

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of February 5, 2015

The following activity, as more fully described in the attached litigation report, has occurred since the report dated January 7, 2015 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)	Jan 16 Jan 30	NEPOOL responds to NEPGA's Jan 7 answer FERC denies Complaint
2	New Entry Pricing Rule Complaint (EL15-23)	Jan 30	FERC denies Complaint
3	206 Proceeding: Importers' FCA Offers Review/Mitigation (EL14-99; ER15-117)	Jan 14 Jan 26	Public Citizen requests rehearing of Dec 15 order; ISO submits 30-day compliance filing NEPGA answers Public Citizen request for rehearing
4	Base ROE Complaints (2012 & 2014) Consolidated (EL14-86 & EL13-33)	Jan 23 Feb 2 Feb 5	FERC issues tolling order affording it additional time to consider TOs' request for rehearing of Nov 24 order in EL14-86 TOs submit testimony and exhibits Judge Sterner issues an order setting the updated data cutoff date at May 26, 2015
5	206 Investigation: FCM PI Compliance Proceedings (EL14-52; ER14-2419)	Jan 15	FERC accepts ISO compliance filing revising Market Rule 1 § 13.7 to strike language rejected by the <i>Oct 2 Order</i>
7	FCM Administrative Pricing Rules Complaint (EL14-7)	Jan 30	FERC denies NEPGA request for rehearing and/or clarification of Jan 24, 2014 <i>FCM Admin Pricing Rules Order</i>
II. Rate, ICR, FCA, Cost Recovery Filings			
9	FCA9 New Import Capacity Resources Qualification Informational Filing (ER15-640)	Jan 13	FERC accepts informational filing
9	ICR-Related Values and HQICCs - 2015/16 ARA3, 2016/17 ARA2, 2017/18 ARA1 (ER15-555)	Jan 27	FERC accepts values
9	Opinion 531-A Compliance Filing: TOs (ER15-414)	Jan 13	Complainant-Aligned Parties ("CAPs") answer TOs' Dec 23 answer
9	FCA9 Qualification Informational Filing (ER15-328)	Jan 16	FERC accepts FCA9 Informational Filing and grants ISO-NE's request to qualify an add'l 5 MW of new capacity for FCA9
10	ICR, HQICCs and Related Values - 2018/19 Power Year (ER15-325)	Jan 30	NEPOOL requests clarification of Jan 2 order
III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests			
10	ORTP Exemption for Distributed Renewable Technology Resources (ER15-716)	Jan 8-13 Jan 13 Jan 28 Feb 4	Entergy, EPSA, NESCOE, NRG, NU intervene NEPGA submits comments ISO answers NEPGA's Jan 13 comments NEPGA answers ISO's Jan 28 comments
11	Information Policy Clean-Up Changes (ER15-600)	Jan 9 Jan 28	ISO and NEPOOL jointly file 2nd set of corrections to Dec 8 filing FERC accepts changes

11	PRD Reserve Market Changes (ER15-257)	Jan 9	FERC accepts changes, effective Jan 12, 2015 and Jun 1, 2017 as requested
11	CSO Deferral: ISO Proposal (ER14-2440)	Jan 14	Footprint notifies FERC that it closed on the financing nec. to proceed with construction of the new Salem Harbor Facility
11	Winter 2014/15 Reliability Program (ER14-2407)	Jan 20	FERC grants clarification of Sep 9 order requested by NEPGA that if a winter reliability solution for winter 2015/16 and beyond is necessary, it must be a market-based solution developed through the stakeholder process and implementable beginning with winter 2015/16
12	Demand Curve Changes (ER14-1639)	Jan 30	FERC denies rehearing, but grants clarification requested by Exelon/Entergy, of May 30 <i>Demand Curve Order</i>
13	Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463)	Jan 30	FERC denies NEPGA’s request for rehearing of the <i>Jan 24 Exigent Circumstances Order</i>

IV. OATT Amendments / TOAs / Coordination Agreements

No Activity to Report

V. Financial Assurance/Billing Policy Amendments

17	FAP Minimum Capitalization Requirement Changes (ER15-593)	Jan 29	FERC accepts changes, effective Feb 5, 2015
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VI. Schedule 20/21/22/23 Changes

18	LGIA – NU/CPV Towantic (ER15-200)	Jan 8 Feb 3 Feb 5	1st settlement conference held Settle Judge Coffman issues report recommending that settlement proceedings continue 2nd settlement conference held; Chief Judge issues order continuing settlement proceedings
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VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 19	LFTR Implementation: 25 th Quarterly Status Report (ER07-476)	Jan 15	ISO files its 25th quarterly report
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IX. Membership Filings

* 19	February 2015 Membership Filing (ER15-937)	Jan 30	Termination of the Participant status of Dominion Retail, Hess, the Cianbro Companies, the PalletOne Companies, and the Hannaford Companies; comment date Feb 20
19	December 2014 Membership Filing (ER15-513)	Jan 8	FERC accepts (1) 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
* 20	Suspension Notices (not docketed)	Jan 12 Jan 21	Pacific Summit Energy (suspended Jan 5; reinstated Jan 12) Cape Wind (suspended Jan 20)

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

20	FFT Report: Jan 2015 (NP15-19)	Jan 30	NERC files report
20	Revised Reliability Standard: PRC-006-2 (RD15-2)	Jan 12	Dominion intervenes

* 21	New Reliability Standard: TPL-007-1 (RM15-11)	Jan 21	FERC files TPL-007-1 for approval
22	<i>Order 802</i> : New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15)	Jan 21	FERC issues tolling order affording it additional time to consider Foundation for Resilient Societies request for rehearing of <i>Order 802</i>
23	NOPR: Revised Reliability Standard: BAL-001-2 (RM14-10)	Jan 26	NERC, AZ Pub. Serv. Co, BPA, Duke, EEI, MISO/PJM/ISO-NE, NatyrEner USA, NYISO, Powerex, Steel Manufactures Assoc., Tri-State Gen & Trans. Assoc., WAPA
24	<i>Order 803</i> : Revised Reliability Standard: PRC-005-3 (RM14-8)	Jan 22	FERC approves PRC-005-3 changes

XI. Misc. - of Regional Interest	
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27	203 Application: First Wind / TerraForm & SunEdison (EC15-44)	Jan 12 Feb 5	FERC approves Terra Form/SunEdison acquisition of First Wind Applicants notify FERC that acquisition was consummated on Jan 29
27	203 Application: EquiPower / Dynegy (EC14-140)	Jan 16	FERC issues deficiency letter requiring submission by Feb 16 (i) a Delivered Price Test for the PJM market, and the AP South, 5004/5005, and PJM East submarkets; and (ii) additional info regarding the transactions' effect on rates
27	LVA/PSNH IA Complaint (EL15-9)	Jan 9	PSNH answers LVA Dec 16 response
* 28	E&P Agreement Terminations: Spruce Mountain Wind (ER15-975); Record Hill Wind (ER15-974); Highland Wind (ER15-973); Patriot Renewables (ER15-972)	Feb 4	CMP files notices of termination, each to become effective April 6, 2015; comment date Feb 25
* 28	LSA Termination: Emera/ Black Bear HVGW (ER15-962)	Feb 3	Emera and the ISO file notice of termination of LSA with Black Bear (covering the Howland Project); comment date Feb 24
* 29	IA – CL&P/Energy Stream (ER15-947)	Jan 30	CL&P (Eversource) files IA with Energy Stream to govern the interconnection of Energy Stream's 120 kV unit on the on the Quinnebaug River in Putnam, Connecticut; comment date Feb 20
* 29	HG&E Demarcation Agreement (ER15-939)	Jan 30	WMECO files Agreement with HG&E; comment date Feb 20
29	E&P Agreement CMP/Atlantic Wind (ER15-589)	Jan 22	FERC accepts Agreement
29	<i>Opinion 531-A</i> Compliance Filing: NGrid IFA Amendments (ER15-418)	Jan 15	FERC issues deficiency letter directing submission of additional information on or before Feb 17
* 30	FERC Enforcement Action: Maxim Power and K. Mitton (IN15-4)	Feb 2	FERC issues show cause order and notice of proposed penalties (in total, \$5.05 million civil penalties); answer date Mar 4
31	FERC Enforcement Action: Powhatan Energy, HEEP Fund, CU Fund, and H. Chen (IN15-3)	Jan 12 Jan 27 Jan 29 Jan 30 Feb 2	Powhatan Respondents invoke their statutory rights to prompt assessment of a penalty and a <i>de novo</i> review of that penalty in federal district court Powhatan Respondents request two-week extension of time for its answers, citing need to review yet-to-be disclosed exculpatory evidence FERC staff opposes requested extension FERC denies requested extension but permits answer by Feb 9 to materials provided with staff's Jan 29 motion Powhatan Respondents submits answers to Dec 12 <i>Powhatan Show Cause Order</i>

