that the FERC expand this proceeding (i) to determine whether the rates produced by FCA8 are just and reasonable and if not, to fix the just and reasonable rates to be charged; and (ii) to include in this proceeding "stakeholder reform and transparency". On October 22, NEPOOL responded to Public Citizen's request for stakeholder reform, stating that the stakeholder process, and not this proceeding, in the first instance, is the appropriate vehicle for exploring such changes, and urging the FERC to reject the Public Citizen request.

***ISO Response to Show Cause Order (ER15-117)***: On October 16, the ISO submitted rule revisions to provide for the review and potential mitigation of importers' supply offers prior to each annual FCA Forward Capacity Auction ("***ISO-NE Changes***"). The ISO-NE Changes, docketed in ER15-117, are designed specifically to determine which import suppliers have market power (that is, which are "pivotal") and to apply mitigation to those suppliers in a manner consistent with the mitigation that is applied to existing resources. An October 17, 2014 effective date was requested. Comments on the ISO's filing were due on or before November 6, 2014.

While the ISO's proposed revisions were supported by the Participants Committee at its October 15 special meeting, additional changes that would provide greater flexibility to importers in justifying their capacity offers, which were proposed by Brookfield, were supported by an even wider margin (the "***NEPOOL Changes***"). The NEPOOL Changes would allow New Import Capacity Resources (1) to subdivide their proposed capacity import offers into as many as five separately priced quantities rather than requiring the

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[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.

importer to submit a single offer and price, and (2) to permit the importer to partially withdraw one or more of those separately priced quantities from the ninth Forward Capacity Auction ("FCA9"), rather than requiring it to withdraw its entire Import Capacity Resource. The NEPOOL Changes were included in October 31 comments filed by NEPOOL, which urged the FERC (i) to approve both the ISO-NE Changes and the NEPOOL Changes for implementation for FCA9, and (ii) to signal its expectation that, following FCA9, ISO-NE will review with NEPOOL the impacts of those Changes on the FCA and will explore with stakeholders whether such impacts suggest further changes to the import mitigation rules before FCA10.

Protests and comments on the October 16 filing were also submitted on November 6 by Brookfield, NEPGA, and Public Citizen.

If you have any questions concerning these matters, 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).

- **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 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 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 Intervenors and EMCOS on September 26 and 26, respectively. Since the last Report, on October 15, 2014, the TOs withdrew their request for summary disposition, but not the remainder of their Answer, including the request to consolidate this case with EL13-33 for purposes of hearing and resolution. This matter remains 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 Proceedings) (EL14-52; ER14-2419)**

As previously reported, the FERC instituted this proceeding, pursuant to section 206 of the Federal Power Act ("FPA"), in its May 30 *PI Order* on the FCM Performance Incentives Jump Ball filing, having concluded 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 "Tariff revisions reflecting a modified version of its [PFP] proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL's

[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").

[5] *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 at P 23 (May 30, 2014) ("*PI Order*"), *clarification and reh'g requested*.

proposal."[6] The FERC-established refund effective date is June 9, 2014.[7] 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/NRG. On July 28, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

***FCM PI Jump Ball Compliance Filing I* (ER14-2419-001)**. On October 2, 2014, the FERC accepted in part, subject to condition, and rejected in part, the ISO's July 14, 2014 compliance filing ("Compliance Filing I") that, as previously reported, had been filed in response to directives in the *PI Order*.[10] While accepting nearly all of the provisions proposed in Compliance Filing I, the *October 2 Order* rejected the ISO's compliance proposal concerning improper price signals caused by binding intra-zonal transmission constraints. The FERC found that an exemption was not necessary for resources on the export side of an intra-zonal transmission constraint during a Capacity Scarcity Condition and directed the ISO to submit a further compliance filing to revise Market Rule Section 13.7 by removing the language that reflected that aspect of the ISO's July 14 compliance proposal and restoring language in Sections III.13.7.2.2(a) and III.13.7.2.2(b) ISO-NE originally proposed by the ISO in its January 17 Filing. The Tariff sections accepted were accepted effective June 9, 2014, December 3, 2014, and June 1, 2018, as requested. Connecticut/Rhode Island[11] and Public Systems[12] requested rehearing of the *October 2 Order* on November 3, 2014. Those requests for rehearing are pending before the FERC, with FERC action required on or before December 3, 2014, or the requests will be deemed denied.

***FCM PI Jump Ball Compliance Filing II* (ER14-2419-002)**. On November 3, 2014, the ISO submitted the 30-day compliance filing required by the *October 2 Order*, revising Market Rule 1 Section 13.7 to strike language rejected by the *October 2 Order*. The ISO reported that, as revised, Section 13.7 is as proposed in the ISO's January 17 Filing. The ISO requested a June 1, 2018 effective date, which is the same effective date granted for the related revisions accepted in the *October 2 Order*. Comments on the second compliance filing are due on or before November 25, 2014.

If you have any questions related to these proceedings, 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).

- **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

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[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] *ISO New England Inc.*, 149 FERC ¶ 61,009 (Oct. 2, 2014) ("*October 2 Order*""), *reh'g requested*.

[11] "Connecticut/Rhode Island" are the CT PURA, CT AG, CT OCC, CT DEEP, and the RI PUC.

[12] "Public Systems" are CMEEC, MMWEC, NHEC, and VEC.

RM14-2 (*see* Section XIII below).[13] Noting its concern about the lack of synchronization between the Day-Ahead scheduling practices of interstate natural gas pipelines and electricity markets, the FERC directed each ISO and RTO, including ISO-NE, within 90 days after publication of a Final Rule in Docket RM14-2 in the *Federal Register:*

> (1) to make a filing that proposes tariff changes to adjust the time at which the results of its day-ahead energy market and reliability unit commitment process (or equivalent) are posted to a time that is sufficiently in advance of the Timely and Evening Nomination Cycles, respectively, to allow gas-fired generators to procure natural gas supply and pipeline transportation capacity to serve their obligations, or (2) to show cause why such changes are not necessary. In their responses, each ISO and RTO must explain how its proposed scheduling modifications are sufficient for gas-fired generators to secure natural gas pipeline capacity prior to the Timely and Evening Nomination Cycles.[14]

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,[15] and (ii) accepted changes to the FCM Administrative Pricing Rules in ER14-463 (*see* Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463) below).[16] 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.[17] 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).

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

[14] *Id.* at P 19.

[15] *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*.

[16] *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*.

[17] *Id.* at P 1.

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

Rehearing of the FERC's February 12, 2013 order denying NESCOE's FCM Renewable Exemption Complaint[18] 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 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.[19] 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),[20] 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; dtdoot@daypitney.com).

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

As previously reported, the FERC, on June 19, 2014, established hearing and settlement judge procedures[21] 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."[22] 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.[23] Hearing in this proceeding was held in abeyance pending the outcome of settlement judge procedures, which as noted below, have now been terminated. 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.

On September 11, 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. Should the FERC deny summary disposition of this

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

[19] *Id.* at P 32.

[20] *Id.* at P 30.

[21] *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*.

[22] *Id.* at P 26.

