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

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

I. Complaints

*	1	NEPGA Peak Energy Rent (PER) Complaint (EL15-25)	Dec 3	NEPGA files Complaint requesting that the ISO be directed (i) to increase the daily PER Strike Price by $250/MWh for Capacity Commitment Periods 5 through 8, and (ii) to eliminate the PER Adjustment for FCA9 and beyond, or, alternatively, to continue the $250 per MWh increase in the PER Strike Price for FCA9; comment date Dec 23
*	1	New Entry Pricing Rule Complaint (EL15-23)	Nov 26	Calpine/Exelon file formal complaint, requesting (i) fast-track processing, (ii) an order by Jan 23, 2015, and (iii) that the FERC remedy "price suppression" impacts "consistent with the approach taken in PJM"; comment date Dec 16
			Dec 3	ConEd intervenes
*	1	NEPGA DR Capacity Complaint (EL15-21)	Nov 14	NEPGA files Complaint requesting DR be disqualified from FCA9 and the Tariff be revised to exclude DR from future FCM participation; comment date Dec 4
			Nov 18-Dec 3	AEP, Brookfield, Calpine, ConEd, CT PURA, CT DEEP, Dominion, EEI, EnergyConnect, EPSA, Exelon, FirstEnergy, Genbright, MD PSC, PPL intervene
			Nov 26	NEPOOL files comments
			Dec 3	NU and UI jointly protest Complaint
	2	206 Proceeding: Importers' FCA Offers Review/Mitigation (EL14-99; ER15-117)	Nov 13	Brookfield answers NEPGA comments
			Nov 19	ISO answers protests and comments
	3	Base ROE Complaint (2014) (EL14-86)	Nov 12	CT PURA highlights pending request to consolidate this case with EL13-33
			Nov 24	FERC issues order establishing evidentiary hearings, consolidating this proceeding with EL13-33, and setting a July 31, 2014 refund effective date
			Nov 25	Trial Judge Sterner issues order directing Parties to file joint procedural schedule by Dec 4
	3	FCM PI Jump Ball Compliance Filing I (EL14-52; ER14-2419)	Dec 3	FERC issues tolling order affording it additional time to consider Conn/RI and Public Systems' rehearing requests
	4	206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices (EL14-23)	Nov 25	Northeast Energy Solutions submits comments
	6	Base ROE Complaint (2012) (EL13-33)	Nov 24	FERC issues order consolidating this proceeding with EL13-33
			Nov 25	Trial Judge Sterner issues order directing Parties to file joint procedural schedule by Dec 4

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	7	Base ROE Complaint (2011) (EL11-66)	Nov 12	CT PURA notifies FERC that it does not oppose TOs' Nov 6 motion for extension of time to issue refunds
			Nov 17	TO's request rehearing and clarification of *Opinion 531-A*
			Nov 21	Fitchburg supports TO's motion for extension of time to complete refunds; requests extension also apply to its refunds/refund reports
			Nov 26	FERC grants extension of time to complete refunds and submit refund reports

II. Rate, ICR, FCA, Cost Recovery Filings

*	8	ICR-Related Values and HQICCs - 2015/16 ARA3, 2016/17 ARA2, 2017/18 ARA1 (ER15-555)	Dec 2	ISO and NEPOOL jointly file ICR-Related Values and HQICCs for the 2015/16 ARA3, 2016/17 ARA2; and 2017/18 ARA1; comment date Dec 23
*	8	Opinion 531-A Compliance Filing: TOs (ER15-414)	Nov 17	New England TOs submit *Opinion 531-A* compliance filing; comment date Dec 8
			Dec 3	IECG intervenes
	8	FCA9 Qualification Informational Filing (ER15-328)	Nov 12-Dec 2	NEPOOL, NESCOE, Brookfield, Calpine, CT OCC, CT PURA, Emera, EnerNOC, EPSA, GDF, PSEG, NRG, NU, UI intervene
			Nov 19	NEPGA, Hawkes Meadow submit comments
	9	ICR, HQICCs and Related Values - 2018/19 Power Year (ER15-325)	Nov 12	NEPOOL intervenes
			Nov 19	NEPOOL files comments; Exelon, GDF SUEZ intervene
			Nov 21	VT PSB intervenes
			Nov 25	NESCOE and CT PURA file comments; CT OCC, Emera, EnerNOC, NU intervene

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

*	10	Waiver Request: FCM Qualification and FA Requirements (Hawkes Meadow) (ER15-447)	Nov 19 Nov 26-28	Hawkes Meadow requests waiver of FCM qualification and FA requirements in order to permit capacity from Hawkes Meadow Energy Station to be offered in FCA9; comment date Dec 10
*	11	FCM Admin Revisions (ER15-369)	Nov 10	ISO and NEPOOL jointly file changes
			Nov 21	Exelon intervenes
	11	PRD Reserve Market Changes (ER15-257)	Nov 12-Dec 2	Dominion, EPSA, Exelon, PSEG, CT AG, CT PURA, NESCOE, NU, UI intervene
			Nov 21	EnerNOC files supporting comments; NEPGA files a protest
			Dec 3	NU answers NEPGA protest
	11	FCM Administrative Clarifications (ER15-195)	Nov 12-17	NRG, NU, Exelon intervene
			Nov 21	FERC accepts changes, effective Dec 26, 2014
	11	CSO Termination: Brookfield White Plain Hydro (ER15-150)	Nov 12	NEPOOL intervenes
	12	CSO Terminations: Constellation New Energy (ER15-149)	Nov 12	NEPOOL intervenes
	12	CSO Terminations: Direct Energy Business (ER15-148)	Nov 12	NEPOOL intervenes
	12	CSO Terminations: Enerwise (ER15-147)	Nov 12	NEPOOL intervenes
	12	CSO Termination: Plainfield Renewable Energy (ER15-146)	Nov 12	NEPOOL intervenes
	12	CSO Deferral Request: Footprint Power Salem Harbor (ER15-60)	Nov 12	ISO answers Exelon protest; Footprint answers PSEG/NRG protest
			Dec 3	"Ratepayer Residents" intervene out-of-time and oppose request Footprint opposes out-of-time intervention and answers Ratepayer Residents protests

	13	Fuel Price Adjustment Changes (ER14-2929)	Nov 14	FERC accepts changes, effective Dec 3
	13	Waiver Request: Deadline for QDN Challenge (GDF SUEZ) (ER14-2886)	Nov 25	FERC denies requested waiver of FCA9 deadlines for QDN challenges
	14	CSO Deferral: ISO Proposal (ER14-2440)	Nov 13	FERC issues tolling order affording it additional time to consider PSEG/NRG rehearing request
	14	Winter 2014/15 Reliability Program (ER14-2407)	Nov 10	FERC issues tolling order affording it additional time to consider NEPGA request for clarification of *Winter 2014/15 Reliability Program Order*
	15	Demand Curve Changes (ER14-1639)	Nov 13	FERC accepts compliance filing clarifying how new resources could qualify for the renewables exemption in future auctions
			Dec 2	ISO files status report on progress towards developing zonal demand curves

IV. OATT Amendments / TOAs / Coordination Agreements

*	18	Order 676-H Compliance: Revisions to Schedule 24 (ER15-519)	Dec 1	ISO files waiver requests and compliance changes; comment date Dec 22
*	18	Order 676-H Compliance: PTOs, SSPs, CSC *et al.* (ER15-517)	Dec 1	PTOs, SSPs, CSC et al. request (i) (continued and new) waivers of certain NAESB v.003 WEQ Standards and (ii) approval of adoption of others in compliance with *Order 676-H*; comment date Dec 22
	18	*Order 784* Additional Compliance Filing (ER15-64)	Nov 21	FERC accepts Schedule 3 changes, effective Dec 9, 2014

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

*	21	Opinion 531-A Compliance Filing: GMP (ER15-412)	Nov 17	Green Mountain Power submits *Opinion 531-A* compliance filing; comment date Dec 8
	21	LGIA – NU/CPV Towantic (ER15-200)	Nov 16	CPV Towantic protests filing, requesting cost reimbursement charges and Option to Build provisions be set for dispute resolution
			Dec 2	ISO/NU file joint answer to CPV Nov 16 protest, urging the matter be resolved (in their favor) based on the pleadings, and not pursuant to dispute resolution
*	22	*Opinion 531-A* Compliance Filing: VEC (ER10-1181)	Nov 14	VEC submits revised rates, at the approved 10.57% ROE, and identifies refunds provided as a result thereof, under Schedule 21-VEC
*	22	*Opinion 531-A* Compliance Filing: FGE (ER09-1498)	Nov 17	FGE submits revised rates, at the approved 10.57% ROE for the Jun 1, 2014 - May 31, 2015 period, used to calculate its annual transmission revenue requirement under Schedule 21-FGE

VII. NEPOOL Agreement/Participants Agreement Amendments

	22	126th Agreement: Common Provisional Member Group Seat (ER15-238)	Nov 20	NU intervenes

VIII. Regional Reports

*	23	ISO New England FERC Form 3Q Submission (not docketed)	Nov 21	ISO submits 2014/Q3 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies)

*	23	IMM Quarterly Markets Reports - 2014 Q3 (ZZ14-4)	Nov 12	Internal Market Monitor files report for Q3 2014

IX. Membership Filings

*	23	December 2014 Membership Filing (ER15-513)	Nov 26	***New Members:*** Athens Energy; Blue Sky West; Canandaigua Power Partners; Mass Solar 1; Hawkes Meadow Energy; The Moore Company; Moore Energy; Nalcor Energy Marketing; SmartEnergy Holdings; and TEC Energy; and (2) the termination of the Participant status of TrueLight Commodities; comment date Dec 19
	23	November 2014 Membership Filing (ER15-278)	Dec 1	FERC accepts new members Aesir Power Services; Agera Energy; Inspire Energy Holdings; and TrailStone Power
	23	October 2014 Membership Filing (ER14-2980)	Nov 14	FERC accepts new members: Fisher Road Solar I; Nordic Energy Services; Plant-E Corp.; and termination of Blue Pilot Energy's membership