XII. Misc. - Administrative & Rulemaking Proceedings

32	Technical Conferences on Implications of Environmental Regulations (AD15-4)	Jan 23	Energy Policy Group submits comments
		Feb 2	FERC issues supplemental notice of Feb 19 National Overview technical conference
		Feb 5	ISO/RTO Council submits comments for Feb 19 technical conference
33	Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14)	Jan 16	FERC invites post-technical workshop comments by Feb 19 on any or all of the 12 questions listed in the attachment in its January 16 Notice
		Jan 29	APPA, EPSA and NRECA request extension of comment filing deadline to Mar 6
		Feb 2	CAISO, NYISO, PJM, SPP file joint motion supporting Jan 29 request
		Feb 3	ISO-NE asks for an extension of time, but only with respect to questions 5-12, to and including Mar 20, 2015
36	Order 676-H: Incorporation of WEQ Version 003 Standards (RM05-5)	Jan 15	FERC extends Version 003 standards compliance deadline to and including May 15, 2015 (with the exception of the OASIS template for which compliance is required by Mar 24, 2016)

XIII. Natural Gas Proceedings

37	NOPR: Scheduling Coordination (RM14-2)	Jan 22	ISO-NE submits response to FERC data requests regarding the impact on reliable and efficient operations of natural gas-fired generators running out of their daily nomination of natural gas transportation service during the morning electric ramp, to the extent it occurs
		Feb 2	Coalition for Enhanced Electric and Gas Reliability, the Natural Gas Council, the New England LDCs, and the APGA submit comments

XIV. State Proceedings & Federal Legislative Proceedings*No Activity to Report***XV. Federal Courts**

41	FCA8 Results (ER14-1244 (consol.))	Jan 15	EPSA/NEPGA file motion supporting FERC motion to dismiss Petitions for lack of jurisdiction
		Jan 26	Connecticut and Public Citizen file motions opposing FERC motion to dismiss Petitions for lack of jurisdiction
		Jan 30	New England Congressional delegation sends letter to FERC Commissioners asking that they re-examine the FCA8 results
41	2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consol.))	Jan 13	FERC requests extension of briefing schedule deadlines
		Jan 15	Court orders revised briefing schedule
42	Orders 745 and 745-A (11-1486 consol.)	Jan 15	FERC petitions Supreme Court for a writ of certiorari regarding the DC Circuit's <i>Order 745</i> decision; responses due Feb 17
43	<i>CPV Power Development, Inc., et al. v. PPL EnergyPlus, LLC, et al.</i> (Supreme Court, 14-634, 14-694)	Jan 9	AWEA files brief amicus curiae
		Jan 12	Connecticut, NY PSC file briefs amici curiae

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: February 5, 2015

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 February 5, 2015. If you have questions, please contact us.¹

I. Complaints

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

On January 30, the FERC denied NEPGA’s PER Complaint, finding that NEPGA had failed to meet its burden under section 206 of the Federal Power Act to demonstrate that the existing ISO Tariff provisions are unjust and unreasonable.² As previously reported, NEPGA filed a complaint, on December 3, 2014, 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. On December 23, the ISO responded to the Complaint. Comments supporting the Complaint were filed by EPSA, Entergy and GDF Suez. Protests were filed by NESCOE and Connecticut.³ NEPOOL filed comments summarizing the consideration of the NEPGA-proposed changes and, without taking a position on the changes themselves, maintaining that NEPGA had not satisfied its statutory burden to show the current Tariff provisions unlawful before forcing changes to the current filed rate. On January 7, NEPGA responded to the protests and NEPOOL’s comments. On January 16, NEPOOL answered NEPGA’s January 7 response.

As noted above, the FERC denied the PER Complaint. In a separate concurrence, Commissioners Clark and Moeller stated that “NEPGA and other parties have raised valid concerns regarding the continued application of the existing PER Adjustment in light of the increases in the Reserve Constraint Penalty Factors in ISO-NE’s energy market put in place in 2014.” The Commissioners went on to “encourage ISO-NE and its stakeholders to continue to consider potential changes to the PER Adjustment mechanism,” stressing that “if NEPGA or any other party is able to provide specific evidence [regarding NEPGA’s original allegations in this complaint], the Commission will consider any such complaints at that time.” Challenges, if any, to the *PER Complaint Order* must be filed on or before March 2, 2015. If you have any questions concerning this

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 *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 150 FERC ¶ 61,053 (Jan. 30, 2015) (“PER Complaint Order”).

³ “Connecticut”, in this proceeding, is the Connecticut Public Utilities Regulatory Authority (“CT PURA”), the Connecticut Office of Consumer Counsel (“CT OCC”), George Jepsen, Attorney General for the State of Connecticut (“CT AG”), and the Connecticut Department of Energy and Environmental Protection (“CT DEEP”).

matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On January 30, the FERC denied the New Entry Pricing Rule Complaint, finding that Exelon and Calpine had failed to show that the existing pricing rules governing lock-in capacity result in unjust, unreasonable or unduly discriminatory price suppression.⁴ As previously reported, Exelon and Calpine filed a formal complaint, on November 26, 2014, requesting (i) that the FERC find the New Entry Pricing Rule⁵ unjust, unreasonable and unduly discriminatory; and (ii) 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. Interventions were filed by ConEd, CPV Towantic, Dominion, Dynegy, Emera, LS Power, MA DPU, NRG, PSEG, and UI. On December 16, the ISO and NEPOOL filed responses to the Complaint. Supporting comments were filed jointly by EPSA and NEPGA, and by Entergy. NESCOE, CT PURA, and Public Systems⁶ filed protests. On December 31, Exelon/Calpine responded to the ISO and NEPOOL responses, and to the protests and the comments filed on December 16. As noted above, the FERC denied this Complaint on January 30. Any challenges to the *New Entry Pricing Rule Complaint Order* must be filed on or before March 2. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

The November 14, 2014 NEPGA 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*), remains pending before the FERC. Interventions were filed by AEP, Brookfield, Calpine, ConEd, CSG, Direct, Dominion, EEI, ELCON, Emera, EnergyConnect, EnerNOC, Entergy, Exelon, FirstEnergy, Maryland Public Service Commission ("MD PSC"), NextEra, NRG, PPL, and Wal-Mart stores. NEPOOL filed comments on November 26 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. NU and UI jointly protested the complaint, on December 3, requesting that the FERC either dismiss or hold the Complaint in abeyance. The ISO answered the Complaint on December 4. Also on December 4, Advanced Energy Management Alliance, NESCOE, Conn/RI,⁷ Enerwise, Environmental Advocates,⁸ NGrid, Public Systems; and the Sustainable FERC Project opposed the Complaint; EPSA and PSEG supported the Complaint; Genbright submitted comments. On December 15, CT PURA moved to lodge the December 15 DC Circuit Court order extending the stay of the mandate in *EPSA v. FERC*. On

⁴ The FERC stated that much of the complainants' argument rested on the assertion that ISO-NE's lock-in resource requirements differ from PJM's. The FERC acknowledged that ISO-NE's and PJM's differing mechanics may yield different prices paid to existing resources, but the FERC was not persuaded that the difference itself renders ISO-NE's rules unjust and unreasonable. *Exelon Corp. and Calpine Corp. v. ISO New England Inc.*, 150 FERC ¶ 61,067 at P 35 (Jan. 30, 2015) ("*New Entry Pricing Rule Complaint Order*").

⁵ 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.

⁶ "Public Systems" are Connecticut Municipal Electric Energy Coop. ("CMEEC"), Massachusetts Municipal Wholesale Electric Co. ("MMWEC"), and New Hampshire Electric Cooperative ("NHEC").

⁷ "Conn/RI" is CT PURA, CT AG, CT DEEP, CT OCC, and the Rhode Island Division of Public Utilities and Carriers ("RI PUC").

⁸ Environmental Advocates are the Sustainable FERC Project, Sierra Club, Environmental Defense Fund, and Acadia Center.

December 19, NEPGA answered the ISO response and the other pleadings submitted in response to its Complaint. On January 7, just as they had on December 23 in the FirstEnergy Complaint (*see* Section XI below), Environmental Advocates moved to lodge the US Solicitor General's application for an extension of time in which to file a petition for writ of certiorari, the Supreme Court Clerk's notice to the DC Circuit that the extension had been granted, and the DC Circuit's order extending the stay of its mandate pending the Supreme Court's final disposition of the writ of certiorari. As noted, this matter remains pending before the FERC. 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)**

As previously reported, the FERC initiated this proceeding, on September 16, 2014, pursuant to Section 206 of the FPA. The FERC directed 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.⁹ 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.¹⁰

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. Brookfield answered the ISO's November 19 answer on December 5.

⁹ *ISO New England Inc.*, 148 FERC ¶ 61,201 (Sep. 16, 2014) ("*September 16 Order*").

¹⁰ The Sep. 17 notice of this proceeding was published in the *Fed. Reg.* on Sep. 24, 2014 (Vol. 79, No. 185) p. 57,075.