[23] *Id.*

proceeding, the TOs requested that this proceeding be consolidated with the 2014 Base ROE Complaint in EL14-86. In response, Complainants-Intervenors,[24] FERC Trial Staff and EMCOS all opposed summary disposition but supported consolidation of the proceedings. Since the last Report, on October 15, the TO's withdrew their September 11 request for summary disposition, but did not withdraw their motion seeking consolidation with EL14-86 for purposes of hearing and decision. Noting support of all the other parties for consolidation, the TO's urged the FERC to grant the requests for consolidation. These motions are pending before the FERC.

Settlement judge procedures have been terminated. 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, scheduled for October 9, 2014, was rescheduled to the 16th and again to the 23rd, but was ultimately cancelled. On October 21, Judge Dring reported that the parties had indicated that they were at an impasse. Accordingly, on October 24, Chief Judge Wagner terminated settlement judge procedures, and designated Steven L. Sterner as the Presiding Judge for the hearing to be held in this proceeding. Chief Judge Wagner's October 24 order also directed Judge Sterner to issue an initial decision by October 26, 2015.

A prehearing conference before Judge Sterner was held on November 6 to establish a procedural schedule for the trial proceedings (with the trial itself set to begin June 8, 2015). Other important milestones are those for: Complainants' and Intervenors' Direct Testimony and Exhibits (December 17, 2014); Respondents' Answering Testimony and Exhibits (January 21, 2015); Trial Staff's Direct and Answering Testimony and Exhibits (March 4, 2015); Respondents' Cross-Answering Testimony and Exhibits (April 2, 2015); Complainants' and Intervenors' Rebuttal Testimony and Exhibits (April 30, 2015); Final Joint Statement of Issues (May 7, 2015); Last Discovery Requests (May 19, 2015); Prehearing Briefs (May 21, 2015); Hearing Commences (June 8); Initial Briefs (July 13, 2015); Reply Briefs (August 10, 2015); Initial Decision (October 26, 2015).

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)**

On October 16, 2014, the FERC issued *Opinion 531-A*,[25] which sets the Transmission Owners' base ROE at 10.57%, with a maximum ROE including incentives not to exceed 11.74%. The FERC affirmed in *Opinion 531-A* that the projected long-term growth in GDP (in this case 4.39%) is the appropriate long-term growth projection to be used in the two-step DCF methodology for determining the TOs' ROE. The FERC directed the TOs, by November 17, to (i) submit a compliance filing with revised rates reflecting a 10.57% base ROE and a total ROE (inclusive of transmission incentive ROE adders) not exceeding 11.74%, effective October 16, 2014, and (ii) to provide refunds, with interest, for the 15-month refund period in this proceeding (October 1, 2011 through December 31, 2012). On November 6, the TOs requested an extension of time to issue and file the required regional and local refunds and refund reports. Specifically, the TOs requested that the following deadlines be established: Regional refunds to be issued by the ISO between December 2014 and April 2015; regional refund report filed by June 30, 2015; local refunds to be issued by July 31, 2015; local refund reports to be filed by September 30, 2015. The TOs extension request is pending before the FERC.

As previously reported, the FERC's June 19, 2014 *Opinion 531*,[26] affirmed in part, and reversed in part, Judge Cianci's *Initial Decision*[27] in this proceeding. The August 6, 2013 *Initial Decision* found unjust

[24] 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.

[25] *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (2014) ("*Opinion 531-A*").

[26] *Martha Coakley, Mass. Att'y Gen. et al.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), *order on paper hearing*, 149 FERC ¶ 61,032 (2014).

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

and unreasonable the 11.14% ROE, and found 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.[28] 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 (10.57%), and established a paper hearing, addressed in Opinion 531-A, to allow the participants a limited opportunity to address application of the new ROE approach in those circumstances.[29]

Challenges, if any, to *Opinion 531-A* will be due on or before November 17. 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

- **FCA9 Qualification Informational Filing (ER15-328)**

On November 4, 2014, the ISO submitted its informational filing (the "FCA9 Informational Filing") for qualification in FCA9. The ISO is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by the ISO for the upcoming Forward Capacity Auction ("FCA") at least 90 days prior to each auction. FCA9 is scheduled to begin February 2, 2015. The Informational Filing contained the ISO's determinations that four Capacity Zones, Southeastern Mass./Rhode Island ("SEMA/RI"), Connecticut, Northeastern Mass./Boston ("NEMA/Boston") and Rest of Pool, will be modeled for FCA9. Connecticut, SEMA/RI and NEMA/Boston will be modeled as import-constrained Capacity Zones; no export-constrained Capacity Zones will be modeled (and, accordingly, no Maximum Capacity Limits ("MCLs") were established). The Informational Filing reported that there will be 32,555 MW of existing capacity in FCA9 competing with 8,547 MW of new capacity under a procurement limit of 34,189 MW (ICR minus HQICCs). The ISO reported also that there were a total of 8,301 MW of de-list bids, just 97 MW of which were later converted into Non-Price Retirement Requests. A list of the 41 Resources for which a Non-Price Retirement Request was submitted, and the status of the associated reliability review, is included in the transmittal letter. The identity of the de-list bids accepted and those rejected for reliability purposes was included in a privileged Attachment E. Comments on the FCA9 Informational Filing are due November 19, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ICR-Related Values and HQICCs - 2018/2019 Power Year (ER15-325)**

On November 4, 2014, the ISO filed ICRs, Hydro Quebec Interconnection Capability Credits ("HQICCs") and related Local Sourcing Requirements ("LSR") values for the 2018/2019 Capability Year. The values will be used in FCA9 to be held in February 2015. With a 2018/2019 ICR of 35,142 MW (reflecting tie benefits of 1,970 MW) and HQICCs of 953 MW/mo., the net amount of capacity to be purchased in FCA9 to meet the ICR will be 34,189 MW. The LSR for the SEMA/RI, Connecticut and NEMA/Boston Load Zones are 7,479. 7,331 MW and 3,572 MW, respectively; no MCLs were established. In addition, the ISO reported that, for the first time, a System-Wide Capacity Demand Curve ("Demand Curve") will be utilized in New England's FCA. The 1-in-5 Loss of Load Expectation ("LOLE") and 1-in-87 LOLE capacity requirement values for the Demand Curve are 33,132 MW and 37,027 MW, respectively. The Participants Committee considered, but did not support the ICR, HQICCs and related values at its October 3, 2014 meeting. Comments on this filing are due November 25. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

[28] *See 2011 Base ROE Initial Decision*.

[29] *Opinion 531* at P 1.

- **2015 NESCOE Budget (ER15-113)**

This proceeding was initiated by the ISO's October 16 filing of the budget for funding NESCOE's 2015 operations. The 2015 Operating Expense Budget for NESCOE is $2,093,615. The amount to be recovered reflects true-ups for actual costs and collections in prior years that cumulatively reached more than $3.6 million. Accordingly, if accepted, the NESCOE budget will result in a charge of $0.00 per kilowatt of Monthly Network Load (the remainder of the true-up will be credited against 2016 rates). The 2015 NESCOE budget was supported by the Participants Committee at its October 3, 2014 meeting. NU intervened. On November 6, NEPOOL filed comments supporting the filing. This matter is pending before the FERC. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2015 ISO-NE Administrative Costs and Capital Budgets (ER15-112)**

Also on October 16, the ISO filed for recovery of its 2015 administrative costs (the "2015 Revenue Requirement") and submitted its capital budget and supporting materials for calendar year 2015 ("2015 Capital Budget", and together with the 2015 Revenue Requirement, the "2015 ISO Budgets"). The 2015 ISO Budgets were filed together pursuant to the Settlement Agreement entered into to resolve challenges to the 2013 ISO Budgets. In the October 16 filing, the ISO reported that the 2015 Revenue Requirement (allowing the ISO to maintain the status quo and to fund established initiatives), after true-up for 2013, is $168.5 million. Of that total, the ISO's administrative costs (i.e., the 2015 Core Operating Budget) comprise $146.6 million; depreciation and amortization of regulatory assets, $31.7 million; and 2013 true-up, $9.8 million.