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

	23	FFT Report: Nov 2014 (NP15-8)	Nov 25	NERC files report
	24	Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-011-1 (RD14-4)	Nov 26	FERC approves Standards
	24	*Order 802:* New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15)	Nov 20	FERC approves new physical security standard
	25	NOPR: Revised Reliability Standard: COM-001-2 and COM-002-4 (RM14-13)	Nov 13-Dec 1	NERC, ISO/RTO Council, EEI/EPSA, ITC, Idaho Power, Duquesne, NRECA, Tri-State Gen & Trans. Assoc. file comments
	25	NOPR: Revised Reliability Standard: MOD-031-1 (RM14-12)	Nov 19-Dec 1	ISO-NE, NERC, EEI, ITC, Idaho Power, Pacific Corp file comments
	25	NOPR: Revised Reliability Standard: BAL-001-2 (RM14-10)	Nov 20	FERC issues NOPR proposing to approve revised BAL-001-2; comment date Jan 26, 2015

XI. Misc. - of Regional Interest

*	29	203 Application: First Wind / TerraForm & SunEdison (EC15-44)	Dec 2	First Wind and TerraForm/SunEdison request authorization for a transaction that will result in TerraForm indirectly owning 100% of the voting securities of the First Wind Applicants; comment date Dec 23
	29	203 Application: EquiPower / Dynegy (EC14-140)	Nov 10 Nov 24	MA AG, Public Citizen intervene; PJM IMM and UWUA 464 submit comments Dynegy responds to PJM IMM and UWUA 464 comments
	29	203 Application: Calpine/Constellat'n (Fore River) (EC14-135)	Nov 14	Calpine and Constellation notify the FERC that the Fore River acquisition was consummated on Nov 7
	30	203 Application: Wheelabrator / Granite Acquisition (ECP) (EC14-125)	Nov 25	FERC authorizes transaction
*	30	*Opinion 531-A* Compliance Filing: NGrid IFA Amendments (ER15-418)	Nov 17	NGrid files an amendment to the formula rates for integrated facilities service reflecting OE set in *Opinion 531-A*
	30	LVA/PSNH IA Complaint (EL15-9)	Nov 10	FERC extends comment date on Complaint to and including Dec 12
	30	FirstEnergy PJM DR Complaint (EL14-55)	Nov 14 Nov 21	FirstEnergy files an answer to the protests and comments filed Environmental Advocates files an answer to FirstEnergy's answer

31	SGIAs – PSNH/QFs (ER15-65)	Nov 21	FERC accepts SGIAs with 8 QFs, effective Dec 8, 2014
32	FERC Enforcement Actions: WAPA-DSW (IN14-9); CAISO (IN14-10)	Nov 24	FERC approves Agreement resolving NERC/OE's investigation of WAPA-DSW's role in the 2011 Southwest Blackout (no monetary penalty)
		Nov 28	FERC approves Agreement resolving NERC/OE's investigation of CAISO's role in the 2011 Southwest Blackout; CAISO agrees to pay ***$6 million*** civil penalty

XII. Misc. - Administrative & Rulemaking Proceedings

33	Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14)	Nov 20	FERC issues supplemental notice of Dec 9 workshop
34	RTO/ISO Winter 2013-2014 Op and Market Performance (AD14-8)	Nov 20	FERC directs RTOs/ISOs to file reports, on or before Feb 18, 2015, on the status of their efforts to address fuel assurance issues
35	Enforcement Annual Report (AD07-13-008)	Nov 20	FERC Office of Enforcement issues 2014 Annual Report
35	*Order 676-H*: Incorporation of WEQ Version 003 Standards (RM05-5)	Nov 19	FERC issues tolling order affording it additional time to consider EPSA, NYISO requests for rehearing of *Order 676-H*

XIII. Natural Gas Proceedings

38	NOPR: Scheduling Coordination (RM14-2)	Nov 21-Dec 2	Over 80 parties file comments
39	Posting of Offers to Purchase Capacity (Section 5 Proceeding) (RP14-442)	Nov 25	Northeast Energy Solutions files comments
40	New England Pipeline Proceedings		
	Salem Lateral Project (CP14-522)	Dec 2	Environmental assessment issued; comment date Jan 9, 2015
	Constitution Pipeline (CP13-499) and Wright Project (CP13-502)	Dec 2	Certificates issued

XIV. State Proceedings & Federal Legislative Proceedings

*	41	US Senate Bill To Clarify FERC's Authority to Regulate DR (S. 2947)	Nov 20	U.S. Senator Martin Heinrich (D-N.M.) introduces bill before the Senate Energy and Natural Resources Committee

XV. Federal Courts

*	41	FCA8 Results (ER14-1244 (consol.))	Nov 14	Public Citizen, CT AG file petitions for review
	41	2013/14 Winter Reliability Program and Bid Results (14-1104 (consol.))	Nov 24	Petitioners file Joint Brief
	42	*Orders 773 and 773-A* (2nd Cir., 13-2316)	Nov 20	Oral argument held
*	43	*CPV Maryland, LLC v. PPL EnergyPlus et al.* (Supreme Court, 14-623)	Nov 26	CPV file petition for writ of certiorari; responses due on or before Dec 29

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: December 3, 2014

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission ("FERC"), state regulatory commissions, and the Federal Courts and legislatures through December 3, 2014. If you have questions, please contact us.[1]

I. Complaints

- **NEPGA Peak Energy Rent (PER) Complaint (EL15-25)**

On December 3, 2014, NEPGA filed a complaint requesting that the ISO be directed (i) to increase the daily PER Strike Price by $250/MWh for Capacity Commitment Periods 5 through 8, and (ii) to eliminate the PER Adjustment for FCA9 and beyond, or, alternatively, to continue the $250 per MWh increase in the PER Strike Price for FCA9. The changes proposed in this Complaint were considered but not supported by the Participants Committee at its October 3, 2014 meeting. Comments on, and any responses to, this Complaint are due on or before December 23, 2014. 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).

- **New Entry Pricing Rule Complaint (EL15-23)**

On November 26, 2014, Exelon and Calpine filed a formal complaint requesting (i) fast-track processing and an order by January 23, 2015; (ii) that the FERC find the New Entry Pricing Rule[2] unjust, unreasonable and unduly discriminatory; and (iii) that the FERC remedy the New Entry Pricing Rule's "price suppression on other suppliers and the market ... consistent with the approach taken in PJM." The changes proposed in this Complaint were considered but not supported by the Markets Committee. The changes were also considered by the Participants Committee at its August 1 meeting and were determined without the need for formal action to lack the requisite support of the Committee. Comments on, and any responses, to this Complaint are due on or before December 16, 2014. Thus far, an intervention has been filed by ConEd. 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).

- **NEPGA DR Capacity Complaint (EL15-21)**

On November 14, 2014, NEPGA filed a complaint requesting that (i) Demand Response Capacity Resources (DR) be disqualified from FCA9 and (ii) the Tariff be revised to exclude DR from FCM participation going forward (as a result of *EPSA v. FERC*). Comments on and responses to this Complaint are due on or before December 4. Thus far, interventions have been filed by AEP, Brookfield, Calpine, ConEd, CT PURA, CT DEEP, Dominion, EEI, Emera, EnergyConnect, EPSA, Exelon, FirstEnergy, Genbright,

[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-NE Tariff § III.13.1.1.2.2. The New Entry Pricing Rule permits a new entrant to "lock in" the clearing price from its first Forward Capacity Auction ("FCA") for up to seven years.

Maryland Public Service Commission, and PPL. On November 26, NEPOOL filed comments asking the FERC to reject the NEPGA Complaint without prejudice to a complaint being resubmitted if and as appropriate following consideration of specifically-proposed changes to the Tariff within the Participant Processes. On December 3, NU and UI jointly protested the complaint, requesting that the FERC either dismiss or hold the Complaint in abeyance. If you have any questions concerning these matters, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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.[3] 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.[4]

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 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. On November 19, the ISO answered the protests and comments filed. This matter is pending before the FERC. 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).

[3] *ISO New England Inc.*, 148 FERC ¶ 61,201 (Sep. 16, 2014) ("*September 16 Order*").

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

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

On November 24, the FERC issued an order establishing a trial-type, evidentiary hearing, consolidating this proceeding with EL13-33, and setting a refund effective date of July 31, 2014.[5] The FERC found that the Complaint in this proceeding "raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing ordered … [b]ecause of the existence of common issues of law and fact, we will consolidate this proceeding with the proceeding in Docket No. EL13-33-000 for purposes of hearing and decision." In addition, the FERC indicated that "it is appropriate for the parties to litigate a separate ROE for each refund period."[6] On November 25, trial Judge Sterner issued an order directing the Parties to file joint procedural schedule by December 4 that leads to hearings beginning June 23, 2015 and an initial decision by November 30, 2015.

As previously reported, 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"),[7] 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. 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. 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."[8] 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

[5] *Mass. Att'y Gen. et al. -v- Bangor Hydro et al.*, 149 FERC ¶ 61,156 (Nov. 24, 2014).

[6] *Id.* at P 27 (for the refund period covered by EL13-33 (i.e., Dec. 27, 2012 through Mar. 27, 2014), the ROE for that particular 15-month refund period should be based on the last six months of that period; the refund period in EL14-86 and for the prospective period, on the most recent financial data in the record).

[7] "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").

[8] *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."[9] The FERC-established refund effective date is June 9, 2014.[10] Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island,[11] Dominion, MMWEC, Indicated Generators,[12] 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*.[13] 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[14] and Public Systems[15] requested rehearing of the *October 2 Order* on November 3, 2014. On December 3, 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 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 were due on or before November 25, 2014; none were filed. The second compliance filing is pending before the FERC.