Order Conditionally Accepting October 16 Filing (ER15-117): On December 15, the FERC conditionally accepted, subject to two additional compliance filings, the ISO's Tariff revisions in response to the Show Cause Order that provided for the review and potential mitigation of importers' supply offers prior to each annual FCA, which the FERC found "a significant step toward decreasing the opportunity for importers to exercise market power."¹¹ The first compliance filing was due on or before January 14, 2015 and must correct an incorrect cross-reference in Section III.13.1.3.5.7 (Qualification Determination Notification for New Import Capacity Resources).¹² In the second compliance filing, due on or before April 1, 2015, ISO-NE must submit tariff revisions in time for implementation for FCA-10 "which allow importers to submit up to five price-quantity pairs, together with any necessary mitigation provisions to address the exercise of market power" (finding implementation for FCA9 not feasible).¹³ All remaining requests and protests, including those of Public Citizen, were rejected. Public Citizen requested rehearing of the *Imports Mitigation Order* on January 14, 2015. On January 26, NEPGA answered Public Citizen's request. Public Citizen's request is pending before the FERC, with FERC action required on or before February 13, 2015, or the request will be deemed denied.

30-Day Compliance Filing (ER15-117): On January 14, the ISO submitted the first compliance filing which, as directed, corrected the cross-reference in Section III.13.1.3.5.7 (Qualification Determination Notification for New Import Capacity Resources). Comments on that filing were due on or before February 4; none were filed and the first compliance filing is pending before the FERC.

If you have any questions concerning these matters, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Base ROE Complaints (2012 and 2014) Consolidated (EL13-33 and EL14-86)**

As previously reported, the FERC issued an order on November 24, 2014, establishing a trial-type, evidentiary hearing, consolidating EL14-86¹⁴ with EL13-33,¹⁵ and setting a refund effective date for EL14-86 of July 31, 2014.¹⁶ The FERC found that the Complaint in EL14-86 "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."¹⁷ The TOs requested rehearing of the November 24 order on December 24. On January 23, 2015, the FERC issued a tolling order affording it additional time to consider the TOs' rehearing request, which remains pending before the FERC.

¹¹ *ISO New England Inc.*, 149 FERC ¶ 61,227 (Dec. 15, 2014) ("*Imports Mitigation Order*"), *reh'g requested*.

¹² *Id.* at P 53.

¹³ *Id.* at PP 41-45, 64.

¹⁴ 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"), 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 ROE 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.

¹⁵ The 2012 Base ROE Complaint challenged the TOs' 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

¹⁶ *Mass. Att'y Gen. et al. -v- Bangor Hydro et al.*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh'g requested*.

¹⁷ *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).

Base ROE Complaint (2012) (EL13-33). In response to a 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 FERC, on June 19, 2014, established hearing and settlement judge procedures.¹⁸ The 2012 Base ROE Complaint challenged the TOs’ 11.14% return on equity (“Base ROE”), and sought a reduction of the Base ROE to 8.7%. In the *2012 Base ROE Initial Order*, the FERC found that the Complaint “raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered.”¹⁹ The FERC directed the parties to present evidence and any discounted cash flow (“DCF”) analyses in accordance with the guidance provided in the *2012 Base ROE Initial Order*.²⁰ Settlement judge procedures in this proceeding were unsuccessful and were terminated October 24, 2014. The TOs July 21 request for rehearing of the *2012 Base ROE Initial Order*, remains pending before the FERC pursuant to an August 20, 2014 tolling order issued by the FERC.

Hearings. Trial Judge Sterner issued a December 4 order adopting a procedural schedule that leads to hearings beginning June 23, 2015 and an initial decision by November 30, 2015. The active Participants filed a preliminary joint statement of issues on December 9 and a discovery plan on December 18. On December 19, the Complaint-Aligned Parties,²¹ EMCOS, TOs, and FERC Trial Staff submitted briefs regarding the appropriate cut-off date for data to be used in filing updates to studies in prior testimony in this proceeding. On December 30, Complaint-Aligned Parties and EMCOS submitted their direct testimony, including work sheets and work papers. Since the last Report, the TOs filed their Answering Testimony and Exhibits (with summaries) on February 2. And, with respect to the data cut-off date, Judge Sterner issued an order on February 5 setting the updated data cutoff date at May 26, 2015 (the day the Update of Studies in Prior Testimony is due).

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.”²² 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 proposal.”²³ The FERC-established refund effective date is June 9, 2014.²⁴ Requests for clarification and/or

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

¹⁹ *Id.* at P 26.

²⁰ *Id.*

²¹ “Complaint-Aligned Parties” are the CT AG, CT OCC, CT PURA, ME OPA, MA DPU, MMWEC, NHEC, NH OCA, NH PUC, RI PUC, VT DPS, Acadia Center (formerly Environment Northeast), The Energy Consortium, Associated Industries of Massachusetts (“AIM”), and the Industrial Energy Consumer Group (“IECG”).

²² *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*.

²³ *Id.* at P 1.

²⁴ 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.

rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island,²⁵ Dominion, MMWEC, Indicated Generators,²⁶ NEPGA, NextEra, Potomac Economics, and PSEG/NERG. On July 28, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

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*.²⁷ 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 Island²⁸ and Public Systems²⁹ 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 January 15, the FERC accepted the ISO's -day compliance filing required by the *October 2 Order* that revised Market Rule 1 Section 13.7 to strike language rejected by the *October 2 Order*. As requested, the compliance filing change was accepted effective as of June 1, 2018 (which is the same effective date granted for the related revisions accepted in the *October 2 Order*). Challenges, if any, to the January 15 order are due on or before February 17, 2015.

If you have any questions related to these proceedings, please contact Dave Doot (860-275-0102; dttdoot@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 RM14-2 (*see* Section XIII below).³⁰ 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*:

²⁵ "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").

²⁶ "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").

²⁷ *ISO New England Inc.*, 149 FERC ¶ 61,009 (Oct. 2, 2014) ("*October 2 Order*"), *reh'g requested*.

²⁸ "Connecticut/Rhode Island" are the CT PURA, CT AG, CT OCC, CT DEEP, and the RI PUC.

²⁹ "Public Systems" are CMEEC, MMWEC, NHEC, and VEC.

³⁰ *Cal. Indep. Sys. Op. Corp. et al.*, 146 FERC ¶ 61,202 (Mar. 20, 2014). The New England 206 proceeding was docketed as EL14-23.

(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.³¹

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. 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)**

On January 30, the FERC denied NEPGA's request for rehearing and/or clarification of the January 24, 2014 FCM Administrative Pricing-related orders.³² As previously reported, in the *NEPGA FCM Admin Pricing Rules Order*,³³ 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.³⁴ In its request for rehearing and clarification of the *NEPGA FCM Admin Pricing Rules Order*, NEPGA requested the FERC: (i) require prospective auctions to utilize ORTP-based prices; (ii) direct the ISO to implement for FCA9 a sloped demand curve for all aspects of the FCM, including for individual capacity zones; and (iii) require the ISO to eliminate the zero-bid requirement and implement the bidding protocols requested by NEPGA in its initial Complaint in this proceeding. In denying rehearing, the FERC (i) disagreed with NEPGA's assertion that the FERC did not justify its use of a balancing approach in rejecting NEPGA's proposal for ORTP-based administrative pricing; (ii) rejected NEPGA's arguments concerning the Capacity Carry Forward Rule and New Entrant Pricing; and (iii) found that NEPGA had not shown the ISO's new entrant pricing to be unjust and unreasonable (distinguishing ISO-NE's and PJM's new entrant pricing rules). If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Rehearing of the FERC's February 12, 2013 order denying NESCOE's FCM Renewable Exemption Complaint³⁵ 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

³¹ *Id.* at P 19.

³² *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 150 FERC ¶ 61,064 (Jan. 30, 2015).

³³ *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 denied*, 150 FERC ¶ 61,064 (Jan. 30, 2015).

³⁴ *Id.* at P 1.

³⁵ *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (Feb. 12, 2013), *reh'g requested*.

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.³⁶ 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),³⁷ 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 (2011) (EL11-66)**

As previously reported, the FERC issued *Opinion 531-A*³⁸ 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*,³⁹ affirmed in part, and reversed in part, Judge Cianci’s *Initial Decision*⁴⁰ 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 December 2012 “locked in/refund period” and 9.7% from January 2013 forward, subject to further updating or modification by the FERC.⁴¹ 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.⁴² The TOs’ requested rehearing and clarification of *Opinion 531-A* on November 17, 2014. On December 15, 2014, the FERC issued a tolling order affording it additional time to consider the TOs’ request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

³⁶ *Id.* at P 32.

³⁷ *Id.* at P 30.

³⁸ *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

³⁹ *Martha Coakley, Mass. Att’y Gen. et al.*, 147 FERC ¶ 61,234 (June 19, 2014) (“*Opinion 531*”), *order on paper hearing*, 149 FERC ¶ 61,032 (2014).

⁴⁰ *Martha Coakley, Mass. Att’y Gen. et al.*, 144 FERC ¶ 61,012 (July 5, 013) (“*Initial Decision*”).

⁴¹ *See 2011 Base ROE Initial Decision.*

⁴² *Opinion 531* at P 1.