The ISO further reported that the 2015 Capital Budget is $28 million and is comprised of the following (with 2015 projected costs and target completion dates, if available, in parentheses):

| | | | |
|---|---|---|---|
| CTS (Nov 2015) | ($4.17 million) | Quarterly Release Projects 2015 (Quarterly) | ($800,000) |
| Non-Project Capital Expenditures | ($3.4 million) | Cyber Security (TBD) | ($550,000) |
| Business Continuity Plan Infrastructure Enhancements Phase III (Q4 2015) | ($2 million) | LMP Calculator Replacement (Q2 2015) | ($500,000) |
| FCA10 (Q1 2016) | ($2 million) | Capitalized Interest | ($500,000) |
| Third-Party FTR Administration (Q3 2015) | ($1.8 million) | Wind Integration Phase II (Q4 2015) | ($500,000) |
| Gen. Control Application (GCA) Production Part 1 (Jun 2015) | ($1.69 million) | Web Enhancements (Q3 2015) | ($500,000) |
| Other Emerging Work Including Strategic Planning Initiatives | ($1.65 million) | Phasor Measurement Unit Data (Q4 2015) | ($500,000) |
| Gen. Control Application (GCA) Production Part 1 (Jun 2015) | ($1.5 million) | Alt. Technologies and Regulation Market (Order 755) (Mar 2015) | ($470,000) |
| Divisional Accounting (Nov 2015) | ($1.07 million) | Software Testing Tool (Q3 2015) | ($300,000) |
| VPN System Upgrade (Q3 2015) | ($1 million) | PRD (Q2 2018) | ($300,000) |
| 2015 Issues Resolution Project (Q4 2015) | ($1 million) | FCA 9 (Feb 2015) | ($230,000) |
| Power System Modeling (Q4 2015) | ($1 million) | Voltage Stability (Mar 2015) | ($75,000) |
| Simultaneous Feas. Test & Market Sys. Upgrade (Q4 2015) | ($1 million) | Control Room Visualization Project | ($47,100) |

The 2015 ISO Budgets were supported by the Participants Committee at its October 3, 2014 meeting. Comments on this filing were due November 6, 2014. A doc-less intervention was filed by NU. NEPOOL filed comments supporting the 2015 Budgets. This matter is pending before the FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) Jennifer Galiette (860-275-0338; jgaliette@daypitney.com).

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

As previously reported, the results of the eighth FCA ("FCA8") became effective by operation of law on September 16, 2014.[30] Challenges, if any, to the finality of the FCA8 Results must be filed in Federal Court on or before November 17, 2014. Challenges to the September 16 Notice, filed with the FERC by the Connecticut (CT AG, PURA, OCC, DEEP) and Public Citizen, were dismissed as procedurally improper on October 24, 2014.[31]

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; the ISO filed Market Rule changes (*see* EL14-99 and ER15-117 in Section I above). 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, continues.[32] 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* order[33] that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding[34] for further consideration, which remains to be acted on. In particular, the FERC must (i) determine whether PSEG's position (that it should receive the full (unprorated) floor price for all its resources that it could not prorate) would be an appropriate way to interpret the then-existing Market Rules and, if not, (ii) respond to PSEG's objections that any contrary result would result in "undue discrimination" and would be "inconsistent with the fundamental policy goals" of FCM. On October 15, 2012, PSEG filed a motion requesting that the FERC issue an order on remand directing the ISO to pay PSEG the full FCA floor price without further delay (for PSEG, the difference totaling $2.8 million plus interest). The ISO filed on October 31, 2012 an answer to PSEG's October 15 motion. On November 1, 2012, Connecticut Generators[35] submitted comments

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[30] *See* Notice of Filing Taking Effect by Operation of Law, *ISO New England Inc.*, Docket No. ER14-1409 (Sep. 16, 2014) ("September 16 Notice").

[31] See Notice of Dismissal of Pleadings, ISO New England Inc., Docket No. ER14-1409 (Oct. 24, 2014) (dismissing the pleadings characterized as "requests for rehearing" because the September 16 Notice was not "an order issued by the Commission" and "rehearing therefore does not lie").

[32] *September 16 Order* at P 11.

[33] *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).

[34] *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).

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

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

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

- **PRD Reserve Market Changes (ER15-257)**

On October 31, the ISO and NEPOOL jointly submitted a series of revisions to the full integration Market Rules for price-responsive demand ("PRD") (the "PRD Reserve Market Changes"). Specifically, the PRD Reserve Market Changes (i) permit PRD to provide Operating Reserves and participate in the Forward Reserve Market on an equal footing with generators and other supply-side resources, (ii) simplify the way in which PRD resources, that can push back energy onto the grid from behind-the-meter generators, participate in the New England Markets, and (iii) make a number of changes to facilitate the full integration of PRD into the markets. A January 12, 2015 effective date was requested. The PRD Reserve Market Changes were supported by the Participants Committee at the October 3, 2014 meeting. Comments on this filing are due on or before November 21, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Administrative Clarifications (ER15-195)**

On October 27, the ISO and NEPOOL jointly submitted revisions to the FCM rules. Specifically, the revisions (i) replace the term "Load Zone" with the term "Capacity Zone", where appropriate, to conform Section III.13 with the current Capacity Zone modeling rules; (ii update the table of municipal utility ownership shares of Pool Planned Units contained in Section III.13.7.3.3.6 to recognize that additional capacity zones may be modeled as import-constrained under the current Capacity Zone modeling rules; and (iii) modify certain provisions related to Capacity Supply Obligation ("CSO") Bilaterals. These revisions were supported by the Participants Committee by way of the October 3, 2014 Consent Agenda (Item No. 1). Comments on this filing are due on or before November 17, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **CSO Terminations: Brookfield White Plain Hydro (ER15-150)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on October 21 to terminate a CSO for Resource No. 617 held by Project Sponsor Brookfield White Plain Hydro ("BWPH"). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by BWPH with respect to the CSO. Comments on this filing are due on or before November 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Constellation New Energy (ER15-149)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on October 21 to terminate 32 CSOs held by Project Sponsor Constellation New Energy ("Constellation"). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Constellation with respect to the CSOs. Comments on this filing are due on or before November 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Direct Energy Business (ER15-148)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on October 21 to terminate 13 CSOs held by Project Direct Energy Business ("Direct"). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Direct with respect to the CSOs. Comments on this filing are due on or before November 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Enerwise (ER15-147)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on October 21 to terminate 4 CSOs held by Project Enerwise Global Technologies ("Enerwise"). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by Enerwise with respect to the CSOs. Comments on this filing are due on or before November 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Plainfield Renewable Energy (ER15-146)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on October 21 to terminate a CSO for Resource No. 15509 held by Project Sponsor Plainfield Renewable Energy ("PRE"). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the amount of financial assurance provided by PRE with respect to the CSO. Comments on this filing are due on or before November 12. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Deferral Request: Footprint Power Salem Harbor (ER15-60)**