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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[9] *Id.* at P 1.

[10] 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.

[11] "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").

[12] "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").

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

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

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

RM14-2 (*see* Section XIII below).[16] 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.[17]

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. Since the last Report, Northeast Energy Solutions submitted comments supporting the FERC's efforts and urging additional reforms in response to NERC's September 2014 Polar Vortex review. 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,[18] and (ii) accepted changes to the FCM Administrative Pricing Rules in ER14-463 (*see* Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463) below).[19] 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.[20] 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).

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

[17] *Id.* at P 19.

[18] *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.*

[19] *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.*

[20] *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[21] 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.[22] 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),[23] 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[24] 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."[25] 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.[26] 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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[21] *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013), *reh'g requested.*

[22] *Id.* at P 32.

[23] *Id.* at P 30.

[24] *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*.

[25] *Id.* at P 26.

[26] *Id.*

proceeding, the TOs requested that this proceeding be consolidated with the 2014 Base ROE Complaint in EL14-86. In response, Complainants-Intervenors,[27] 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)**

As previously reported, the FERC issued *Opinion 531-A*[28] setting the Transmission Owners' base ROE at 10.57%, with a maximum ROE including incentives not to exceed 11.74%. *Opinion 531-A* affirmed that the 4.39 % projected long-term growth in GDP was 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 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. The FERC granted that request on November 26, 2014, setting the following deadlines: April 30, 2015, for regional refunds; June 30, 2015, for the regional refund report; July 31, 2015, for local refunds; and September 30, 2015, for the local refund report.

As previously reported, the FERC's June 19, 2014 *Opinion 531*,[29] affirmed in part, and reversed in part, Judge Cianci's *Initial Decision*[30] in this proceeding. The August 6, 2013 *Initial Decision* found unjust and unreasonable the 11.14% ROE, and found that the ROE should be 10.6% for the October 2011 through

[27] 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.

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

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

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

December 2012 "locked in/refund period" and 9.7% from January 2013 forward, subject to further updating or modification by the FERC.[31] 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.[32] The TO's requested rehearing and clarification of *Opinion 531-A* on November 17, 2014. That request is pending before the FERC, with FERC action required on or before December 17, 2014, or the request will be deemed denied.

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **ICR-Related Values and HQICCs - 2015/16 ARA3, 2016/17 ARA2, and 2017/18 ARA1 (ER15-555)**

On December 2, 2014, the ISO and NEPOOL jointly filed materials that identify the Installed Capacity Requirement ("ICR"), Local Sourcing Requirements ("LSR"), Maximum Capacity Limits ("MCL") (collectively, the "ICR-Related Values") and Hydro Quebec Interconnection Capability Credits ("HQICCs") for the third annual reconfiguration auction ("ARA") for the 2015/16 Capability Year to be held March 2, 2015, the second ARA for the 2016/17 Capability Year to be held August 3, 2015, and the first ARA for the 2017/18 Capability Year to be held June 1, 2015. The ICR-Related Values and HQICCs were supported by the Participants Committee through the approval of the November 7, 2014 Consent Agenda. A January 31, 2015 effective date was requested. Comments on this filing are due December 23, 2014. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- ***Opinion 531-A* Compliance Filing: TOs (ER15-414)**

On November 17, 2014, the New England TOs submitted tariff changes (to both the regional and local rates in the ISO OATT) in response to *Opinion 531-A*. Specifically, Section II.A.2.(a)(iii) of the Attachment F Implementation Rule was revised to reflect an ROE of 11.07% – the 10.57% base ROE directed by the Commission in *Opinion 531-A* plus the 50 basis point adder for ISO-NE participation. The TOs also revised Section II.A.2.(a)(iii) of the Attachment F Implementation Rule to require the PTOs to calculate their total ROE each year under both regional and local rates and to reduce any ROE incentives included in regional rates to the extent necessary to ensure that the PTOs' total ROE does not exceed 11.74% (the TOs' maximum ROE as identified by the FERC). The TOs also revised a number of provisions of the Attachment F Implementation Rule to include cross-references to Section II.A.2.(a)(iii). An effective date of October 16, 2014, consistent with *Opinion 531-A*, was requested. Comments, if any, on this filing are due on or before December 8, 2014. Thus far, an intervention has been filed by IECG. 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).

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

As previously reported, the ISO submitted its informational filing (the "FCA9 Informational Filing") for qualification in FCA9 on November 4, 2014. 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

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

[32] *Opinion 531* at P 1.

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.

Interventions were filed by NEPOOL, NESCOE, Brookfield, Calpine, CT OCC, CT PURA, Emera, EnerNOC, EPSA, GDF, PSEG, NRG, and NU. Comments on the FCA9 Informational Filing were filed by NEPGA (referring to its Complaint in EL15-21, and noting its concern with the effect of the IMM's mitigation methodology, explained in part in Attachment J to the Informational Filing) and Hawkes Meadow Energy (noting its waiver request in ER15-447). 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).

- **ICR-Related Values and HQICCs - 2018/19 Power Year (ER15-325)**

The ISO filed ICRs, Hydro Quebec Interconnection Capability Credits ("HQICCs") and related Local Sourcing Requirements ("LSR") values for the 2018/19 Capability Year on November 4, 2014. Those values will be used in FCA9 to be held in February 2015. With a 2018/19 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 the 2018/19 Power Year ICR and related values were filed by NEPOOL, NESCOE and CT PURA. Interventions were filed by CT OCC, Emera, EnerNOC, Exelon, GDF, NU, and VT PSB. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **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 remains 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)**

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") also on October 16. 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 remains 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).

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

- **Waiver Request: FCM Qualification and FA Requirements (Hawkes Meadow) (ER15-447)**

On November 19, Hawkes Meadow Energy LLC ("Hawkes Meadow") requested a waiver of the FCM qualification and financial assurance ("FA") requirements in order to permit capacity from the Hawkes Meadow Energy Station that is being developed by Hawkes Meadow to be offered in FCA9. Comments on this waiver request are due on or before December 10, 2014. Thus far doc-less interventions have been filed by the ISO and NEPOOL. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Admin Revisions (ER15-369)**

On November 10, the ISO and NEPOOL jointly filed administrative revisions to the FCM Rules. Specifically, the first set of revisions to be effective on January 30, 2015, will: (1) conform Section III.13.1 with changes to the ISO New England Financial Assurance Policy that were accepted by the FERC in January 2014; (2) clarify the payment rate for existing resources that cleared in FCA7 and FCA8; (3) clarify the rate at which the ISO will participate in the annual reconfiguration auctions associated with FCA7; and (4) clarify instances in which the term "Capacity Clearing Price" is intended to include the rates resulting from administrative pricing rules. The second set of revisions (the "Two-Settlement Revisions"), to be effective on June 1, 2018, correct minor errors in the two-settlement capacity market design Tariff language filed on January 17 and July 14, 2014: (1) the inadvertent application of the Peak Energy Rent mechanism to certain Demand Resources; and (2) the inadvertent exclusion of a resource's Real-Time Reserve Designation in the calculation of its Actual Capacity Provided. A February 2, 2015 effective date was requested. FCM Admin Revisions were unanimously supported by the Participants Committee by way of the October 3 and November 7, 2014 Consent Agendas. Comments on the FCM Admin Revisions were due on or before December 1; none were filed. A doc-less intervention was filed by Exelon. This matter is pending before the FERC. If you have any questions, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the ISO and NEPOOL jointly submitted, on October 31, 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 were due on or before November 21, 2014. Interventions were filed by Dominion, EPSA, Exelon, PSEG, CT AG, CT PURA, NESCOE, NU, and UI. Supporting comments were filed by EnerNOC. NEPGA filed a protest (urging the FERC (i) to reject the filing in its entirety because, pursuant to *EPSA*, PRD Resources are ineligible to provide Operating Reserves or to participate as supply-side resources in the Forward Reserve Market, or (ii) if eligible, to reject the ISO's proposal to compensate PRD for avoided line losses). On December 3, NU answered the NEPGA protest. 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).

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

On November 21, the FERC accepted revisions to the FCM rules jointly submitted by the ISO and NEPOOL on October 27. 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 accepted effective December 26, 2014, as requested. Unless the November 21 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 Termination: 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 were due on or before November 12; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 were due on or before November 12; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 were due on or before November 12; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 were due on or before November 12; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Termination: 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 were due on or before November 12; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, Footprint Power Salem Harbor Development LP ("Footprint") requested on October 7, 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). On November 12, the ISO answered Exelon and Footprint answered PSEG/NRG. On December 3, an intervention out-of-time and comments protesting the Footprint request were filed by "Ratepayer Residents."[33] Footprint responded to Ratepayer Residents comments and opposed their untimely intervention also on December 3. 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)**

On November 14, the FERC accepted revisions to the automated fuel price adjustment provisions in Section III.A.3.4 of Appendix A to Market Rule 1 and a number of clean-up changes (collectively, the "Fuel Price Adjustment Revisions") proposed in connection with 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. The revisions were accepted December 3, 2014, as requested. Unless the November 14 order is challenged, this proceeding will be concluded. If you have any questions, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the ISO and NEPOOL jointly filed, on September 22, 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 remains 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)**

On November 25, the FERC denied GDF SUEZ's request for waiver of the deadline to challenge a portion of an FCA9 Qualification Determination Notification ("QDN").[34] The GDF SUEZ request, which 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), was opposed by the ISO. In denying the request, the FERC found GDF SUEZ's statement concerning its underlying error unpersuasive, stating "Administrative oversight is not a sufficient basis to justify waiving an express deadline."[35] In addition, the FERC found that the requested waiver was not of limited scope, could have broad ramifications, and, if granted, "would result in unduly favorable treatment to" GDF SUEZ.[36] Unless the November 25 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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[33] "Ratepayer Residents" are Jeffrey Brooks, William Dearstyne, Linda Haley, Andrea Maubourquette, each of whom claim to live and/or own property within close proximity to Footprint's Salem Harbor project and to have participated "extensively in the state permitting process".