II. Rate, ICR, FCA, Cost Recovery Filings

- **FCA9 New Import Capacity Resources Qualification Informational Filing (ER15-640)**

On January 13, the FERC accepted the ISO's informational filing for qualification of certain New Import Capacity Resources in the 2018-2019 FCM Capacity Commitment Period (the "FCA9 New Import Capacity Resource Filing"). As previously reported, this additional informational filing, which resulted from changes filed and accepted in ER15-117, detailed the ISO's determination of the New Resource Offer Floor Price for each New Import Capacity Resource requesting to submit offers in FCA9 at prices below the relevant ORTP and, in the privileged version, contained supporting cost information and supporting documentation for its determinations. Unless the January 13 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).

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

On January 27, the FERC accepted 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. Unless the January 27 order is challenged, this proceeding will be concluded. 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. Interventions were filed by the IECG, Complainant-Aligned Parties, and EMCOS. Protests were filed by EMCOS and the Complainant-Aligned Parties. On December 23, the TOs answered the protests of EMCOS and Complainant-Aligned Parties. Complainant-Aligned Parties answered the TOs' December 23 answer on January 13. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On January 16, the FERC accepted the ISO's informational filing regarding for qualification in FCA9 (the "FCA9 Informational Filing").⁴³ As previously reported, the Informational Filing contained the ISO's determinations that four Capacity Zones, Southeastern Mass./Rhode Island ("SEMA/RI"), Connecticut, Northeastern Mass./Boston ("NEMA/Boston") and Rest of Pool, will be modeled for FCA9. Connecticut, SEMA/RI and NEMA/Boston will be modeled as import-constrained Capacity Zones; no export-constrained Capacity Zones will be modeled (and, accordingly, no 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). In accepting the FCA9 Informational Filing, the FERC found that the ISO "complied with its obligations under Tariff section

⁴³ *ISO New England Inc.*, 150 FERC ¶ 61,021 (Jan. 16, 2015)

III.13.8.1 to submit information related to its qualification determinations and provide sufficient supporting documentation”⁴⁴ and granted the ISO’s “request to qualify new resources identified in Attachment D of its Informational Filing for an additional 5 MW in total capacity value.”⁴⁵ Unless the January 16 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).

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

As previously reported, the FERC accepted, on January 2, 2015, the ICR, HQICCs and related Local Sourcing Requirements (“LSR”) values for the 2018/19 Capability Year.⁴⁶ The FERC stated its expectation that “ISO-NE [will] fully explore the incorporation of distributed generation into the ICR calculation in the stakeholder process. We expect ISO-NE to do this on a schedule that will allow these factors to be reflected, if determined appropriate, in the ICR calculation for FCA 10.”⁴⁷ In identifying that expectation, the FERC stated that “NEPOOL believes the ICR value should be reduced to account for distributed generation, especially solar photovoltaic resources, that is forecasted to be available during the 2018/2019 Capacity Commitment Period.”⁴⁸ On January 30, 2015, NEPOOL requested that the FERC clarify the January 2 order by acknowledging that, while NEPOOL did not support the ICR-Related Values, neither has NEPOOL taken a substantive position on whether the ISO should be trying to more fully incorporate DG in the ICR calculation for FCA-10. NEPOOL’s request for clarification is pending before the FERC, with FERC action required on or before March 2, 2015 or the request will be deemed denied. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **2014/15 Power Year Transmission Rate Supplemental Filing (ER09-1532; RT04-2)**

On January 5, 2015, the Participating Transmission Owners (“PTOs”) Administrative Committee (“PTO AC”) submitted a supplement to its July 31, 2014 rate filing for the 2014/15 Power Year, identifying primarily revised information from NGrid⁴⁹ that results in adjustments to the 2014/15 rates: RNS (\$0.48258/kW-yr. increase), TOUT (to be increased consistent with RNS increase), and S&D (\$0.04684/kW-yr. decrease). This filing will not be noticed for public comment. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **ORTP Exemption for Distributed Renewable Technology Resources (ER15-716)**

On December 23, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 to allow new On-Peak Demand Resources, which include distributed solar and wind generation, to qualify for the Renewable Technology Resources exemption from the FCM minimum offer price rules. A February 21, 2015 effective date was requested. These Market Rule changes were supported by the Participants Committee at the December 5, 2014 annual meeting. Interventions were filed by Entergy, EPSA, Exelon, NESCOE, NRG, and NU. On January 13, NEPGA submitted comments. The ISO answered NEPGA’s January 13 comments on January 28, and

⁴⁴ *Id.* at P 16.

⁴⁵ *Id.* at P 17.

⁴⁶ *ISO New England Inc.*, 150 FERC ¶ 61,003 (Jan. 2, 2015), *clarification requested*.

⁴⁷ *Id.* at P 20.

⁴⁸ *Id.* at P 7.

⁴⁹ NEP’s revisions impacting this filing are the result of a limited tariff waiver granted by the FERC in ER14-1686 that allowed NEP to initially use estimated data as the basis for calculating its Transmission Revenue Requirement but required corrected rates to be posted on the ISO-NE website no less than 45 days prior to the making of a supplemental filing and such filing to be made on or before January 12, 2015. The actual posting took place on November 21, 2014, so that the supplemental filing complies with the 45-day posting requirement.

NEPGA answered the ISO's January 28 comments on February 4. 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).

- **Information Policy Clean-Up Changes (ER15-600)**

On January 28, the FERC accepted clean-up changes to the Information Policy jointly filed by the ISO and NEPOOL. The changes were accepted February 9, 2015, as requested. Unless the January 28 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).

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

On January 9, the FERC accepted a series of revisions to the full integration Market Rules for price-responsive demand ("PRD") (the "PRD Reserve Market Changes") jointly submitted by the ISO and NEPOOL.⁵⁰ As previously reported, 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. The PRD Reserve Market Changes were accepted January 12, 2015 and June 1, 2017, as requested. Unless the January 9 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

The request for rehearing of the FERC's September 12, 2014 order accepting 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 CSO⁵¹ remains pending. As previously reported, 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. Since the last Report, Footprint submitted a notice that it had closed, on January 9, on the financing necessary to proceed with construction of the new Salem Harbor Facility. FootPrint credited FERC's issuances in this and its individual CSO deferral proceeding as critical to its achieving that milestone. 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)**

On January 20, 2015, the FERC granted⁵² the clarification requested by NEPGA of the *Winter 2014/15 Reliability Program Order*.⁵³ As previously reported, NEPGA requested, in response to the *Winter 2014/15 Reliability Program Order*, that the FERC "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." (In its October 24 answer, the ISO urged the FERC to reject NEPGA's request asserting that the FERC, despite its preference for a market-

⁵⁰ *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,007 (Jan. 9, 2015).

⁵¹ *ISO New England Inc.*, 148 FERC ¶ 61,185 (Sep. 12, 2014), *reh'g requested*.

⁵² *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,029 (Jan. 20, 2015).

⁵³ *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 granted*, 150 FERC ¶ 61,029 (Jan. 20, 2015). The *Winter 2014/15 Reliability Program Order* conditionally accepted 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*").

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). In the January 20 order, the FERC clarified that its directive in the *Winter 2014/15 Reliability Program Order* “intended that ISO-NE would determine whether a winter reliability solution is necessary for the 2015-2016 winter and future winters, and, if so, develop an appropriate market-based solution through the stakeholder process that can be implemented beginning with the 2015-2016 winter. While the two-settlement capacity market design could help address winter reliability concerns in the future, that design will not be fully implemented until the 2018-2019 Capacity Commitment Period.”

Progress reports with respect to the stakeholder process “to develop a proposal to address reliability concerns for the 2015-2016 winter and future winters, as necessary”⁵⁴ will be filed every 60 days during 2015, with the next report to be filed on or before February 6 (and summarized in Section VIII). The ISO’s analysis and recommendations with respect to the appropriateness of the 1.75 volatility ratio of the higher-priced fuel index (included as part of new market monitoring changes) will be included as part of the IMM’s Annual Markets Report. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On January 30, the FERC denied rehearing of the *Demand Curve Order*, but clarified (agreeing with Exelon and Entergy) that a resource that elects to utilize the renewables minimum offer price rule exemption should not also be allowed to utilize the new resource lock-in).⁵⁵ 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”).⁵⁶ 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.

In granting clarification of the *Demand Curve Order*, the FERC directed the ISO to submit, on or before March 2, 2015, a compliance filing clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in. Proposed changes in response to the January 30 order will be considered by the Markets Committee at its February 10-11 meeting.

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.

If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁵⁴ 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.

⁵⁵ *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,065, at P 27 (Jan. 30, 2015).

⁵⁶ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”), *reh’g denied but clarif. granted*, 150 FERC ¶ 61,065 (Jan. 30, 2015).

- **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).