On October 7, Footprint Power Salem Harbor Development LP ("Footprint") requested, pursuant to Market Rule 1 Section 13.3.7, a one-year deferral of its 674 MW Capacity Supply Obligation for FCA7. Footprint asserted that it meets the criteria necessary to obtain a deferral. If the FERC grants the deferral, Footprint's CSO and five-year revenue lock-in will be deferred one year. Comments on Footprint's request were due on October 28, 2014. Interventions were filed by: NEPOOL, ISO-NE, Calpine, Emera, and NESCOE. Comments supporting the deferral request were filed by MA AG and City of Salem, MA DPU; and MA State Senator J. Lovely (2d Essex); other comments and protests were filed by Exelon (suggesting, contrary to Footprint's implication, that there may be alternatives to Footprint's project that could help address reliability needs in the NEMA/Boston zone during the FCA8 capacity commitment period); and PSEG/NRG (asserting that Footprint failed to meet the criteria necessary for deferral and requesting rejection of the deferral request). 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).

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

As previously reported, the ISO and NEPOOL jointly filed, on September 23, 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 were due on or before October 14; none were filed. Doc-less interventions were filed by Calpine, Dominion, Emera, Exelon, NRG, and NU. This matter is pending before the FERC. 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 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 were due on or before October 14; none were filed. Doc-less interventions were filed by Beacon Exelon and NU. This matter is pending before the FERC. 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)**

As previously reported, GDF SUEZ requested, on September 15, a waiver of the deadline to challenge a portion of an FCA9 Qualification Determination Notification ("QDN"). GDF SUEZ explained that the waiver was requested in order to qualify Northfield Mountain at its full winter capacity (22 MW more than identified in the QDN). On October 6, 2014, the ISO opposed the GDF SUEZ request. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On October 7, the FERC accepted revisions to Market Rule 1 Appendix A, jointly submitted by the ISO and NEPOOL, to ensure the competitive offer test, 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. The revisions were accepted effective as of December 3, 2014, as requested. Unless the October 7 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, 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 CSO.[36] The revisions were accepted without change or condition, effective July 17, 2014, as requested. On October 14, 2014, PSEG and NRG requested rehearing of the September 12 order. That request is pending before the FERC, with FERC action required on or before November 13, 2014, or the request will be deemed denied. If you have any questions concerning this matter, please contact 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").[37] 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.[38] 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.

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[36] *ISO New England Inc.*, 148 FERC ¶ 61,185 (Sep. 12, 2014), *reh'g requested*.

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

[38] The schedule and progress reports will be for informational purposes only, and not noticed for comment or subject to Commission action. *Winter 2014/15 Reliability Program Order* at n. 46.

On October 9, NEPGA requested clarification of the *Winter 2014/15 Reliability Program Order*, specifically requesting the FERC to "issue an order confirming that it expects ISO-NE to develop and propose market rule changes based on competitive market principles, rather than another out-of-market mechanism, to meet New England's winter 2015-2016 system reliability needs." On October 24, the ISO urged the FERC to reject NEPGA's request for clarification (asserting that the FERC, despite its preference for a market-based solution, did not impose a requirement that the proposal be market-based, and urging the FERC to give the region the flexibility to determine the problem to be solved and how much it is willing to pay to solve it). The NEPGA request is pending before the FERC, with FERC action required on or before November 10, or the request will be deemed denied.

***Stakeholder Meeting Schedule***: On October 8, the ISO reported that winter reliability concerns would be discussed with the Markets Committee, beginning with its November 12-13 meeting and continuing monthly through the March 10-11, 2015 meeting, at which the Markets Committee will be asked to vote on the ISO's proposal for Winter 2015/16 and future winters, as necessary. The Participants Committee will then be asked to a vote on the ISO proposal at its April 10, 2015 meeting.

The first progress report to be filed pursuant to the *Winter 2014/15 Reliability Program Order* will be made on or about December 9, 2014, and will be reported on in Section VIII. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Requests for rehearing of the *Demand Curve Order* remain pending. As previously reported, the FERC conditionally accepted, on May 30, 2014, the revisions to the FCM rules jointly submitted by the ISO and NEPOOL that establish a system-wide sloped demand curve ("Demand Curve Changes").[39] The Demand Curve Changes define the shape of the system-wide sloped demand curve (with key points defined by CONE and the 0.1 days/year LOLE target) illustrated below, extend the period during which a Market Participant may "lock-in" the capacity price for a new resource from five to seven years, establish a limited renewables, and eliminate, at the system-wide level, the administrative pricing rules that were necessary in certain market conditions under the vertical demand curve construct. 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.[40] 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)**

Rehearing of the *FCM PI Order* remains pending. 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

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

[40] *Id.* at P 88.

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.[41] 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-Minute Non-Spinning Operating Reserves to $1,500/MWh. The FERC established a June 9, 2014 refund effective date.[42] 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/NRG. 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 in Section I above.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com), 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").[43] The FCM Pricing Rule Changes became effective January 24, 2014, as requested. In accepting the filing, the FERC established a $7.025/kW administrative pricing rate for FCA8, replacing existing Tariff provisions that

[41] *See PI Order.*

[42] *See* n. 4 *supra*.

[43] *Jan 24 Exigent Circumstances Order*.

it found unjust and unreasonable in the Administrative Pricing Rules Complaint order (*see* EL14-7 in Section I above).[44] 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.[45]

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; dtdoot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@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.[46] The *FCA8 Revisions Order* accepted the following aspects of the FCA8 Revisions as compliant with its prior FCM Orders: the ISO's offer review trigger prices;[47] unit specific offer review;[48] the ISO's proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports' treatment under MOPR;[49] no exemptions to MOPR for new Self-Supplied Resources;[50] the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;[51] $1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;[52] and a number of other additional revisions.[53] The *FCA8 Revisions Order* rejected: the ISO's proposed methodology for reducing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA (directing the ISO to submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market);[54] and the ISO's request to model only 4 capacity zones for FCA8 (the ISO's Capacity Zones Changes

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[44] 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.

[45] *Id.* at P 30.

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

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

[48] *Id.* at P 53.

[49] *Id.* at P 70.

[50] *Id.* at P 80.

[51] *Id.* at P 97.

[52] *Id.* at P 126.

[53] *Id.* at P 127.

[54] *Id.* at PP 63-64.

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; dtdoot@daypitney.com).