[34] *GDF SUEZ Energy Marketing NA, Inc.*, 149 FERC ¶ 61,165 (Nov. 25, 2014).

[35] *Id.* at P 11.

[36] *Id.* at P 13.

- **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.[37] 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. On November 13, the FERC issued a tolling order affording it additional time to consider the rehearing request, which remains pending before the FERC. 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").[38] 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.[39] 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.

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). On November 10, the FERC issued a tolling order affording it additional time to consider the NEPGA rehearing request, which remains pending before the FERC.

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).

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

[38] *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*.

[39] 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.

- **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").[40] 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.[41] Requests for rehearing of the *Demand Curve Order* were filed by Exelon/Entergy, MMWEC/NHEC, NextEra, NEPGA, PSEG, and TransCanada (sub-docket -001). 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 (ER14-1639-002). Since the last Report, on November 13, the FERC accepted the ISO's required 60-day compliance filing clarifying how new resources could qualify for the renewables exemption in future auctions. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

Informational Report on Progress Toward Developing Zonal Demand Curves. On December 2, the ISO reported that additional time, beyond the January 2, 2015 submission expected by the FERC, will be needed to "complete the process [to submit zonal demand curve changes] and ensure that certain issues that have been identified by the ISO and its market monitors can be addressed." The ISO noted its continued hope that zonal demand curve changes would be filed with the FERC and implemented prior to FCA-10. These status report will not be noticed for public comment.

- **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 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).

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

[41] *Id.* at P 88.

On May 30, 2014, the FERC issued an order in response to the jump ball filing.[42] 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.[43] 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").[44] 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 it found unjust and unreasonable in the Administrative Pricing Rules Complaint order (*see* EL14-7 in Section I above).[45] 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

[42] *See PI Order.*

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

[44] *Jan 24 Exigent Circumstances Order*.

[45] 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.

direct ISO-NE to submit its proposed demand curve by April 1, 2014, to allow sufficient time for implementation prior to FCA9.[46]

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.[47] 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;[48] unit specific offer review;[49] the ISO's proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports' treatment under MOPR;[50] no exemptions to MOPR for new Self-Supplied Resources;[51] the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;[52] $1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;[53] and a number of other additional revisions.[54] The *FCA8 Revisions Order* rejected: the ISO's proposed methodology for reducing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA (directing the ISO to submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market);[55] and the ISO's request to model only 4 capacity zones for FCA8 (the ISO's Capacity Zones Changes were accepted in *ISO New England Inc.*, 147 FERC ¶ 61,071 (2014)). Two requests for rehearing of the *FCA8 Revisions Order* were filed on March 15, 2013, one by MMWEC, NHEC, APPA, NEPPA, and NRECA; the other, by EMCOS and Danvers. On April 11, NEPGA filed an answer to the MMWEC *et al.* request. On April 15, 2013, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

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

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46 *Id.* at P 30.

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

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

49 *Id.* at P 53.

50 *Id.* at P 70.

51 *Id.* at P 80.

52 *Id.* at P 97.

53 *Id.* at P 126.

54 *Id.* at P 127.

55 *Id.* at PP 63-64.

IV. OATT Amendments / TOAs / Coordination Agreements

- ***Order 676-H* Compliance: Revisions to Schedule 24 (ER15-519)**

On December 1, the ISO submitted a compliance filing requesting (i) renewal of waivers previously granted in response to Order 676, 676-C, 676-E, and 890, (ii) waiver of certain new *Order 676-H*-approved standards, and (iii) acceptance of Schedule 24 Revisions incorporating by reference the North American Energy Standards Board ("NAESB") Wholesale Electric Quadrant ("WEQ") v.003 Standards for which waiver was not requested. A February 2, 2015 effective date was requested. The Schedule 24 revisions were unanimously recommended for Participants Committee approval at a December 1, 2014 special teleconference meeting of the Transmission Committee, and will be considered at the December 5 Participants Committee meeting (agenda item #2A). Comments on this filing are due on or before December 22. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Kristin Sullivan (617-345-4657; kmsullivan@daypitney.com).

- ***Order 676-H* Compliance: PTOs, SSPs, CSC *et al.* (ER15-517)**

Also on December 1, the PTO Administrative Committee ("PTO AC"), on behalf of the Participating Transmission Owners ("PTOs"), the Schedule 20A Service Providers ("SSPs"), Cross-Sound Cable Company, LLC ("CSC"), New England Power Company ("NGrid"), Northeast Utilities Service Company ("NUSCO"), Unitil Energy Systems, Inc., Fitchburg Gas and Electric Light Company, and the ISO (collectively, the "Filing Parties"), jointly submitted a filing to request (continued and new) waiver of, and to adopt, certain Version 003 WEQ Standards adopted NAESB incorporated by reference into FERC regulations pursuant to *Order 676-H*. Waiver requests included those previously granted for Orders 676-C and 676-E, waiver of WEQ-4 (limited in the case of CSC),WEQ-8, WEQ-11, WEQ-15, WEQ-21, the OASIS-related Standards, and various additional waivers under the individual Schedule 21 service schedules. Comments on this filing are due on or before December 22. If you have any comments or concerns, please contact please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Kristin Sullivan (617-345-4657; kmsullivan@daypitney.com).

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

On November 21, the FERC accepted the changes to Schedule 3 of the ISO OATT jointly filed by the ISO and NEPOOL in response to the September 9 order rejecting ISO-NE's Dec 27, 2013 *Order 784* compliance filing.[56] 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*,[57] and (ii) denied the ISO's request to waive *Order 784*'s new Area Control Error ("ACE") data posting requirements.[58] The October 9 compliance filing inserted 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. Unless the November 21 order is challenged, this proceeding will be concluded. 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,

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

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

[58] *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")

NYISO and PJM, filed an Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol ("Amended Protocol") as part of its compliance changes (ER13-1957). The *Order 1000 Interregional Compliance Changes* include (i) revisions to Attachment K to add provisions describing the interregional coordination provisions included in the Amended Protocol, as well as adding other provisions facilitating the consideration of interregional solutions to regional needs; (ii) a new Schedule 15 reflecting the methodology for allocation among ISO-NE and NYISO of the costs of approved interregional transmission projects; (iii) revisions to Schedule 12 describing the regional cost allocation within New England of the costs of approved interregional transmission projects; and (iv) conforming changes to Tariff Section I. The *Order 1000* Interregional Compliance Changes and the Amended Protocol were supported by the Participants Committee at its June 27 Summer Meeting. On August 7, the FERC extended the comment deadline on these filings to and including September 9, 2013. Doc-less motions to intervene were filed by a number of New England parties in both proceedings, including Dominion, Exelon, PPL, PSEG, and NEPOOL (in the Protocol proceeding (in which it was not a filing party)). On August 26, 2013, NEPOOL filed comments supporting the Protocol. NEPOOL added that "From a stakeholder perspective, stakeholder input into revisions to the Protocol as it evolves over time would be easier and more likely to be taken into account if it were made part of the individual regional tariffs of each of the Northeast ISOs rather than existing solely as a stand-alone three-party agreement". On September 9, NESCOE submitted comments generally supporting the filings, but reserving the right to further comment on these filings should the substance of the changes be modified as a result of further FERC (*see* ER13-193 and ER13-196 below) or federal court proceedings. Public Interest Organizations[59] 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[60] (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.

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

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

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); ***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***[61] (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***[62] (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***[63] (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

[61] "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.

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

[63] "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").

VI. Schedule 20/21/22/23 Changes

- ***Opinion 531-A* Compliance Filing: GMP (ER15-412)**

On November 17, 2014, the ISO submitted on behalf of Green Mountain Power ("GMP") changes to Schedule-21 GMP, in response to *Opinion 531-A,* to reflect a 10.57% ROE effective as of October 16, 2014. GMP explained that, although it was not a respondent to the complaint in Docket No. EL11-66, GMP agreed in the recently-accepted Settlement Agreement[64] to accept the ROE approved by the FERC in Docket No. EL11-66 and to provide refunds for the period of October 1, 2012 through December 31, 2012 (which it has also done). Comments, if any, on this filing are due on or before December 8. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NU: Non-Conforming LCRA Cancellations (ER15-332 et al.)[65]**

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[66]). 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 were due on or before November 26; none were filed. These cancellation notices are pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, the ISO and NU, on October 27, 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. On November 16, CPV Towantic protested the filing, requesting that the FERC set two particular provisions of the LGIA Filing for dispute resolution ((i) Operation, Maintenance and Capital Cost Reimbursement charges; and (ii) Option to Build provisions). On December 2, the ISO and NU jointly filed an answer to CPV's protest, urging that the matter be resolved (in their favor) based on the pleadings, and not pursuant to dispute resolution. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On August 4, the ISO, NEPOOL, and the PTO AC ("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*.[67] 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

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

[65] 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.

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

[67] *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).

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).

- **Opinion 531-A Compliance Filing: VEC (ER10-1181)**

On November 14, 2014, Vermont Electric Cooperative ("VEC") submitted revised data and schedules used to calculate its annual transmission revenue requirement for Non-PTF Local Network Transmission Service, Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service for the period of October 16, 2014 through May 31, 2015. FGE reported that the revised rates were calculated, in accordance with *Opinion 531-A*, at the approved ROE of 10.57%. 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).