On May 30, 2014, the FERC issued an order in response to the jump ball filing.⁵⁷ 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.⁵⁸ 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; dtodot@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)**

On January 30, the FERC denied NEPGA's request for rehearing⁵⁹ of the *Jan 24 Exigent Circumstances Order*.⁶⁰ As previously reported, the FERC accepted, on January 24, 2014, revisions to the

⁵⁷ *See PI Order.*

⁵⁸ *See n. 4 supra.*

⁵⁹ *ISO New England Inc.*, 150 FERC ¶ 61,066 (Jan. 30, 2015) ("*Exigent Circumstances Rehearing Order*").

⁶⁰ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("*Demand Curve Order*"), *reh'g denied*, 150 FERC ¶ 61,066 (Jan. 30, 2015).

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”).⁶¹ 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).⁶² Demand curve changes, proposed in response to directives in the *Jan 24 Exigent Circumstances Order* were filed and conditionally accepted (*see* ER14-1639 above). NEPGA requested clarification and rehearing of the *Jan 24 Exigent Circumstances Order* on February 24, 2014.

In denying rehearing of the *Jan 24 Exigent Circumstances Order*, the FERC emphasized its expectation that “ISO-NE will submit the zonal demand curve changes in time to allow for review, approval, and implementation for FCA 10.”⁶³ The FERC issued on tolling order on March 24, 2014 affording it additional time to consider the NEPGA rehearing request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Requests for rehearing of the *FCA8 Revisions Order* remain pending. 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.⁶⁴ 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;⁶⁵ unit specific offer review;⁶⁶ the ISO’s proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports’ treatment under MOPR;⁶⁷ no exemptions to MOPR for new Self-Supplied Resources;⁶⁸ the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;⁶⁹ \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;⁷⁰ and a number of other additional revisions.⁷¹ 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);⁷² and the ISO’s request to

⁶¹ *Jan 24 Exigent Circumstances Order*.

⁶² 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.

⁶³ *Id.* at P 41.

⁶⁴ *ISO New England Inc.*, 142 FERC ¶ 61,107 (Feb. 12, 2013) (“*FCA8 Revisions Order*”).

⁶⁵ *FCA8 Revisions Order* at PP 37-38.

⁶⁶ *Id.* at P 53.

⁶⁷ *Id.* at P 70.

⁶⁸ *Id.* at P 80.

⁶⁹ *Id.* at P 97.

⁷⁰ *Id.* at P 126.

⁷¹ *Id.* at P 127.

⁷² *Id.* at PP 63-64.

model only 4 capacity zones for FCA8 (the ISO's Capacity Zones Changes were accepted in *ISO New England Inc.*, 147 FERC ¶ 61,071 (2014)). Two requests for rehearing of the *FCA8 Revisions Order* were filed on March 15, 2013, one by MMWEC, NHEC, APPA, NEPPA, and NRECA; the other, by EMCOS and Danvers. On April 11, NEPGA filed an answer to the MMWEC *et al.* request. On April 15, 2013, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

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 supported by the Participants Committee at its December 5 annual meeting. Interventions were filed by Exelon and NU. In its comments, NEPOOL reported on that support and requested that the FERC accept the ISO-NE OATT revisions and grant the requested waivers. This matter is pending before the FERC. 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. Interventions were filed by NEPOOL and NU. Comments on this filing were due on or before December 22; none were filed and this matter is pending before the FERC. 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 1000 Interregional Compliance Filing (ER13-1960; ER13-1957)**

On July 10, 2013, the ISO, NEPOOL and the PTO AC jointly filed revisions to Sections I and II of the Tariff to comply with the interregional coordination and cost allocation requirements of *Orders 1000* and *1000-A* (the “*Order 1000* Interregional Compliance Changes”) (ER13-1960). In addition, the ISO, on behalf of itself, NYISO and PJM, filed an Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol (“Amended Protocol”) as part of its compliance changes (ER13-1957). The *Order 1000 Interregional Compliance Changes* include (i) revisions to Attachment K to add provisions describing the interregional coordination provisions included in the Amended Protocol, as well as adding other provisions facilitating the consideration of interregional solutions to regional needs; (ii) a new Schedule 15 reflecting the methodology for allocation among ISO-NE and NYISO of the costs of approved interregional transmission projects; (iii) revisions to Schedule 12 describing the regional cost allocation within New England of the costs of approved interregional transmission projects; and (iv) conforming changes to Tariff Section I. The *Order 1000* Interregional Compliance Changes and the Amended Protocol were supported by the Participants Committee at its June 27 Summer Meeting. On August 7, the FERC extended the comment deadline on these filings to and including September 9,

2013. Doc-less motions to intervene were filed by a number of New England parties in both proceedings, including Dominion, Exelon, PPL, PSEG, and NEPOOL (in the Protocol proceeding (in which it was not a filing party)). On August 26, 2013, NEPOOL filed comments supporting the Protocol. NEPOOL added that “From a stakeholder perspective, stakeholder input into revisions to the Protocol as it evolves over time would be easier and more likely to be taken into account if it were made part of the individual regional tariffs of each of the Northeast ISOs rather than existing solely as a stand-alone three-party agreement”. On September 9, NESCOE submitted comments generally supporting the filings, but reserving the right to further comment on these filings should the substance of the changes be modified as a result of further FERC (*see* ER13-193 and ER13-196 below) or federal court proceedings. Public Interest Organizations⁷³ 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 filing⁷⁴ (described in previous Reports) remains pending. As previously reported, the *Order 1000 Compliance Order* accepted the ISO-NE/PTO compliance filing as partially complying with *Order 1000*, but required changes to the compliance proposal. The primary change was the elimination of the Right of First Refusal (“ROFR”) and the establishment of competitive transmission development for all regional transmission projects (with an exception to the elimination of the ROFR for transmission needed for reliability within three years of the needs assessment determination and subject to certain other limiting criteria). Additionally, the *Order 1000 Compliance Order* required that the public policy transmission proposal be revised to: (i) make the ISO, rather than the New England states, the entity that evaluates and selects which transmission projects will be built to meet transmission needs driven by public policy; and (ii) include an *ex ante* default cost allocation method, transparent to all stakeholders, developed in advance of particular transmission facilities being proposed, rather than leaving it to the states to decide cost allocation on a project-specific basis after particular projects are proposed. While requiring these fundamental changes to the public policy transmission part of the filing, the *Order 1000 Compliance Order* also allowed for the NESCOE-driven proposal for both selection of projects and cost allocation to remain in the tariff as a complementary process for voluntary transmission projects alongside the *Order 1000*-compliant process. A more detailed summary of the *Order 1000 Compliance Order* was circulated to the Participants Committee on May 20, 2013. On June 17, the ISO, LS Power, PTO AC and NESCOE each filed requests for clarification and/or rehearing of the *Order 1000 Compliance Order*. On June 28, the ISO answered LSP Power’s request concerning the effective date for the *Order 1000* compliance changes. On July 16, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC.

Order 1000 November 15 Compliance Order Changes. On November 15, 2013, the ISO and the PTO AC jointly submitted proposed revisions to Sections I and II of the Tariff and to the Transmission Operating Agreement (“TOA”) (the “Compliance Revisions”) to comply with the FERC’s May 17, 2013 *Order 1000 Compliance Order*. The revisions included planning revisions (addressing competitive processes for developing new regional transmission projects), cost allocation revisions (regarding the allocation of costs for Public Policy Transmission Projects), and TOA revisions. The Planning Revisions and the Cost Allocation Revisions filed by the ISO and PTO AC were considered but not supported by the Participants Committee at its November 8, 2013 meeting.

Comments on the November 15 filing were filed by **NEPOOL** (seeking two sets of changes to the Planning Revisions filed by the ISO and PTO AC (i) limiting the scope of transmission projects that are

⁷³ “Public Interest Organizations” are Conservation Law Foundation, ENE, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

⁷⁴ *ISO New England Inc.*, 143 FERC ¶ 61,150 (May 17, 2013) (“*Order 1000 Compliance Order*”).

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**⁷⁵ (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**⁷⁶ (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**⁷⁷ (protesting the Cost Allocation Revisions). Answers to the protests and comments were filed on January 15, 2014 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

- **FAP Minimum Capitalization Requirement Changes (ER15-593)**

On January 29, the FERC accepted changes to the Financial Assurance Policy’s (“FAP”) capitalization requirements intended to better protect Market Participants from the risks presented by the market participation of thinly-capitalized entities (“FAP Changes”) jointly filed by the ISO and NEPOOL. Specifically, the changes (i) eliminate the exemption for meeting the minimum capitalization requirements afforded Participants with a total financial assurance (“FA”) requirement of lower than \$100,000; (ii) require Participants failing to meet the capitalization requirements to provide additional FA in an uncapped amount equal to 25% of the Participant’s total FA requirement (excluding FTR Financial Assurance Requirements) instead of the current sliding scale structure; and (iii) for the FTR market, any Participant failing to meet the minimum capitalization requirements must provide additional FA equal to 25% of the Participant’s FTR FA requirements. The FAP Changes were accepted February 5, 2015, as requested. Unless the January 29 order is challenged, this proceeding will be concluded. If you have any questions, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁷⁵ “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.

⁷⁶ In this proceeding, “Public Systems” are MMWEC and NHEC.