## IV. OATT Amendments / TOAs / Coordination Agreements

- **Additional *Order 784* Compliance Filing (ER15-64)**

On October 9, the ISO and NEPOOL filed changes to Schedule 3 of the ISO OATT in response to September 9 order rejecting ISO-NE's Dec 27, 2013 *Order 784* compliance filing.[55] As previously reported, 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*,[56] and (ii) denied the ISO's request to waive *Order 784*'s new Area Control Error ("ACE") data posting requirements.[57] The October 9 compliance filing inserts the required statement indicating that the ISO will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response service, including as it reviews whether a self-supplying customer has made "alternative comparable arrangements" as required by the schedule. The Schedule 3 changes were unanimously supported by the Participants Committee at its October 3 meeting. Comments on the Schedule 3 changes were due on or before October 30; none were filed. Exelon intervened on October 27. This matter is pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- ***Order 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

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

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

[57] *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")

and more likely to be taken into account if it were made part of the individual regional tariffs of each of the Northeast ISOs rather than existing solely as a stand-alone three-party agreement". On September 9, NESCOE submitted comments generally supporting the filings, but reserving the right to further comment on these filings should the substance of the changes be modified as a result of further FERC (*see* ER13-193 and ER13-196 below) or federal court proceedings. Public Interest Organizations[58] 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 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 filing[59] (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 ("QTPS") are on an equal footing regarding consulting with the ISO in assessing regional transmission needs and solutions (together, the "NEPOOL Alternative"); but taking no position on the Cost Allocation revisions);

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

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

***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***[60] (each supporting the Cost Allocation Revisions, but noting continuing concern that the region's planning process fails to produce more cost-effective and efficient planning outcomes); ***LSP Transmission*** (supporting NEPOOL's Alternative, requesting a January 1, 2014 effective date for the compliance filing, and protesting the hold harmless provision contained in Attachment O, Section 9.01, the ISO's evaluation process and the proposed study deposit), ***MA DPU*** (supporting the Cost Allocation Revisions); ***NESCOE*** (without expressing a position on the Cost Allocation Revisions, affirming its support for NESCOE it having a central role in determining how public policy planning need relates to cost allocation); ***New Hampshire Transmission*** ("NHT") (protesting the November 15 filing and suggesting specific amendments to the proposal to be submitted a short time after an order on the second compliance filing is issued); ***Public Systems***[61] (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***[62] (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-NU: Non-Conforming LCRA Cancellations (ER15-332 et al.)**[63]

On November 5, the NU Companies submitted Notices of Cancellation of NU's individually filed, non-conforming Localized Costs Responsibility Agreements ("LCRAs"), each of which has been replaced by an executed standardized version (the form of which was accepted in ER14-2064[64]). The LCRAs will be reported using the FERC's Electric Quarterly Reports ("EQR") filing process. An October 1, 2014 effective date was requested for each of the cancellation notices. Comments on these filings are due on or before November 26. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

[60] "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.

[61] In this proceeding, "Public Systems" are MMWEC and NHEC.

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

[63] The Notices of Cancellations were filed in multiple dockets: ER15-332, ER15-333, ER15-334, ER15-336, ER15-337, ER15-338, ER15-339, ER15-340, ER15-341, ER15-342, ER15-344, and ER15-347.

[64] *ISO New England Inc. and Northeast Utilities Service Co.*, 148 FERC ¶ 61,070 (Jul. 29, 2014).

- **LGIA – NU/CPV Towantic (ER15-200)**

On October 27, the ISO and NU filed an unexecuted LGIA (LGIA-ISONE/NU-14-02) under Schedule 22 of the ISO Tariff to govern the interconnection of CPV Towantic's 795 MW natural gas-fired plant located in Oxford, Connecticut. The ISO and NU report that CPV did not execute the LGIA for two reasons: (i) the ISO and CL&P denied CPV's request to select the Option to Build in Article 5.1.3 of the ISO's *pro forma* LGIA; and (ii) CPV contends that the Operation, Maintenance and Capital Cost Reimbursement charges to be assessed by CL&P as the Interconnecting Transmission Owner have not been supported and may not be just and reasonable. A November 1, 2014 effective date was requested. Comments on this filing are due on or before November 17, 2014. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On October 20, the FERC accepted 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. The LSA was accepted effective May 1, 2014, as requested. Unless the October 20 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).

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

On August 4, the ISO, NEPOOL, and the PTO AC ("Order 792 Filing Parties") 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*.[65] 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, but no comments were filed. On October 6, the FERC issued a deficiency letter directing the Order 792 Filing Parties to submit additional information and justification for the proposed $500 pre-application fee, which Order 792 Filing Parties submitted on October 21. Comments on the October 21 filing were due on or before November 5; none were filed. This matter is again pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@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")[66] 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).[67] 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. The compliance filings were accepted on November 6, 2014. Unless the November 6 order is challenged, this matter will be concluded. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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[65] *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).

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

[67] *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).

- **Schedule 21-GMP Annual True Up Calculation Informational Filing (ER12-2304)**

On October 30, 2014, pursuant to Section 4 of Schedule 21-GMP, GMP submitted its annual informational filing containing the true-up recalculation of its actual (rather than estimated) costs for the January 1,2013 through December 31, 2013 time period. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

## VII. NEPOOL Agreement/Participants Agreement Amendments

- **126th Agreement: Common Provisional Member Group Seat (ER15-238)**

On October 30, NEPOOL submitted amendments to the NEPOOL Agreement that create a Common Provisional Member Group that will vote separately from the six Sectors. A November 1, 2014 effective date was requested. These changes were approved in balloting, following the September 12, 2014 meeting, in which the Minimum Response Requirement was satisfied. Comments on this filing are due on or before November 20. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Jennifer Galiette (860-275-0338; jgaliette@daypitney.com).

## VIII. Regional Reports

- **Capital Projects Report - 2014 Q3 (ER15-115)**

In a new matter since the last report, the ISO filed on October 16 its Capital Projects Report and Unamortized Cost Schedule covering the third quarter ("Q3") 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 include the following new project: 2014 Issue Resolution Project Phase II ($273,000). Projects reported to have significant changes include: (i) Order 755 changes ($570,000 increase reflecting re-design costs to meet FERC requirements and March 31, 2015 implementation) (ii) EMOF changes ($600,000 increase, reflecting testing and December 3 implementation); (iii) LMP Calculator Replacement ($390,000 increase); (iv) Simultaneous Feasibility Test and Market System Upgrade ($222,000 decrease); (v) FCA9 ($175,000 reduction); (vi) Asset Registration Electronic Forms ($118,600 deferred to 2015); (vii) CTS ($432,000 reallocated to 2015); (viii) Divisional Accounting ($80,000 reallocated to 2015); and (ix) Business Intelligence Phase IV project ($150,000) and Cyber Security project ($120,000) removed altogether. NU filed a doc-less motion to intervene on November 6. NEPOOL filed comments on November 6 supporting the filing. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Jennifer Galiette (860-275-0338; jgaliette@daypitney.com).

- **LFTR Implementation: 24th Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the twenty-fourth of its Quarterly Status Reports regarding LFTR implementation on October 15. Subject to a number of qualifications, the ISO reported that if the third party clearing design begin vetted in the Participant Processes is supported, the third party clearing design could be implemented during Q4 2015 for the 2016 annual FTR auction, about six months later (mid-2016) for monthly auctions, and during Q4 2017 for an initial auction of LFTRs. The estimated 18-month LFTR implementation process, described in previous reports, would be initiated in 2016, presuming the third party clearing design is accepted and related FAP changes resolved. These status reports are not noticed for public comment and no comments have been filed.

## IX. Membership Filings

- **November 2014 Membership Filing (ER15-278)**

On October 31, NEPOOL requested that the FERC accept the memberships of Aesir Power Services LLC (Supplier Sector); Agera Energy LLC (Supplier Sector); Inspire Energy Holdings, Inc. (Supplier Sector); and TrailStone Power, LLC [Generation Sector Group Seat, Related Person to ReEnergy Stratton Energy LP]. Comments on this filing are due on or before November 21.