- **Opinion 531-A Compliance Filing: FGE (ER09-1498)**

On November 17, 2014, Fitchburg Gas & Electric ("FGE") submitted revised data, schedules and refund report to reflect *Opinion 531-A* that required VEC to resettle prior period charges and recalculate current charges produced by its transmission formula rates within Local Service Schedule 21-VEC. 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 were due on or before November 20; none were filed. NU intervened on November 20. 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) or Jennifer Galiette (860-275-0338; jgaliette@daypitney.com).

VIII. Regional Reports

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

As previously reported, 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).

- **IMM Quarterly Markets Reports - 2014 Q3 (ZZ14-4)**

On November 12, 2014, the Internal Market Monitor ("IMM") filed with the FERC its report for the third quarter of 2014 of "market data regularly collected by [it] in the course of carrying out its functions under … Appendix A and analysis of such market data," as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. Highlights from this report were reviewed by the IMM at the November 7, 2014 Participants Committee meeting. These filings are not noticed for public comment by the FERC.

- **ISO-NE FERC Form 3Q (not docketed)**

On November 21, the ISO submitted its 2014/Q3 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

IX. Membership Filings

- **December 2014 Membership Filing (ER15-513)**

On November 26, NEPOOL requested that the FERC accept (1) the memberships of: Athens Energy (Provisional Member); Blue Sky West, Canandaigua Power Partners, and Mass Solar 1 (each Related Persons to First Wind, AR Sector); Hawkes Meadow Energy (Provisional Member); The Moore Company and Moore Energy (End User Sector); Nalcor Energy Marketing (Supplier Sector); SmartEnergy Holdings (Supplier Sector); and TEC Energy; and (2) the termination of the Participant status of TrueLight Commodities. Comments on this filing are due on or before December 21.

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

On December 1, the FEC accepted the memberships of Aesir Power Services (Supplier Sector); Agera Energy (Supplier Sector); Inspire Energy Holdings (Supplier Sector); and TrailStone Power [Generation Sector Group Seat, Related Person to ReEnergy Stratton Energy], each effective November 1, 2014.

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

On November 14, the FERC accepted (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.

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: November 2014 (NP15-8)**

NERC submitted on November 25, 2014 its Find, Fix, Track and Report ("FFT") informational filing for the month of November 2014. The November FFT resolves 24 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 3 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.

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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: PRC-004-3 (RD14-14)**

As previously reported, NERC filed, on September 15, 2014, 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 FERC concerns and directives related to PRC-004 and PRC-003 and create a single Reliability Standard requiring Transmission Owners, Generator Owners, and Distribution Providers to identify and correct causes of Misoperations of certain Protection Systems for Bulk Electric System Elements. NERC requested that the PRC-004 Changes be approved, and the existing PRC-004-2.1a and PRC-003-1 be retired, effective on the first day of the first calendar quarter that is one year after the date of FERC approval. Comments on the PRC-004 Changes were due on or before October 20, 2014; none were filed. The PRC-004 Changes are pending before the FERC.

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

On November 26, the FERC approved an errata filing replacing the language in the effective date section of the most recently-approved INT Reliability Standards with "See implementation plan," which NERC indicated was to ensure the implementation plan contained the correct effective date language. As previously reported, uncontested changes to the underlying five Interchange and Coordination Standards ("INT Changes") were approved by the FERC on June 30, 2014.[69] Unless the November 26 order is challenged, this proceeding will be concluded.

- ***Order 802*: New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15)**

On November 20, 2014, the FERC approved NERC's proposed Physical Security Reliability Standard (CIP-014-1),[70] which NERC reported was 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. As previously reported, 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. CIP-014 will become effective June 1, 2015. In approving CIP-014, the FERC required NERC within six months of the effective date of the Rule,[71] to remove the term "widespread" from the Standard or, alternatively, to propose modifications to the Reliability Standard that address the FERC's concerns. In addition, the FERC directed NERC to submit, by June 1, 2017, an informational filing that addresses whether there is a need for consistent treatment of "High Impact" control centers for cyber security and physical security purposes through the development of Reliability Standards that afford physical protection to all "High Impact" control centers.[72]

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[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*, Order No. 802, 149 FERC ¶ 61,140 (Nov. 20, 2014) ("*Order 802*").

[71] *Order 802* was published in the *Fed. Reg.* on Nov. 25, 2014 (Vol. 79, No. 227) pp. 70,069-70,085.

[72] *Id.* at P 57.

- **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").[73] 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 were due on or before December 1, 2014,[74] and were filed by 7 parties, including by NERC, the ISO/RTO Council, EEI/EPSA, and NRECA. This NOPR is pending before the FERC.

- **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").[75] The MOD-031 Changes are designed to replace, consolidate and improve upon the "existing MOD-C Standards"[76] 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 were due on or before December 1, 2014,[77] and were filed by ISO-NE, NERC, EEI, ITC, Idaho Power, and Pacific Corp. This NOPR is pending before the FERC.

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

On November 20, 2014, the FERC issued a NOPR proposing to approve changes to BAL-001-2 (Real Power Balancing Control Performance) ("BAL-001 Changes") and to require NERC to submit an informational filing that would address the impact of the proposed Reliability Standard on inadvertent interchange and unscheduled power flows.[78] As previously reported, the BAL-001 Changes add a frequency component to the

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

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

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

[76] 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.

[77] 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.

[78] *Real Power Balancing Control Performance Reliability Standard*, 149 FERC ¶ 61,139 (Nov. 20, 2014).

measurement of a Balancing Authority's Area Control Error ("ACE") and allow 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. Comments on this NOPR are due on or before January 26, 2015.[79]

- **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").[80] 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.[81] 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[82] and were filed by NERC, EEI, Idaho Power Company, ITC, and the G&T Cooperatives.[83] 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[84] 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,[85] and were filed by NERC, Bonneville, Duke, MISO, and NAESB. The MOD-001-2 NOPR remains pending before the FERC.

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[79] The *Real Power Balancing Control Performance Reliability Standard* NOPR was published in the *Fed. Reg.* on Nov. 26, 2014 (Vol. 79, No. 228) pp. 70,483-70,488.

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

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

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

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

[84] 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.

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

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

On November 21, 2013, the FERC issued a NOPR[86] 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).[87]

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

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

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

Because the proposed TOP and IRO Reliability Standards were interrelated, and because the proposed revisions to Reliability Standard TOP-006-3 involved similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the FERC addressed all three proposals together in the one NOPR. Although the FERC acknowledged that the proposed TOP and IRO Reliability Standards contain some improvements over the current Standards, concerns

[86] *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*").

[87] 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.

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.[88] 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.[89]

Initially, comments are the *Nov 21 NOPR* were due on or before February 3, 2014.[90] 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.[91] NERC asserted that the proposed interpretation clarifies that BAL-002-1 is intended to be read as an integrated whole and relies in part on information in the Compliance section of the Reliability Standard. Specifically, the proposed interpretation would clarify that: (1) a Disturbance that exceeds the most severe single Contingency, regardless if it is a simultaneous Contingency or non-simultaneous multiple Contingency, would be a reportable event, but would be excluded from compliance evaluation; (2) a pre-acknowledged Reserve Sharing Group would be treated in the same manner as an individual Balancing Authority; however, in a dynamically allocated Reserve Sharing Group, exclusions are only provided on a Balancing Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,[92] 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.

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[88] *Id.* at P 4.

[89] *Id.*

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

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

[92] 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.

- **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 were due on or before November 18, 2014; none were filed. This matter is pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: First Wind / TerraForm & SunEdison (EC15-44)**

On December 2, First Wind and TerraForm/SunEdison requested approval of a transaction whereby TerraForm Power will ultimately own indirectly 100% of the voting securities of each of the First Wind Applicants.[93] The Applicants asked for a FERC order on or before January 12, 2015. Comments on this filing are due on or before December 23, 2014. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, 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). On September 24, PJM's IMM requested that this proceeding be consolidated with EC14-141 (the acquisition of certain Midwest generating assets from Duke Energy), citing common issues of law and fact and the need to evaluate the impact of the combined transactions on PJM markets. Dynegy opposed that request on September 25. That request is pending before the FERC. Comments on the 203 filing, which were due on or before November 10, were submitted by PJM's IMM and by UWUA Local 464. Dynegy responded to the PJM IMM and UWUA Local 464 comments on November 24. Interventions were filed by Public Citizen and MA AG. This matter is pending before the FERC If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, the FERC authorized on October 27, 2014, Calpine Fore River Energy Center, LLC's ("Calpine") acquisition of the Constellation Mystic Power, LLC ("Constellation") Fore River Generating Station and certain associated assets.[94] Calpine and Constellation notified the FERC on November 14 that the disposition of jurisdictional facilities was consummated on November 7, concluding this proceeding. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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[93] "First Wind Applicants" are: Blue Sky East, LLC; Canandaigua Power Partners, LLC; Canandaigua Power Partners II, LLC; Erie Wind, LLC; Evergreen Gen Lead, LLC; Evergreen Wind Power, LLC; Evergreen Wind Power III, LLC; First Wind Energy Marketing, LLC; Longfellow Wind, LLC; Maine GenLead, LLC; Milford Wind Corridor Phase I, LLC; Milford Wind Corridor Phase II, LLC; Niagara Wind Power, LLC; Palouse Wind, LLC; Stetson Holdings, LLC; Stetson Wind II, LLC; and Vermont Wind, LLC.

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

- **203 Application: Wheelabrator / Granite Acquisition (ECP) (EC14-125)**

The FERC authorized on November 25, 2014, the acquisition by Granite Acquisition (an ECP affiliate) of 100% of the ownership interests in Wheelabrator.[95] Wheelabrator 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).