⁷⁷ “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: CTMEEC (ER15-584)**

On December 5, 2014, the ISO submitted on behalf of the Connecticut Transmission Municipal Electric Energy Cooperative (“CTMEEC”) changes to Attachment B to Schedule-21 CTMEEC to conform Schedule-21 CTMEEC to the holdings in *Opinions 531* and *531-A*. Comments, if any, on this filing were due on or before December 26; none were filed and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 Agreement⁷⁸ 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 were due on or before December 8; none were filed and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

The FERC conditionally accepted, on December 24, 2014, and set for hearing and settlement judge procedures on the issue of the proposed operation, maintenance, and capital cost reimbursement charges, the unexecuted LGIA (LGIA-ISONE/NU-14-02) between CPV Towantic, CL&P and the ISO, governing the interconnection of CPV Towantic’s 795 MW natural gas-fired plant located in Oxford, Connecticut.⁷⁹ Chief Judge Wagner appointed Judge David H. Coffman as the Settlement Judge. A first settlement conference was held on January 8, 2015; a second settlement conference was held on February 5. On February 3, Judge Coffman issued a report recommending that the settlement proceeding continue. On February 5, Chief Judge Wagner issued an order continuing settlement proceedings. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Future Winter Reliability Program Progress Reports (ER14-2407)**

As directed in the *Winter 2014/15 Reliability Program Order*, the ISO submitted on December 8, 2014, its first 60-day progress report on efforts to address reliability concerns for the 2015-2016 winter and future winters, as necessary. In its first report, the ISO stated that no consensus has yet emerged with respect to the exploration of alternative objectives and/or the development of alternative solution(s) for future winter periods. The ISO indicated it would continue to discuss these issues with Participants at the Markets Committee. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁷⁸ *ISO New England Inc., et al.*, 148 FERC ¶ 61,097 (Aug. 4, 2014).

⁷⁹ *ISO New England Inc. and Northeast Utilities Service Co.*, 149 FERC ¶ 61,274 (Dec. 24, 2014).

- **Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54); Order 755 Regulation Market Progress Report (ER12-1643)**

The ISO filed its twenty-fifth report regarding non-generating resource regulation market participation on December 19, 2014. As previously reported, the ISO committed in the August 5, 2008 Regulation Filing to provide the FERC with quarterly reports on its progress in implementing and carrying out market rule revisions to allow non-generating resources to provide Regulation, including the Alternative Technologies Pilot Program.⁸⁰ In the 25th report, the ISO reported that it expects to implement the new regulation market design that fully complies with *Order 755* on March 31, 2015. These reports are not noticed for public comment.

- **LFTR Implementation: 25th Quarterly Status Report (ER07-476; RM06-08)**

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

IX. Membership Filings

- **February 2015 Membership Filing (ER15-937)**

On January 30, NEPOOL requested that the FERC accept the termination of the Participant status of Dominion Retail and Hess (Jan 1, 2015), and the Cianbro, PallettOne, and Hannaford Companies (Feb 1, 2015). Comments on this filing are due on or before February 20.

- **January 2015 Membership Filing (ER15-780)**

On December 30, NEPOOL requested that the FERC accept (1) the memberships of: Convergent Energy and Power LLC (AR Sector, Small LR Group Member); Denver Energy, LLC and its Related Person Peninsula Power, LLC (Supplier Sector); Quantum Utility Generation, LLC (AR Sector, RG Sub-Sector); Wallingford Energy II, LLC (Related Person to Hawkes Meadow, Provisional Group Member); and Longwood Medical Energy Collaborative (Related Person to End User Sector member Harvard Dedicated Energy Limited); and (2) the termination of the Participant status of DB Energy Trading, LLC and Open Book Energy, LLC (Dec 1, 2014); and Marden's Inc. and its Related Person Kennebec River Energy, LLC (Jan 1, 2015). This matter is pending before the FERC.

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

On January 8, the FERC accepted: (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.

⁸⁰ See Market Rule 1 revisions regarding the provision of Regulation by non-generating resources, *ISO New England Inc. and New England Power Pool*, Docket Nos. ER08-54-000 and -001 (filed Aug. 5, 2008) (the "Regulation Filing").

- **Suspension Notices (not docketed)**

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

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Jan 5/12	Pacific Summit Energy LLC	Jan 12
Jan 20/21	Cape Wind Associates, LLC	Remains suspended

Suspension notices are for the FERC's information only and are not docketed or noticed for public comment.

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

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

- **FFT Report: January 2015 (NP15-19)**

NERC submitted on January 30, 2015 its Find, Fix, Track and Report ("FFT") informational filing for the month of January 2015. The January FFT resolves 17 possible violations of 9 Reliability Standards that posed a risk minimal risk to bulk power system ("BPS") reliability, but which have since been remediated.⁸¹ The 4 Registered Entities involved each submitted a mitigation activities statement of completion. FFT filings are for information only and are not be noticed for public comment by the FERC.

- **Revised Reliability Standard: PRC-006-2 (RD15-2)**

On December 15, 2014, NERC filed changes to PRC-006-2 (Automatic Underfrequency Load Shedding), and its associated VRFs and VSLs, and requested the retirement of the previous version of the Standard, all in accordance with the Implementation Plan ("PRC-006 Changes"). NERC stated that the PRC-006 Changes address outstanding FERC concerns expressed in *Order 763*⁸² that applicable entities are required to implement corrective actions identified by the Planning Coordinator in accordance with a schedule established by the same Planning Coordinator. NERC requested that the PRC-006 Changes be approved, and the existing PRC-006-1 be retired, effective on the first day of the first calendar quarter that is six months after the date of FERC approval. Comments on the PRC-006 Changes were due on or before January 16, 2015; none were filed and this matter is pending before the FERC.

- **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

⁸¹ 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.

⁸² *Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards*, Order No. 763, 139 FERC ¶ 61,098 (2012), *order on clarification*, 140 FERC ¶ 61,164 (2012).

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.

- **New Reliability Standard: TPL-007-1 (RM15-11)**

On January 21, 2015, NERC filed for approval a new Reliability Standard -- TPL-007-1 (Geomagnetic Disturbance Operations) -- and one new definition (Geomagnetic Disturbance Vulnerability Assessment), associated VRFs and VSLs (together, the “GMD Operations Changes”). NERC stated that the GMD Operations Changes address the FERC’s directive in *Order 779* that NERC develop a Reliability Standard that requires owners and operators of the Bulk-Power System to conduct initial and on-going vulnerability assessments of the potential impact of benchmark geomagnetic disturbance events on the Bulk-Power System equipment and the Bulk-Power System as a whole.⁸³ NERC requested the FERC approve a five-year phased implementation plan for compliance with TPL-007-1. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Revised Reliability Standard: PRC-005-4 (RM15-9)**

On December 18, 2014, NERC filed for approval changes to PRC-005-4 (Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance), one new (Sudden Pressure Relaying) and four revised definitions (Protection System Maintenance Program, Component Type, Component, and Countable Event), associated VRFs and VSLs (together, the “PRC-005 Changes”). NERC stated that the PRC-005 Changes address FERC concerns expressed in the *Order 758* proceeding that NERC’s proposed interpretation of PRC-005-1 may not include all components that serve in some protective capacity.⁸⁴ NERC requested that the PRC-005 Changes be approved, effective on the first day of the first calendar quarter following FERC approval. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Revised Reliability Standard: PRC-026-1 (RM15-8)**

On December 31, 2014, NERC filed for approval a new Standard, PRC-026-1 (Relay Performance During Stable Power Swings) and associated VRFs and VSLs (the “PRC-026 Standard”) in response to the FERC’s directive in *Order 733*⁸⁵ to develop a Reliability Standard addressing undesirable relay operation due to stable power swings. NERC requested that PRC-026 be approved, effective as follows: R1 on the first day of the first full calendar year that is 12 months after FERC approval; R2-R4 on the first day of the first full calendar year that is 36 months after FERC approval. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Revised Reliability Standard: EOP-011-1 (RM15-7)**

On December 29, 2014, NERC filed for approval a new Standard, EOP-011-1 (Emergency Operations), a revised definition of “Energy Emergency”, and associated VRFs and VSLs (together, the “Emergency Operations Changes”). NERC stated that the purpose of the Emergency Operations Changes is to address the effects of operating Emergencies by ensuring each Transmission Operator and Balancing Authority has developed Operating Plans to mitigate operating Emergencies, and that those plans are coordinated within a Reliability

⁸³ *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (“*Order 779*”).

⁸⁴ *Interpretation of Protection System Reliability Standard*, Notice of Proposed Rulemaking, 133 FERC ¶ 61,223 (2010) at P 11; *Interpretation of Protection System Reliability Standard*, Order No. 758, 138 FERC ¶ 61,094 (“*Order 758*”), *order on reh’g*, 139 FERC ¶ 61,227 (2012).

⁸⁵ *Transmission Relay Loadability Reliability Standard*, Order No. 733, 130 FERC ¶ 61,221 (2010); *order on reh’g and clarification*, Order No. 733-A, 134 FERC ¶ 61,127 (2011); *clarified*, Order No. 733-B, 136 FERC ¶ 61,185 (2011) (“*Order 733*”).