- **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. This matter is pending before the FERC.

- **Suspension Notices (not docketed)**

Since the last Report, the ISO filed, pursuant to Section 2.3 of the Information Policy, a notice with the FERC that Advanced Power Services (NA) Inc. was suspended from the New England Markets on October 31 due to a Financial Assurance Default. This notice was for the FERC's information only and was not docketed or noticed for public comment. As of the date of this Report, Advanced Power Services remains suspended.

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

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

- **FFT Report: October 2014 (NP15-7)**

NERC submitted on October 30, 2014 its Find, Fix, Track and Report ("FFT") informational filing for the month of October 2014. The October FFT resolves 21 possible violations of 12 Reliability Standards that posed a risk minimal risk to bulk power system ("BPS") reliability, but which have since been remediated.[68] The 7 Registered Entities involved each submitted a mitigation activities statement of completion. FFT filings are for information only and are 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-003and 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 were due on or before October 20, 2014; none were filed. The PRC-004 Changes are pending before the FERC.

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[68] 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.

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

On November 4, the FERC approved 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"). The NUC-001 Changes implement recommendations made following a Standards Processes Manual-mandated periodic review. The NUC-001 Changes were approved, and existing NUC-001-2 will be retired, effective on January 1, 2016. Unless the November 4 order is challenged, this proceeding will be concluded.

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

On November 6, the FERC approved changes to FAC-001-2 (Facility Interconnection Requirements) and FAC-002-2 (Facility Interconnection Studies) ("FAC Changes"). In its filing, NERC stated that the FAC Changes were 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." The FAC Changes were approved, and the existing FAC-001-1 and FAC-002-1 will be retired, effective on January 1, 2016. Unless the November 6 order is challenged, this proceeding will be concluded.

- **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").[69] 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).[70] 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, 2014[71] 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.

[69] 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).

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

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

- **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").[72] 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.[73]

- **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").[74] The MOD-031 Changes are designed to replace, consolidate and improve upon the "existing MOD-C Standards"[75] 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.[76]

- **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.

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

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

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

[75] 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.

[76] 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.

- **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").[77] 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.[78] 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 September 23, 2014[79] and were filed by NERC, EEI, Idaho Power Company, ITC, and the G&T Cooperatives.[80] 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 Standards[81] 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,[82] and were filed by NERC, Bonneville, Duke, MISO, and NAESB. The MOD-001-2 NOPR remains pending before the FERC.

- ***Order 797-A*: 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).[83] The new Reliability Standard requires BPS owners and operators to develop and implement operational procedures to mitigate the effects of Geomagnetic Disturbances consistent

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

[78] *Id.* at PP 1-2.

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

[80] The "G&T Cooperatives" are Assoc. Elec. Coop., Basin Elec. Power Coop. and Tri-State Generation and Transmission Assoc.

[81] 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.

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

[83] *Reliability Standard for Geomagnetic Disturbance Operations*, Order No. 797, 147 FERC ¶ 61,209 (June 19, 2014) ("*Order 797*"), *reh'g denied*, 149 FERC ¶ 61,209 (2014).

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*. FRS' rehearing request was denied on October 16, 2014.[84] Absent a challenge in the federal courts, this matter has now been concluded.

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

On November 21, 2013, the FERC issued a NOPR[85] proposing (i) to approve NERC's proposed revisions to Reliability Standard TOP-006-3 (Monitoring System Conditions) filed in RM13-12, but (ii) to remand changes to the following Interconnection Reliability Operations and Coordination ("IRO") and Transmission Operating ("TOP") Reliability Standards filed in RM13-14 and RM13-15:

- IRO-001-3 (Reliability Coordination — Responsibilities and Authorities);
- IRO-002-3 (Reliability Coordination – Analysis Tools);
- IRO-005-4 (Reliability Coordination – Current Day Operations);
- IRO-0014-2 (Coordination Among Reliability Coordinators);
- TOP-001-2 (Transmission Operations);
- TOP-002-3 (Operations Planning);
- TOP-003-2 (Operational Reliability Data); and
- PRC-001-2 (System Protection Coordination).[86]

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.

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[84] *Reliability Standard for Geomagnetic Disturbance Operations,* Order No. 797-A, 149 FERC ¶ 61,209 (Oct. 16, 2014) ("*Order 797-A*").

[85] *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*").

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

Because the proposed TOP and IRO Reliability Standards were interrelated, and because the proposed revisions to Reliability Standard TOP-006-3 involved similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the FERC addressed all three proposals together in the one NOPR. Although the FERC acknowledged that the proposed TOP and IRO Reliability Standards contain some improvements over the current Standards, concerns that the changes would create reliability gaps in the Standards that are critical to reliable operation of the BPS resulted in the proposed remand of the proposed TOP Standards.[87] 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.[88]

Initially, comments are the *Nov 21 NOPR* were due on or before February 3, 2014.[89] 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.[90] 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.

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[87] *Id.* at P 4.

[88] *Id.*

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

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

Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,[91] 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, as revised October 29, 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 were due on or before October 6, 2014; none were filed. Comments on the October 29 errata filing are due on or before November 18, 2014.

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

As previously reported, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2015 on August 22, 2014. FERC regulations[92] 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. On October 14, NERC submitted revisions to the 2015 Budget and Assessments of Peak Reliability, Inc. to reflect additional revenues from British Columbia Hydro and Power Authority. The FERC accepted the 2015 NERC/NPCC Business Plans and Budgets on October 16, 2014.[93] The FERC accepted the revisions to the 2015 Budget and Assessments of Peak Reliability, Inc. on October 28, 2014. Unless the October 16 or 28 orders are challenged, these proceedings will be concluded.

## 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

[91] 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.

[92] 18 CFR § 39.4(b) (2014).

[93] *N. Amer. Elec. Rel. Corp.*, 149 FERC ¶ 61,028 (Oct. 16, 2014).

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 October 27, 2014, the FERC authorized the acquisition by Calpine Fore River Energy Center, LLC ("Calpine") of the Constellation Mystic Power, LLC ("Constellation") Fore River Generating Station and certain associated assets.[94] Calpine and Constellation must notify the FERC within 10 days of the date that the disposition of jurisdictional facilities has been consummated. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **LVA/PSNH IA Complaint (EL15-9)**

On October 23, Lower Village Hydroelectric Associates ("LVA") filed a complaint against PSNH requesting FERC direct PSNH to recognize the existing LVA IA, rescind its demand for LVA facility modifications, and close the air break switch so LVA can complete relay testing and resume generating/ selling electricity. PSNH's response and comments on the Complaint are currently due on or before November 11. On November 3, PSNH request a 30-day extension of time, to December 11, to respond to the Complaint, which is pending before the FERC. 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 were due October 22, 2014. More than 40 parties filed comments or responses to the FirstEnergy amended complaint. Many parties filed comments supporting the complaint (including Calpine, PSEG and PPL), while others opposed the complaint in its entirety (including Direct Energy and Enerwise). PJM's response argued that the complaint failed to justify the market disruption that would result from recalculating past capacity auction results, PJM was instead more focused on minimizing "litigation risk." A number of parties filed supporting comments in favor of removing demand response resources from the PJM tariff moving forward, but opposed to recalculating the results of past capacity auctions (including Exelon, the PJM IMM and NRG). Comments were also filed by National Grid and NYISO. A number of New England parties intervened, including NEPOOL (stressing that the FERC should not apply any ruling in this docket to the New England Market), Dominion, Duke Energy, Dynegy, Essential Power, Macquarie Energy, NEPGA, NESCOE, and NextEra. If you have any questions concerning this matter, please contact Jamie Blackburn (jblackburn@daypitney.com; 202-218-3905) or Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA - NEP: NEP/Centennial Island Hydro Cancellation (ER15-210)**