- ***Opinion 531-A* Compliance Filing: NGrid IFA Amendments (ER15-418)**

On November 17, 2014, National Grid submitted an amendment to the formula rates for integrated facilities service ("IFA Amendment") under Schedule III-B of New England Power's ("NEP's") Tariff No. 1. The IFA Amendment modifies the ROE components of the Tariff No. 1 formula rates so that they mirror those recently ordered in *Opinion 531-A*. The proposed IFA amendment also implements *Opinion 531-A*'s ROE cap to ensure that the total ROE does not exceed 11.74%. National Grid reports that the overall effect of the IFA Amendment is a rate decrease of approximately $2.2 million. An October 16, 2014 effective date was requested. Any comments on this filing are due on or before December 8. 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. Since the last Report, FirstEnergy filed on November 14 an answer to the answer filed by PJM and to the other protests and comments

[95] *Wheelabrator Technologies Inc. on behalf of its Pub. Util. Subsidiaries*, 149 FERC ¶ 62,127 (Nov. 25, 2014).

submitted in response to FirstEnergy's Complaint and Amended Complaint. Environmental Advocates[96] filed an answer to FristEnergy's answer on November 21. This matter is pending before the FERC. 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 on the notice of cancellation were due on or before November 18; 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).

- **SGIAs – PSNH/QFs (ER15-65)**

On November 21, the FERC accepted eight (8) interconnection agreements filed by NU, each one between PSNH and a Qualifying Facility ("QF").[97] NU reported that the interconnection agreements became subject to the FERC's jurisdiction because the QFs now sell their power into the New England Markets and thus filed each as a PSNH rate schedule.[98] The SGIAs were accepted effective December 8, 2014, as requested. Unless the November 21 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).

- **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",99 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.

[96] "Environmental Advocates" are Sustainable FERC Project, Natural Resources Defense Council ("NRDC"), Sierra Club, Environmental Defense Fund, Environmental Law and Policy Center, and Acadia Center (f/k/a Environment Northeast).

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

[98] 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.

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

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. Briefs opposing exceptions were filed by the FERC Trial Staff, MISO TOs, NYISO, NY TOs, PJM, and the PJM TOs. On February 25, Joint Applicants moved to strike a portion of the PJM Brief Opposing Exceptions. On March 12, PJM answered Joint Applicants February 25 motion. 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).

- **FERC Enforcement Actions: WAPA-DSW (IN14-9); CAISO (IN14-10)**

Since the last Report, the FERC approved the fourth and fifth settlements related to the joint FERC-NERC investigation into the September 8, 2011 Southwest Blackout. As previously reported, 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. On November 24, 2014, the FERC approved a Stipulation and Consent Agreement between NERC, OE and Western Area Power Administration – Desert Southwest Region ("WAPA-DSW") that, without specific civil monetary penalty, requires WAPA-DSW to commit to mitigation and compliance measures necessary to mitigate the violations described in the Agreement, and to make semi-annual compliance reports to OE and NERC for at least one year. It is worth noting that WAPA-DSW's significant efforts to address reliability concerns identified in the inquiry and investigation and also by WAPA-DSW on its own initiative appear to have contributed to the sanctions imposed. On November 28, 2014, the FERC approved an agreement with the California ISO ("CAISO") that levied a ***$2 million civil penalty,*** $2 million to be split equally and paid to NERC and the US Treasury, and $4 million to be invested in reliability enhancement measures that go above and beyond mitigation of the violations and the requirements of NERC's Reliability Standards. Neither WAPA-DSW not CAISO admitted or denied that their 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")[100] 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.

[100] 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).

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

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

Recall that Notices of Alleged Violations ("NoVs") are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff's conclusions regarding the subject's conduct.[101] 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.

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:

  - use of uplift payments;
  - offer price mitigation and offer price caps;
  - scarcity and shortage pricing; and

[101] *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).

- 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).

Dec 9 Workshop. The third and final workshop will be held on December 9. The December 9 workshop will focus on RTO/ISO operator actions that affect price. A supplemental notice and agenda for the workshop was posted on November 20. New England speakers on the agenda include, among others, Joel Gordon, Tom Kaslow, David Patton, Pete Brandein, and Matt White. 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 2013/14 Operations and Market Performance (AD14-8)**

On November 20, the FERC issued an order directing RTOs/ISOs to file reports on or before February 18, 2015, on the status of their efforts to address fuel assurance issues.[102] While the FERC noted that it "could take action to impose solutions, and may need to in the future if the steps RTOs/ISOs have taken or plan to take prove inadequate, [it found] that the appropriate next step is for each RTO/ISO to provide the [FERC] with additional information to explain how its market rules address fuel assurance challenges."[103]

As previously reported, the FERC held a "Polar Vortex" technical conference, on April 1, 2014, to explore the impacts of and actions taken to respond to recent cold weather events by RTO/ISOs. Discussion focused on: the impact of cold weather events on operational planning and real-time operations, market prices and performance, and regional infrastructure; the actions taken in response to those impacts; gas procurement; and lessons learned that can be shared between regions and applied in future events. ISO-NE's materials were circulated to the Committee on April 1, and are posted with the composite materials for the April 4 meeting. Speaker materials are posted in the FERC's eLibrary as well as at: http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=7272&CalType=&CalendarID=116&Date=&View=Listview. Post-conference comments 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.

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[102] *Winter 2013-2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators*, 149 FERC ¶ 61,145 (Nov. 20, 2014). The FERC explained that "fuel assurance" describes "the broad set of issues that have emerged in the RTOs/ISOs with respect to generator access to sufficient fuel supplies and the firmness of generator fuel arrangements. Fuel assurance is a broad concept that includes a range of generator-specific and system-wide issues, including the overall ability of an RTO's/ISO's portfolio of resources to access sufficient fuel to meet system needs and maintain reliability." Fuel assurance may also "encompass impacts on fuel availability of any industry in the supply chain, including contingencies and other risks stemming from those industries."

[103] *Id.* at P 19.

- **Enforcement Annual Report (AD07-13-008)**

On November 20, 2014, the FERC issued its Annual Enforcement Report. The report provides additional transparency and guidance for regulated entities and the public. Highlights include summaries of activities undertaken by the Office of Enforcement's investigations, audits and accounting, market oversight, and analytics and surveillance divisions. In 2015, the Office Enforcement will continue to target fraud and manipulation, serious violations of mandatory Reliability Standards, anticompetitive conduct, and conduct that threatens the transparency of regulated markets. The Report is available at http://ferc.gov/enforcement/enforce-res.asp.

- **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.[104] In addition, the FERC clarified certain standards for obtaining and retaining MBR authority. Among other changes, the FERC proposes (i) to permit sellers in RTO/ISO markets with Commission-approved market monitoring and mitigation to include a statement that they are relying on such mitigation to address any potential horizontal market power concerns in lieu of submitting the indicative screens; (ii) to permit sellers to explain that their qualified capacity is fully committed in lieu of including indicative screens in their filings in order to satisfy the FERC's horizontal market power tests and to submit a change in status filing when there is a net increase of 100 MW or more; (iii) to relieve sellers of their obligation to file quarterly land acquisition reports and of the obligation to provide information on sites for generation capacity development in market-based rate applications and triennial updated market power analyses; (iv) to require a change in status filing if there is a 100 MW increase in cumulative nameplate capacity added in any relevant geographic market; and (v) require corporate org charts with all MBR applications and notices of change in status. Comments on this NOPR were due September 23, 2014,[105] 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"),[106] 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.[107] 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 NOPR is pending before the FERC.

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[104] *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*").

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

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

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

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

On June 26, 2013, WIRES[108] petitioned the FERC to institute an expedited generic proceeding and to provide such policy and clarifications as necessary to provide "greater stability and predictability regarding regulated rates of return on equity for existing and future investments in high voltage electric transmission infrastructure." Specifically, WIRES recommended a new policy that (1) standardizes selection of proxy groups; (2) denies complainants a hearing on rates of return for existing facilities unless it is shown that existing returns are at the extremes of the zone of reasonableness; (3) allows consideration of competing infrastructure investments of other industries; (4) permits use of other rate of return methodologies; and (5) supports use of more forward-looking data and modeling. In addition, WIRES urged the FERC to support consideration of a project's actual and anticipated benefits when a complaint is filed against the ROE for an existing project. Although the WIRES petition has not been noticed for public comments, more than 16 sets of comments have been filed. On October 3, 2013, WIRES submitted a summary of the comments and analysis filed to that point in the proceeding. On October 16, the Organization of PJM States noted its position that the WIRES petition did not present a compelling reason for the FERC to initiate a generic rulemaking proceeding or abandon its Discounted Cash Flow methodology. On November 5, 2013, a letter from US Senator Angus King, urging the FERC to establish a more certain regulatory environment that provide investors the level of confidence necessary to support and encourage needed infrastructure investments, was posted in eLibrary. This matter is pending before the FERC.

- ***Order 771*: Availability of e-Tag Information to FERC Staff (RM11-12)**

Rehearing of portions of *Order 771* has been requested and remains pending. As previously reported, *Order 771*,[109] 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.[110] 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*.[111] *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*.[112] The FERC noted that it would issue an additional

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[108] 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.

[109] *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).

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

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

[112] *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

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*,[113] which proposes to amend FERC regulations by incorporating by reference, with certain enumerated exceptions, ***Version 003*** of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB"). The Version 003 Standards update earlier versions of these standards previously incorporated by reference into FERC regulations at 18 CFR 38.2. The Version 003 standards include modifications to support Order Nos. 890, 890-A, 890-B and 890-C, including the standards to support Network Integration Transmission Service on an Open Access Same-Time Information System ("OASIS"), Service Across Multiple Transmission Systems ("SAMTS"), standards to support FERC policy regarding rollover rights for redirects on a firm basis, standards that incorporate the functionality for transmission providers to credit redirect requests with the capacity of the parent reservation and standards modifications to support consistency across the OASIS-related standards. The Version 003 Standards also include modifications to the OASIS-related standards that NAESB states support *Order Nos. 676*, *676-A*, *676-E* and *717* and add consistency. In addition, there are modifications to the Coordinate Interchange standards to compliment recent updates to e-Tag specifications, modifications to the Gas/Electric Coordination standards to provide consistency between the two markets, and re-organized and revised definitions to create a standard set of terms, definitions and acronyms applicable to all NAESB WEQ standards. The Version 003 Standards include the Standards addressed in *Order 676-G* and the recent Smart Grid Standards. Order 676-H will become effective October 24, 2014.[114] Requests for rehearing of Order *676-H* were filed by EPSA and the NYISO on October 20, 2014. On November 19, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), 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. There was no published activity in this proceeding since the last Report.