Coordinator Area. EOP-011-1 consolidates requirements from three existing Reliability Standards, EOP-001-2.1b, EOP-003.1, and EOP-003-2, into a single new Reliability Standard. NERC stated that the Emergency Operations Changes address seven FERC directives from *Order 693*. NERC requested that the Emergency Operations Changes be approved, effective on the first day of the first calendar quarter that is 12 months after FERC approval. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Revised Reliability Standard: PRC-002-2 (RM15-4)**

On December 15, 2014, NERC filed for approval changes to PRC-002-2 (Disturbance Monitoring and Reporting Requirements), associated VRFs and VSLs, and requested retirement of PRC-002-1 (Define Regional Disturbance Monitoring and Reporting Requirements) and PRC-018-1 (Disturbance Monitoring Equipment Installation and Data Reporting) (together, the “PRC-002 Changes”). NERC stated that the PRC-002 Changes address FERC concerns expressed in *Order 693*⁸⁶ with the “fill in the blank” aspects in PRC-002-1 and PRC-018-1.⁸⁷ NERC requested that the PRC-002 Changes be approved, effective on the first day of the first calendar quarter six months following FERC approval. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

The FERC approved NERC’s proposed Physical Security Reliability Standard (CIP-014-1) on November 20, 2014.⁸⁸ CIP-014 is designed to enhance physical security measures for the most critical Bulk-Power System facilities and thereby lessen the overall vulnerability of the Bulk-Power System to physical attacks. CIP-014 requires Transmission Owners and Transmission Operators to protect those critical Transmission stations and Transmission substations, and their associated primary control centers that, if rendered inoperable or damaged as a result of a physical attack, could result in widespread instability, uncontrolled separation, or cascading within an Interconnection. CIP-014 also includes requirements for: (i) the protection of sensitive or confidential information from public disclosure; (ii) third party verification of the identification of critical facilities as well as third party review of the evaluation of threats and vulnerabilities and the security plans; and (iii) the periodic reevaluation and revision of the identification of critical facilities, the evaluation of threats and vulnerabilities, and the security plans to help ensure their continued effectiveness. 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,⁸⁹ 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.⁹⁰ A request for rehearing of *Order 802* was filed by the Foundation for Resilient Societies (“FRS”), which identified as problematic: (i) exemptions for Reliability Coordinators, Balancing Authorities, and Generator Operators and Generator Owners; (ii) 2-year exemptions for high impact control centers; (iii) FERC’s failure to address FRS’ comments on the critical role of RCs under the Standard; (iv) failure to require modeled contingency planning for physical attack scenarios; (v) lack of requirements for specific security measures for critical grid facilities; and (vi) failure to address FRS’ cost-effectiveness comments. On January 21, the FERC issued a tolling order affording it additional time to consider the FRS rehearing request, which remains pending before the FERC.

⁸⁶ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16416, FERC Stats. & Regs. ¶ 31,242, at PP 1131-1222, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007) (“*Order 693*”).

⁸⁷ *Interpretation of Protection System Reliability Standard*, Notice of Proposed Rulemaking, 133 FERC ¶ 61,223 (2010) at P 11; *Interpretation of Protection System Reliability Standard*, Order No. 758, 138 FERC ¶ 61,094 (“*Order 758*”), *order on reh’g*, 139 FERC ¶ 61,227 (2012).

⁸⁸ *Physical Security Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 (Nov. 20, 2014) (“*Order 802*”).

⁸⁹ *Order 802* was published in the *Fed. Reg.* on Nov. 25, 2014 (Vol. 79, No. 227) pp. 70,069-70,085.

⁹⁰ *Id.* at P 57.

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

The FERC's September 18, 2014 NOPR proposing to approve changes to COM-1 (Communications) and COM-2 (Operating Personnel Communications Protocols) (together, "COM Changes")⁹¹ remains pending. As previously reported, 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, 2014,⁹² 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)**

The FERC's September 18, 2014 NOPR proposing to approve changes to MOD-31 (Demand and Energy Data) ("MOD-031 Changes")⁹³ also remains pending. The MOD-031 Changes are designed to replace, consolidate and improve upon the "existing MOD-C Standards"⁹⁴ 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, 2014,⁹⁵ 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.⁹⁶ As previously reported, the BAL-001 Changes add a frequency component to the

⁹¹ *Communications Reliability Standards*, 148 FERC ¶ 61,210 (Sep. 18, 2014).

⁹² The *Communications Reliability Standards* NOPR was published in the *Fed. Reg.* on Sep. 30, 2014 (Vol. 79, No. 189) pp. 58,709-58,716.

⁹³ *Demand and Energy Data Reliability Standard*, 148 FERC ¶ 61,192 (Sep. 18, 2014).

⁹⁴ 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.

⁹⁵ 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.

⁹⁶ *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 were due on or before January 26, 2015,⁹⁷ and 12 sets of comments were filed, including comments by NERC, EEI, and ISO-NE (in joint comments with MISO and PJM). This NOPR is pending before the FERC.

- **Order 803: Revised Reliability Standard: PRC-005-3 (RM14-8)**

On January 22, 2015, the FERC approved changes to PRC-005-3 (Protection System and Automatic Reclosing Maintenance) ("PRC-005 Changes").⁹⁸ The PRC-005 Changes include in PRC-005 the maintenance and testing of reclosing relays that can affect the reliable operation of the BPS. While the FERC was persuaded not to direct NERC to submit a report based on actual performance data, and simulated system conditions from planning assessments, it instead directed NERC to "obtain, maintain, and make available to the Commission upon request, one year following the effective date of the standard and on an annual basis thereafter, data sufficient to analyze the effectiveness of PRC-005-3".⁹⁹ In addition, the FERC directed NERC to modify PRC-005-3 to include maintenance and testing of supervisory relays associated with autoreclosing relay schemes to which PRC-005-3 applies.¹⁰⁰ The PRC-005 Changes will become effective, and the existing PRC-005-2 retired, as of April 1, 2016.¹⁰¹

- **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 Standards¹⁰² 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, 2014,¹⁰³ and were filed by NERC, Bonneville, Duke, MISO, and NAESB. Since the last Report, NAESB supplemented its comments with a report on its efforts to develop WEQ

⁹⁷ 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.

⁹⁸ *Protection System Maintenance Reliability Standard*, Order No. 803, 150 FERC ¶ 61,039 (Jan. 22, 2015) ("Order 803"). Order 803 also approved one new definition and six revised definitions, the assigned VRFs and VSLs, and NERC's proposed implementation plan.

⁹⁹ *Id.* at P 25.

¹⁰⁰ *Id.* at P 31.

¹⁰¹ Order 803 was published in the *Fed. Reg.* on Jan. 27, 2015 (Vol. 80, No. 17) pp. 4,195-4,201.

¹⁰² 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.

¹⁰³ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. The MOD-001-2 NOPR remains pending before the FERC.

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

On November 21, 2013, the FERC issued a NOPR¹⁰⁴ 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).¹⁰⁵

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

¹⁰⁴ *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*").

¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷

Initially, comments on the *Nov 21 NOPR* were due on or before February 3, 2014.¹⁰⁸ 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 January 2, 2015, NERC submitted the fourth of its promised quarterly status reports regarding the status of revisions. In the fourth report, NERC reported that it will require additional time, at least until just after February 12, 2015, in order to obtain NERC Board of Trustees approval for proposed Reliability Standard TOP-001-3 (expected to be approved in stakeholder balloting in January). TOP-001-3 is the one remaining Standard that has not yet been approved by the stakeholders and Board. NERC reported that, without TOP-001-3, it is unable to file the remaining approved Standards (given the integrated nature of this group of Standards). If not approved in balloting in January, NERC will propose in a subsequent filing an amended path forward.

- **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.¹⁰⁹ 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, 2013,¹¹⁰ and were

¹⁰⁶ *Id.* at P 4.

¹⁰⁷ *Id.*

¹⁰⁸ The *Nov 21 NOPR* was published in the *Fed. Reg.* on Dec. 5, 2013 (Vol. 78, No. 234) pp. 73,112-73,128.

¹⁰⁹ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

¹¹⁰ 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.

filed by NERC, EEL, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. This NOPR remains pending before the FERC.