On October 28, New England Power ("NEP") submitted a notice of cancellation of its 1993 IA with Centennial Island Hydroelectric Company ("Centennial Hydro"), effective June 23, 2014. The IA was superseded by a non-conforming SGIA between NEP and Centennial Hydro accepted by the FERC in ER14-2534. Comments

[94] *Calpine Fore River Energy Center, LLC and Constellation Mystic Power, LLC*, 149 FERC ¶ 62,054 (Oct. 27, 2014)

on the notice of cancellation are due on or before November 18. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **SGIAs – PSNH/QFs (ER15-65)**

On October 9, NU filed eight (8) interconnection agreements, each one between PSNH and a Qualifying Facility ("QF").[95] NU reports that the interconnection agreements have become subject to the FERC's jurisdiction because the QFs have begun to sell their power into the New England Markets and thus filed each as a PSNH rate schedule.[96] A December 8, 2014 effective date was requested. Comments on this filing were due on or before October 30; 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).

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

On October 27, the FERC accepted Engineering and Procurement ("E&P") Agreements between Central Maine Power ("CMP") and Blue Sky West II, LLC ("Blue Sky West") facilitating the interconnection of the Blue Sky West's 191 MW wind farm in Bingham, Mayfield Township and Kingsbury Plantation, Maine. The Agreements were each accepted effective as of October 28, 2014. The FERC denied the requested waiver of the 60-day prior notice requirements (18 C.F.R. § 35.11), directing CMP to refund the time value of the monies actually collected prior to October 28, 2014, with the refunds limited so as not to cause CMP to suffer a loss. The refunds must be made on or before November 27, and a refund report filed on or before December 29. Any challenges to the October 27 letter order must be filed on or before November 26. 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",97 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 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).

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[95] The facilities are: Stevens Mill, Greggs Falls, Mine Falls, Lakeport Dam, Hoisery Mill, Lockmere Dam, Pembroke Hydro, River Bend Hydro (collectively, the "Facilities").

[96] The SGIAs were filed as PSNH rate schedules, rather than ISO-NE interconnection agreements, because no new interconnection requests for any of the Facilities were required under Schedule 22 or 23 of the ISO Tariff.

[97] *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) ("*MISO Initial Decision*") at P 923.

- **FERC Enforcement Action: Southern California Edison (IN14-8)**

On October 21, 2014, the FERC approved a Stipulation and Consent Agreement between NERC, OE and Southern California Edison ("SCE") that levied a ***$650,000 civil penalty,*** $250,000 to be split equally and paid to NERC and the US Treasury, and $400,000 to be invested in reliability enhancement measures that go above and beyond mitigation of the violations and the requirements of NERC's Reliability Standards. This is the third settlement related to the joint FERC-NERC investigation into the September 8, 2011 Southwest Blackout. That Blackout arose out of a system disturbance which resulted in cascading outages, leaving approximately 2.7 million customers without power, and resulting in a total load loss exceeding 30,000 MWh. SCE neither admitted nor denied that its actions constituted violations of the Reliability Standards.

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

***Maxim Power (New England)***. On November 3, 2014, the FERC issued a notice that Staff has preliminarily determined that Maxim Power Corporation ("Maxim")[98] engaged in three schemes in New England that violated the FERC's Anti-Manipulation Rule. In the first, during 2012-13, Maxim received millions of dollars of inflated make-whole payments from the ISO by gaming Market Rules intended to mitigate the market power of generators needed for reliability; in the second, July-August 2010, staff alleges that Maxim told the ISO it needed to offer based on high oil prices because of supposed gas supply problems, and collected make-whole payments based on those high prices, but in fact burned much less expensive gas. In many cases Maxim had already purchased gas when it submitted Day-Ahead offers based on oil prices because of supposed gas supply issues; in the third, 2010- 2013, Maxim obtained inflated capacity payments by artificially raising the reported output of three of its plants by employing extraordinary measures during capacity tests that it did not use, and did not intend to use, during the ordinary operation of the plants. Staff also alleged that Maxim executives John Bobenic and Kyle Mitton engaged in certain of these schemes, and that Maxim also violated the FERC's Market Behavior Rules through schemes two and three.

***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.

[98] Maxim's Related Person, Pawtucket Power Holding Company, is a member of the Generation Sector Group Seat. In addition to Pawtucket, Maxim operates units in Pittsfield, MA and Hartford, CT (Capitol District Energy Center Cogeneration Associates).

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.[99] 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.[100] Bangor Hydro requested a limited waiver from the FERC's Standards of Conduct requirements,[101] to the extent necessary, to permit its transmission function personnel to undertake the actions necessary to re-sell into the New England Market energy from the Rollins Project which the MPUC has mandated it purchase but cannot otherwise sell at retail. The FERC stated that it would revisit its determination if Bangor Hydro brought forward information demonstrating that it met the criteria for waiver set forth in section 358.1(c) and summarized in the order (i.e. a demonstration that Bangor Hydro has no access to information concerning the operation of the transmission facilities by the ISO and that it obtains information about such matters only by viewing the ISO's OASIS). In response to the *BHE Standards of Conduct Order*, Bangor Hydro amended its waiver request in 2 respects: First, Bangor Hydro revised its request to apply only to the energy required to be purchased from the Rollins Project and the Exeter Agri-Energy Project. Second, Bangor Hydro committed, as a condition of the waiver (if granted), not to engage in any purchases or sales of wholesale electric capacity or energy except for those required under Maine laws and/or regulations or orders of the MPUC. The MPUC filed comments supporting Bangor Hydro's amended waiver request on November 15, 2011. This matter remains pending before the FERC.

## 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"). Comments on the Metrics Report were filed by APPA, AWEA, EEI, ITC, NYISO, New York TOs, Southern Company.

- **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:

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[99] *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).

[100] *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (Sep. 15, 2011) ("*BHE Standards of Conduct Order*").

[101] *See* 18 C.F.R. § 358 (2013) *et seq.*

- 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***. The FERC held its second workshop on October 28, 2014. The October 28 workshop focused on 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/ISOs. In advance of the workshop, FERC staff posted on October 21 two reports, one on shortage pricing in RTO/ISO markets (http://www.ferc.gov/legal/staff-reports/2014/AD14-14-pricingrto-iso-markets.pdf), the other on energy offer mitigation in RTO/ISO markets (http://www.ferc.gov/legal/staff-reports/2014/AD14-14-mitigation-rto-iso-markets.pdf).

The third and final workshop has not yet been scheduled. 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. Since the last Report, FERC Staff provided an update at the Commission's October Open Meeting on FERC and industry actions and continuing initiatives responding to the severe cold weather events experienced last winter.