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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.

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

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

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

On March 20, 2014, the FERC issued a series of orders addressing gas-electric coordination. At the forefront, was this NOPR, in which the FERC proposes to revise its natural gas act regulations in order to better coordinate the scheduling of natural gas and electricity markets and to provide additional flexibility to natural gas shippers.[115] Specifically, the NOPR proposes to: (i) start the Gas Day earlier, at 4:00 a.m. Central Clock Time ("CCT")[116] rather than 9:00 a.m., in order to ensure that gas-fired generators are not running short on gas supplies during the morning electric ramp periods; (ii) institute a later start to the first day-ahead gas nomination opportunity (called the Timely Nomination Cycle), from 11:30 a.m. to 1 p.m. The FERC said that because the Timely Nomination Cycle is the most liquid of the gas nomination cycles, this change will allow electric utilities to finalize their scheduling before gas-fired generators must make gas purchase arrangements and submit nomination requests for natural gas transportation service to the pipelines; and (iii) modify the current intraday nomination timeline to provide 4 (rather than 2) intraday nomination cycles in order to provide greater flexibility to all pipeline shippers. The NOPR adds an early morning nomination cycle with a mid-day effective flow time and a new late-afternoon nomination cycle during which firm nominations would have precedence over or be permitted to bump already scheduled interruptible service. Ultimately, the standard cycles will be 8:00 a.m. CCT (bump), 10:30 a.m. CCT (bump), 4:00 p.m. CCT (bump) and 7:00 p.m. CCT (no-bump).

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

Noting that the natural gas and electricity industries are best positioned to work out the details of how changes in scheduling practices can most efficiently be made and implemented, consistent with the policies discussed in the NOPR, the FERC provided the industries 6 months to reach consensus on standards, consistent with FERC's guidance in the NOPR, including any revisions or modifications to the proposals provided herein. Comments were due November 28, 2014.[117] 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 were due on or before November 28, 2014 and were filed by over 80 parties, including, among others, by ISO-NE, the ISO/RTO Council, NESCOE, Calpine, Direct, Dominion, EEI, EPSA, Essential Power, Exelon, and the New England LDCs. This matter is pending before the FERC.

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

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

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

- **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.[118] 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.[119] The FERC also requested that NAESB develop business practice and communication standards specifying: (1) the information required for requests to acquire capacity; (2) the methods by which such information is to be exchanged; and (3) the location of the information on a pipeline's website. Each pipeline must explain in its compliance filing how it will fully comply with 18 CFR § 284.8(d) until NAESB develops, and the FERC implements, the requested standards, including how the pipeline will provide shippers the ability to post offers to purchase capacity on the Informational Posting section of its website.[120] Since the last Report, comments were filed by Northeast Energy Solutions.

- **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. BP Corp. N. Amer. BP Amer. Production BP Energy Co. (together, "BP") (IN13-15)	The FERC established a hearing to determine whether BP violated section 4A of the Natural Gas Act and the FERC's Anti-Manipulation Rule as alleged by OE Staff. OE Staff alleged that BP traded physical natural gas at Houston Ship Channel ("HSC") to increase the value of BP's financial position at HSC, uneconomically using BP's transportation capacity, making repeated early uneconomic sales at HSC, taking steps to increase BP's market concentration at HSC. In doing so, OE staff alleged, BP suppressed the HSC Gas Daily index with the goal of increasing the value of BP's	Show Cause Order[121] $28 million (civil penalty) $800,000 (disgorgement)

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

[119] *Id.* at P 6.

[120] *Id.*

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

financial position at HSC. The activity occurred
from mid-September 2008 through November 2008.

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).
  - Final EIS scheduled for issuance on Dec 19, 2014.
  - Authorization Requested by Jan 1, 2015.
  - Construction to begin Mar 2015 (anticipated).
  - In-service: Nov 2016 (anticipated).

- ***Connecticut Expansion Project (CP14-529)***
  - Tennessee Gas Pipeline filed for Section 7(c) certificate July 31, 2014
  - 72,100 dekatherms/day of firm capacity.
  - 13.26 miles of three looping segments and facility upgrades/modifications in NY, MA and CT.
  - Three firm shippers: Connecticut Natural Gas, Southern Connecticut Gas, and Yankee Gas.
  - Authorization requested by July 31, 2015.
  - Construction expected to begin Winter 2015/2016.
  - In-service: Nov 2016 (anticipated).

- ***Constitution Pipeline (CP13-499) and Wright Interconnection Project (CP13-502)***
  - Constitution Pipeline Company and Iroquois Gas Transmission (Wright Interconnection) concurrently filed for Section 7(c) certificates on June 13, 2013.
  - 650,000 dekatherms/day of firm capacity from Susquehanna County, PA through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
  - New 122-mile interstate pipeline.
  - Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
  - Final EIS completed on Oct 24, 2014
  - Certificates granted Dec 2, 2014 (must be constructed and in service within 24 months);
  - Construction expected to begin Feb 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 issued Dec 2, 2014.
- In-Service: Nov 2015 (anticipated).

XIV. State Proceedings & Federal Legislative Proceedings

- **US Senate Bill To Clarify FERC's Authority to Regulate DR (S. 2947)**

On November 20, U.S. Senator Martin Heinrich (D-N.M.), a member of the Senate Energy and Natural Resources Committee, introduced a bill (S. 2947) to clarify FERC's authority to "prescribe just, reasonable, and not unduly discriminatory or preferential rates, terms, conditions, and compensation applicable to wholesale demand response resource participation in organized wholesale energy, capacity, and ancillary service markets." The bill is pending before the Senate Energy and Natural Resources Committee.

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).

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
  Underlying FERC Proceedings: ER14-1409[122]
  Appellants: Public Citizen and CT AG

On November 14, 2014, Public Citizen and the CT AG filed petitions for review of the FERC's action on the FCA8 Results Filing, which became effective by operation of law on September 16, 2014. These proceedings have been consolidated. A Docketing Statement Form and Statement of Issues to be Raised must be filed by Petitioners by December 22, 2014.

- ***2013/14* Winter *Reliability Program* (14-1104, 14-1105, 14-1103 (consolidated))**
  Underlying FERC Proceedings: ER13-1851[123] **and ER13-2266**[124]
  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. A Joint Brief for Petitioners was filed on November 24 (as corrected on December 1); Respondent Brief is due next, on 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.

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[122] Notice of Filing Taking Effect by Operation of Law, *ISO New England Inc.*, Docket No. ER14-1409 (Sep. 16, 2014); Notice of Dismissal of Pleadings, *ISO New England Inc.*, Docket No. ER14-1409 (Oct. 24, 2014).

[123] 144 FERC ¶ 61,204 (Sep. 16, 2013); 147 FERC ¶ 61,026 (Apr. 8, 2014).

[124] 145 FERC ¶ 61,023 (Oct. 7, 2013); 147 FERC ¶ 61,027 (Apr. 8, 2014).

- ***Orders 773* and *773-A* (2nd Cir., 13-2316)**
  Underlying FERC Proceedings: RM12-6 and RM12-7[125]
  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 were 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 was held on November 20, 2014.

- **New England's Order *745* Compliance Filing (12-1306)**
  Underlying FERC Proceedings: ER11-4336[126]
  Appellants: EPSA and NEPGA

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

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093)**
  Underlying FERC Proceedings: RM10-17-000[127]
  Appellants: EPSA, CAISO, ODEC, EEI, CA PUC

As previously reported, the DC Circuit vacated *Order 745*[128] 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.

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[125] 141 FERC ¶ 61,236 (Dec. 20, 2012); 143 FERC ¶ 61,053 (Apr. 18, 2013).

[126] 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

[127] 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

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

On September 22, the FERC and a group of intervenors[129] 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.

- **CPV Maryland, LLC v. PPL EnergyPlus et al. (Supreme Court, 14-623)**

A petition for a writ of certiorari in this case was filed on November 26, 2014 and placed on the Supreme Court's docket on November 28, 2014 as No. 14-623. Responses are due on or before December 29, 2014.

As previously reported, 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[130] 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.[131] In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field[132] and conflict pre-empted.[133]

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."[134] 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"),[135] and leaving "no room either for direct state regulation of the prices of interstate

[129] 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.

[130] *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.

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

[132] "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.

[133] "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."

[134] Slip op. at p. 14.

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

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."[136] The MD PSC Order "compromises the integrity of the federal scheme and intrudes on FERC's jurisdiction" because the MD PSC Order "effectively supplants the rate generated by the auction with an alternative rate preferred by the state." The 4th Circuit rejected arguments that the CfD payments "represented a separate supply-side subsidy implemented entirely outside the federal market."[137] 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."[138]

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".[139] 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."[140] "Maryland's initiative disrupts [the PJM scheme] by substituting the state's preferred incentive structure for that approved by FERC."[141] "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."[142]

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*.

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

On September 11, 2014, the 3rd Circuit Court of Appeals affirmed[143] 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").[144] 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.[145]

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

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

[138] *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.

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

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

[141] *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.")

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

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

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

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

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.