- **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.[102] 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

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

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,[103] and were filed by over 25 parties. Since the last Report, comments were filed by the National Hydropower Association and reply comments were filed by Berkshire Hathaway, Barrick Mines, and EPSA. 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"),[104] 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.[105] Comments were submitted by over 20 parties, including: 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, WIRES[106] 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

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

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

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

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

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*,[107] 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.[108] 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*.[109] *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*.[110] The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

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

On September 18, 2014, the FERC issued *Order 676-H*,[111] 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

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107 *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).

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

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

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

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

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.[112] Requests for rehearing of Order *676-H* were filed by EPSA and the NYISO on October 20, 2014. The EPSA and NYISO requests for rehearing are pending before the FERC, with FERC action required on or before November 19, 2014, or the requests will be deemed denied.

## XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), Jennifer Galiette (860-275-0338; jgaliette@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@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 more than 30 parties. Since the last Report, comments were filed by BTG Pactual Commodities, and jointly by Environmental Defense Fund, Skipping Stone, CLF and The Sustainable FERC Project.

- **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.[113] Specifically, the NOPR proposes to: (i) start the Gas Day earlier, at 4:00 a.m. Central Clock Time ("CCT")[114] 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).

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

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

[114] CCT, pursuant to the NAESB WGQ standards, reflects daylight savings changes.

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

Noting that the natural gas and electricity industries are best positioned to work out the details of how changes in scheduling practices can most efficiently be made and implemented, consistent with the policies discussed in the NOPR, the FERC provided the industries 6 months to reach consensus on standards, consistent with FERC's guidance in the NOPR, including any revisions or modifications to the proposals provided herein. Comments are due November 28, 2014[115] 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. Comments on the NAESB status report are due on or before November 28, 2014.

- **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 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.[116] 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.[117] 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

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

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

[117] *Id.* at P 6.

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.[118]

- **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:

| ***Company*** | ***Alleged Violation(s)*** | ***Civil Penalty/Disgorgement*** |
|---|---|---|
| BP America Inc.<br>BP Corp. N. Amer.<br>BP Amer. Production<br>BP Energy Co.<br>(together, "BP")<br>(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[119]<br>$28 million (civil penalty)<br>$800,000 (disgorgement) |

On October 29, BP and Enforcement Staff agreed to a modified procedural schedule for the hearing procedures underway. Pursuant to that schedule, hearings before Judge Cintron will begin March 30, 2015, with an Initial Decision due August 14, 2015.

- **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).

[118] *Id.*

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

- ***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.
  - Scoping process to assist FERC with Environmental Assessment open until Nov 10, 2014.
  - 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.
  - Final EIS completed on Oct 24, 2014 (with Wright Interconnect).
  - 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.
  - Final EIS completed on Oct 24, 2014 (with Constitution).
  - Revised FERC schedule indicates FERC authorization in Jan. 2015.
- ***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.
  - FERC Environmental assessment to be issued Dec 2, 2014.
  - 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: ER13-1851[120] and ER13-2266[121]**
  **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. On October 2, the Court issued a briefing format and scheduling order that calls for Joint Brief for Petitioners to be filed by November 24; Respondent Brief, January 23, 2015; Joint Brief for Respondent-Intervenors, February 9, 2015; Joint Reply Brief for Petitioners, February 23, 2015; Deferred Appendix, March 2, 2015; and Final Briefs, March 16, 2015.

- ***Orders 773* and *773-A* (2nd Cir., 13-2316)**
  **Underlying FERC Proceedings: RM12-6 and RM12-7[122]**
  **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. Oral argument is scheduled for November 20, 2014.

- **New England's Order *745* Compliance Filing (12-1306)**
  **Underlying FERC Proceedings: ER11-4336[123]**
  **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.

[120] 144 FERC ¶ 61,204 (Sep. 16, 2013); 147 FERC ¶ 61,026 (Apr. 8, 2014).

[121] 145 FERC ¶ 61,023 (Oct. 7, 2013); 147 FERC ¶ 61,027 (Apr. 8, 2014).

[122] 141 FERC ¶ 61,236 (Dec. 20, 2012); 143 FERC ¶ 61,053 (Apr. 18, 2013).

[123] 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

- **Orders 1000 and 1000-A (12-1232 consolidated with 12-1233, 12-1250, 12-1276, 12-1279, 12-1280, 12-1285, 12-1292, 12-1293, 12-1296, 12-1299, 12-1300, 12-1304, 12-1448, 12-1478, and 7th Cir. 12-2248)**
  **Underlying FERC Proceedings: RM10-23**[124]
  **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.[125] 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 ("LPPC") petitioned the Court for rehearing *en banc*. On October 17, the Court denied LPPC's petition. The mandate issued on October 29, 2014.

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093)**
  **Underlying FERC Proceedings: RM10-17-000**[126]
  **Appellants: EPSA, CAISO, ODEC, EEI, CA PUC**

As previously reported, the DC Circuit vacated *Order 745*[127] 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 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.

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[124] 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

[125] *S. Car. Pub. Servc. Auth. v. Federal Energy Regulatory Commission*, 2014 U.S. App. LEXIS 15674 (Aug. 15, 2014).

[126] 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

[127] *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.

On September 22, the FERC and a group of intervenors[128] 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. On October 20, 2014, the Court granted the FERC's motion to stay issuance of the mandate. The Clerk was directed to withhold the mandate through December 16, 2014. If, before that time, Respondent notifies Clerk in writing that a petition for writ of certiorari has been filed, the Clerk was directed to withhold issuance of the mandate pending the Supreme Court's final disposition.

- **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 Maryland[129] 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.[130] In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field[131] and conflict pre-empted.[132]

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."[133] 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"),[134] 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 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."[135] 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

[128] 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.

[129] *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.

[130] *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467; 2014 U.S. App. LEXIS 10155.

[131] "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.

[132] "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."

[133] Slip op. at p. 14.

[134] *Id.* at p. 10.

[135] *Id.* at p. 16.

market."[136] 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."[137]

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".[138] 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."[139] "Maryland's initiative disrupts [the PJM scheme] by substituting the state's preferred incentive structure for that approved by FERC."[140] "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."[141]

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 affirmed[142] 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").[143] 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.[144]

No petition for rehearing or rehearing *en banc* was filed on or before September 25, 2014. Accordingly, the mandate was issued on October 3, 2014. Any petition for *certiorari* to the U.S. Supreme Court must be filed on or before December 10, 2014.

[136] *Id.* at pp. 18-19.

[137] *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.

[138] *Id.* at p. 27.

[139] *Id*. at p. 23.

[140] *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.")

[141] *Id.* at p. 25.

[142] *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, ("*NJ Order*").

[143] *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

[144] *Id.* slip op. at 31.

# INDEX
## Status Report of Current Regulatory and Legal Proceedings as of November 6, 2014

### I. Complaints



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



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

### IV. OATT Amendments/Coordination Agreements



### V. Financial Assurance/Billing Policy Amendments

No Activity to Report

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



### VII. NEPOOL Agreement/Participants Agreement Amendments



### VIII. Regional Reports



### IX. Membership Filings



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

### XI. Misc. Regional Interest



### XII. Misc: Administrative & Rulemaking Proceedings



### XIII. Natural Gas Proceedings



### XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

### XV. Federal Courts