INDEX
Status Report of Current Regulatory and Legal Proceedings as of December 3, 2014

I. Complaints

206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 .... (EL14-23) 4
206 Investigation: FCM Performance Incentives (Compliance Proceeding) .... (EL14-52; ER14-2419) 3
206 Proceeding: Importers' FCA Offers Review/Mitigation .... (EL14-99; ER15-117) 2
Base ROE Complaint (2011) .... (EL11-66) 7
Base ROE Complaint (2012) .... (EL13-33) 6
Base ROE Complaint (2014) .... (EL14-86) 3
FCM Administrative Pricing Rules Complaint .... (EL14-7) 5
LVA/PSNH IA Complaint .... (EL15-9) 30
NEPGA DR Capacity Complaint .... (EL15-21) 1
NEPGA Peak Energy Rent (PER) Complaint .... (EL15-25) 1
NESCOE FCM Renewables Exemption Complaint .... (EL13-34) 6
New Entry Pricing Rule Complaint .... (EL15-23) 1

II. Rate, ICR, FCA, Cost Recovery Filings

2015 ISO-NE Administrative Costs and Capital Budgets .... (ER14-112) 9
2015 NESCOE Budget .... (ER15-113) 9
Base ROE Complaint (2011) .... (EL11-66) 7
Base ROE Complaint (2012) .... (EL13-33) 6
Base ROE Complaint (2014) .... (EL14-86) 3
FCA9 Qualification Informational Filing .... (ER15-328) 8
ICR-Related Values and HQICCs - 2018/19 Power Year .... (ER15-325) 9
ICR-Related Values and HQICCs - 2015/16 ARA3, 2016/17 ARA2, and 2017/18 ARA1 .... (ER15-555) 8
Opinion 531-A Compliance Filing: TOs .... (ER15-414) 8

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

206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 .... (EL14-23) 4
206 Investigation: FCM Performance Incentives (Compliance Proceeding) .... (EL14-52; ER14-2419) 3
206 Proceeding: Importers' FCA Offers Review/Mitigation .... (EL14-99; ER15-117) 2
CSO Deferral: ISO Proposal .... (ER14-2440) 14
CSO Deferral Request: Footprint Power Salem Harbor .... (ER15-60) 12
CSO Termination: Brookfield White Plain Hydro .... (ER15-150) 11
CSO Terminations: Constellation New Energy .... (ER15-149) 12
CSO Terminations: Direct Energy Business .... (ER15-148) 12
CSO Terminations: Enerwise Global Technologies .... (ER15-147) 12
CSO Termination: Plainfield Renewable Energy .... (ER15-146) 12
Demand Curve Changes .... (ER14-1639) 10
Exigent Circumstances Filing – FCM Admin. Pricing Rules .... (ER14-463) 16
FCM Admin Revisions .... (ER15-369) 11
FCM Administrative Clarifications .... (ER15-195) 11
FCM Administrative Pricing Rules Complaint .... (EL14-7) 5
FCM Performance Incentives Jump Ball Filing .... (ER14-1050) 15
FCM PI Jump Ball Compliance Filing I .... (ER14-2419-001) 3
FCM PI Jump Ball Compliance Filing II .... (ER14-2419-002) 3
FCM Redesign Compliance Filing: FCA8 Revisions .... (ER12-953 et al.) 17
Fuel Price Adjustment Revisions .... (ER14-2929) 13
ISO Response to Show Cause Order .... (ER15-117) 2
NEPGA DR Capacity Complaint .... (EL15-21) 1
NEPGA Peak Energy Rent (PER) Complaint .... (EL15-25) 1
NESCOE FCM Renewables Exemption Complaint .... (EL13-34) 6
New Entry Pricing Rule Complaint .... (EL15-23) 1

PRD Reserve Market Changes .... (ER15-257) 11
Regulation Market Dispatch Changes .... (ER14-2918) 12
Waiver Request: QDN Challenge Deadlines (GDF SUEZ) .... (ER14-2886) 13
Waiver Request: FCM Qualification and FA Requirements (Hawkes Meadow) .... (ER15-447) 10
Winter 2014/15 Reliability Program .... (ER14-2407) 14

IV. OATT Amendments/Coordination Agreements

Order 676-H Compliance: PTOs, SSPs, CSC et al. .... (ER15-517) 18
Order 676-H Compliance: Revisions to Schedule 24 .... (ER15-519) 18
Order 784 Additional Compliance Filing .... (ER15-64) 18
Order 1000 Compliance Filing .... (ER13-193; ER13-196) 19
Order 1000 Interregional Requirements Compliance Filing .... (ER13-1960; ER13-1957) 18
Order 1000 November 15 Compliance Order Changes .... (ER13-193; ER13-196) 19

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Updates

LGIA – NU/CPV Towantic .... (ER15-200) 21
Opinion 531-A Compliance Filing: FGE .... (ER09-1498) 22
Opinion 531-A Compliance Filing: VEC .... (ER10-1181) 22
Order 792 Compliance Filing .... (ER14-2583) 21
Schedule 21-NU: Non-Conforming LCRA Cancellations .... (ER15-332 et al.) 21

VII. NEPOOL Agreement/Participants Agreement Amendments

126th Agreement: Common Provisional Member Group Seat .... (ER15-238) 22

VIII. Regional Reports

Capital Projects Report - 2014 Q3 .... (ER15-115) 22
IMM Quarterly Markets Reports - 2014 Q3 .... (ZZ14-4) 23
ISO-NE FERC Form 3Q .... (not docketed) 23

IX. Membership Filings

December 2014 Membership Filing .... (ER15-513) 23
November 2014 Membership Filing .... (ER15-278) 23
October 2014 Membership Filing .... (ER14-2980) 23

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

FFT Report: November 2014 .... (NP15-8) 23
NOPR: BAL-002-1a Interpretation Remand .... (RM13-6) 28
NOPR: Revised Rel. Standard: BAL-001-2 .... (RM14-10) 25
NOPR: Revised Rel. Standard: COM-001-2 and COM-002-4 .... (RM14-13) 25
NOPR: Revised Rel. Standard: MOD-001-2 .... (RM14-7) 26
NOPR: Revised Rel. Standard: MOD-031-1 .... (RM14-12) 25
NOPR: Revised Rel. Standard: PRC-005-3 .... (RM14-8) 26
NOPR: Revised TOP and IRO Reliability Standards .... (RM13-15, -14, -12) 27
Order 802: New Reliability Standard: CIP-014-1 (Physical Security) .... (RM14-15) 24
Revised NPCC Regional Reliability Standards Development Procedure .... (RR14-7) 29
Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-11-1 . (RD14-4) 24
Revised Reliability Standard: PRC-004-3 .... (RD14-14) 24

XI. Misc. Regional Interest

203 Application: Calpine/Constellation (Fore River) .... (EC14-135) 29
203 Application: EquiPower/Dynegy .... (EC14-140) 29
203 Application: First Wind / TerraForm & SunEdison .... (EC15-44) 29
203 Application: Wheelabrator / Granite Acquisition (ECP) .... (EC14-125) 30
E&P Agreements: Blue Sky West & CMP .... (ER14-2743; ER14-2744) 31
FERC Enforcement Action Pending: Staff Notice of Alleged Violations – City Power and K. Tsingas 32
FERC Enforcement Action Pending: Staff Notice of Alleged Violations – Maxim Power (New England) 32
FERC Enforcement Action Pending: Staff Notice of Alleged Violations – Powhatan Energy, HEEP Fund, CU Fund, and H. Chen 32
FERC Enforcement Actions: WAPA-DSW and CAISO .... (IN14-9); (IN14-10) 32
FirstEnergy PJM DR Complaint .... (EL14-55) 30
IA - NEP: NEP/Centennial Island Hydro Cancellation .... (ER15-210) 31
LVA/PSNH IA Complaint .... (EL15-9) 30
MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area .. (ER11-1844) 31
Opinion 531-A Compliance Filing: NGrid IFA Amendments .... (ER15-418) 30
SGIAs – PSNH/QFs .... (ER15-65) 31

XII. Misc: Administrative & Rulemaking Proceedings

Enforcement Annual Report .... (AD07-13-008) 35
NOPR: MBR Authorization Refinements .... (RM14-14) 35
NOPR: Open Access and Priority Rights on ICIF .... (RM14-11) 35
Order 676-H: Incorporation of WEQ Version 003 Standards .... (RM05-5) 37
Order 771: Availability of E-Tag Information to FERC Staff .... (RM11-12) 36
Price Formation in RTO/ISO Energy & Ancillary Services Markets .... (AD14-14) 33
RTO/ISO Common Metrics Report .... (AD14-15) 33
RTO/ISO Winter 2013/14 Operations and Market Performance .... (AD14-8) 34
WIRES Request for Policy Statement on ROE for Electric Transmission .... (RM13-18) 36

XIII. Natural Gas Proceedings

206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 .... (EL14-23) 4
Enforcement Actions: BP .... (IN13-15) 39
Inquiry Into Natural Gas Trading, and Proposal to Establish an Electronic Information and Trading Platform .... (AD14-19) 37
New England Pipeline Proceedings 40
NOI: Enhanced Natural Gas Market Transparency .... (RM13-1) 39
NOPR: Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities .... (RM14-2) 38
Posting of Offers to Purchase Capacity (Section 5 Proceeding) .... (RP14-442) 39

XIV. State Proceedings & Federal Legislative Proceedings

US Senate Bill To Clarify FERC's Authority to Regulate DR .... (S. 2947) 41

XV. Federal Courts

2013/14 Winter Reliability Program and Bid Results .... 14-1104 (DC Cir.) 41
CPV Maryland, LLC v. PPL EnergyPlus et al. .... 14-623 (Supreme Court) 43
FCA8 Results .... 14-1244 (DC Cir.) 41
New England's *Order 745* Compliance Filing .... 12-1306 (DC Cir.) 42
Orders 745/745-A .... 11-1486 (DC Cir.) 42
Orders 773/773-A .... 13-2316 (2nd Cir.) 42
PPL EnergyPlus, LLC v. Solomon .... 13-4330 (3d Cir.) 44