XI. Misc. - of Regional Interest

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

On January 12, the FERC approved a transaction¹¹¹ whereby TerraForm Power will ultimately own indirectly 100% of the voting securities of each of the First Wind Applicants¹¹² and First Wind will become an indirect subsidiary of Sun Edison. On February 5, TerraForm, SunEdison Inc. and the First Wind Applicants notified the FERC that the transaction was consummated, concluding this proceeding. If there are any further 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. Interventions were filed by Public Citizen and MA AG. Comments were submitted by PJM's IMM and by UWUA Local 464. Dynegy and EquiPower responded to the PJM IMM and UWUA Local 464 comments on November 24. Both the PJM IMM and UWUA Local 464 answered Dynegy's November 24 answer on December 9. Dynegy and EquiPower filed a limited answer to the December 9 pleadings on December 12. On January 16, the FERC issued a deficiency letter requiring submission by Feb 16 (i) a Delivered Price Test for the PJM market, and the AP South, 5004/5005, and PJM East submarkets; and (ii) additional info. regarding the transactions' effect on rates. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, Lower Village Hydroelectric Associates ("LVA") filed a complaint, on October 23, 2014, 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 responded to the Complaint on December 11, urging the FERC to dismiss the Complaint. LVA answered PSNH's response on December 26 and PSNH answered LVA's answer on January 9, 2015. This matter is pending before the FERC. If you have any questions concerning this Complaint, 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,

¹¹¹ *Blue Sky East, LLC et al.*, 150 FERC ¶ 62,014 (Jan. 12, 2015).

¹¹² "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.

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. On November 14, FirstEnergy filed an answer to the answers, protests and comments submitted in response to its Complaint and Amended Complaint. Environmental Advocates¹¹³ filed an answer to FirstEnergy's answer on November 21. Since the last Report, CPower and Advanced Energy Management Alliance filed answers to the FirstEnergy and other answers and pleadings. On December 23, Environmental Advocates moved to lodge the US Solicitor General's application for an extension of time in which to file a petition for writ of certiorari, the Supreme Court Clerk's notice to the DC Circuit that the extension had been granted, and the DC Circuit's order extending the stay of its mandate pending the Supreme Court's final disposition of the writ of certiorari. This matter remains 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).

- **E&P Agreement Terminations: Spruce Mountain Wind (ER15-975); Record Hill Wind (ER15-974); Highland Wind (ER15-973); Patriot Renewables (ER15-972)**

On February 4, CMP filed a notice of termination of four Engineering and Procurement Agreement ("E&P Agreements") with Spruce Mountain Wind (superseded by IA-CMP-11-04); Record Hill Wind (superseded by IA-CMP-10-01); Highland Wind (all services completed); and Patriot Renewables (all services completed). CMP requested that each of the terminations become effective April 6, 2015. Comments on these filings are due on or before February 25, 2015.

- **LSA Termination: Emera/ Black Bear HVGW (ER15-962)**

On February 3, Emera and the ISO filed a notice of termination of a Local Service Agreement ("LSA") for Local Point-to-Point Service with Black Bear HVGW, LLC ("Black Bear"). Black Bear operated the Howland Hydroelectric Project ("Howland") located on the Penobscot River in central Maine, which as of January 2, 2015, however, ceased operations in preparation for decommissioning and dismantling. On January 5, 2015, Emera Maine's electric transmission facilities were disconnected from Howland and Emera Maine ceased providing electric transmission service for use by Howland. Emera and the ISO requested that the termination become effective January 6, 2015. Comments on this filing are due on or before February 24, 2015.

¹¹³ "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).

- **IA – CL&P/Energy Stream (ER15-947)**

On January 30, CL&P filed a non-conforming¹¹⁴ interconnection agreement (IA-NU-29) to maintain and govern the interconnection of Energy Stream’s 120 kW hydroelectric generation unit located on the Quinnebaug River in Putnam, Connecticut. A March 31, 2015 effective date was requested. Comments on this matter are due on or before February 20, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **HG&E Demarcation Agreement (ER15-939)**

On January 30, WMECO filed a revised Asset Demarcation Agreement by and between WMECO and Holyoke Gas and Electric Department (“HG&E”). The Agreement established the parties agreement on the demarcation of ownership of their respective electric transmission facilities, and the revisions reflect the recent construction by HG&E of a new transmission substation. WMECO requested that the Agreement be accepted for filing as of January 5, 2015. Comments on this filing are due on or before February 20, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **IA – CMP/Kennebec Water District (ER15-757)**

On December 30, CMP filed a non-conforming¹¹⁴ interconnection agreement (IA-CMP-15-02) to maintain and govern the interconnection (first established in 2000) of Kennebec Water District’s 800 kV facility in Waterville, Maine. A January 1, 2015 effective date was requested. Comments on this matter were due on or before January 20, 2015; none were filed and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **E&P Agreement CL&P/CPV Towantic (ER15-715)**

On December 23, NU filed an Engineering, Design, Permitting and Siting Agreement (“E&P Agreement”) between CL&P and CPV Towantic, LLC (designated as service agreement IA-NU-30). The E&P Agreement sets forth the terms and conditions under which CL&P will undertake engineering, design, permitting and siting activities to the extent that transmission upgrades are necessary to physically and electrically interconnect CPV’s 795 MW natural gas-fired plant located in Oxford, Connecticut to the Administered Transmission System for FCA9. NU requested that the E&P Agreement be accepted for filing as of December 5, 2014. Comments on this filing were due on or before January 13, 2015; none were filed and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **E&P Agreement CMP/Atlantic Wind (ER15-589)**

On January 22, the FERC accepted an Engineering and Procurement Agreement (“E&P Agreement”) between CMP with Atlantic Wind LLC (designated as service agreement CMP-EP-3 under CMP’s eTariff files). As previously reported, the E&P Agreement sets forth the terms and conditions under which CMP will provide engineering and procurement services to Atlantic Wind in connection with Atlantic Wind’s planned 100 MW, 50 turbine Fletcher Mountain Wind Farm to be located in Concord and Lexington Townships in Somerset County, Maine. The FERC accepted the E&P Agreement effective as of December 4, 2014, as requested. Unless the January 22 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).

- **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

¹¹⁴ Because the IA continues an existing interconnection arrangement, the submission of the IA does not constitute a new “Interconnection Request” or require a new three-party IA (and, as a two-party agreement, is a non-conforming SGIA).

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. Comments on this filing were due on or before December 8; none were filed. NU submitted a doc-less intervention on December 5. On January 15, 2015, the FERC issued a deficiency letter directing National Grid to provide additional information, on or before February 17, 2015, in order for the FERC to process the filing. 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”,¹¹⁵ which the Midwest ISO (“MISO”) and ITC proposed unilaterally to do (without the support of either PJM or NYISO) in its October 20, 2010 filing initiating this proceeding. For a summary of specific findings, please refer to any of the January to June 2013 Reports.

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. Briefs opposing exceptions were filed by the FERC Trial Staff, MISO TOs, NYISO, NY TOs, PJM, and the PJM TOs. On February 25, Joint Applicants moved to strike a portion of the PJM Brief Opposing Exceptions. On March 12, PJM answered Joint Applicants February 25 motion. MISO (now called “Midcontinent Independent System Operator, Inc.”) moved to lodge a NYISO “Broader Regional Markets Informational Report” filed March 19, 2014 in ER08-1281 and a related January 16, 2014 “Ontario-Michigan Interface PAR Performance Evaluation Report” (“Evaluation Report”) prepared by MISO, IESO and PJM. Oppositions to that motion to lodge were filed by FERC Staff, NYISO, NY TOs, PJM, and PSEG. This matter remains pending before the FERC. If there are any questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FERC Enforcement Action: Maxim Power and K. Mitton (IN15-4)**

On February 2, 2015, the FERC issued an order directing Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Co., LLC, Pittsfield Generating Company, LP, and Kyle Mitton (collectively, “Maxim Respondents”)¹¹⁶ to show cause (i) why they should not be found to have violated the FERC’s Anti-Manipulation Rules through a scheme to obtain payments for reliability dispatches based on the price of expensive fuel oil when Maxim in fact burned much less costly natural gas; and (ii) why they should not be assessed civil penalties as follows: Maxim and its affiliates (**\$5 million civil penalty, jointly and severally**); and K. Mitton (**\$50,000 civil penalty**).¹¹⁷ As previously reported, OE Staff alleges that Maxim 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,

¹¹⁵ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

¹¹⁶ 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).

¹¹⁷ *Maxim Power Corp. et al.*, 150 FERC ¶ 61,068 (Feb. 2, 2015) (“*Maxim Show Cause Order*”).

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. The Maxim Respondents have until March 4, 2015 to file an answer to the *Maxim Show Cause Order*. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FERC Enforcement Action: Powhatan Energy, HEEP Fund, CU Fund, and H. Chen (IN15-3)**

On December 17, 2014, the FERC issued an order directing Houlian “Alan” Chen, HEEP Fund, Inc., CU Fund, Inc., and Powhatan Energy Fund, LLC (together, “Powhatan Respondents”) to show cause (i) why they should not be found to have violated the FERC's Anti-Manipulation Rules by engaging in fraudulent Up To Congestion (UTC) transactions in PJM's energy markets and (ii) why they should not disgorge unjust profits with interest and be assessed civil penalties as follows: Powhatan Energy Fund (***\$16.8 million civil penalty; \$3.47 million disgorgement***); CU Fund: (***\$10.08 million civil penalty; \$1.08 million disgorgement***); HEEP Fund (***\$1.92 million civil penalty; \$173,100 disgorgement***); H. Chen (***\$1 million civil penalty*** for trades executed through and on behalf of Powhatan and the Funds).¹¹⁸ As previously reported, OE Staff alleges that, between June and August 2010, Powhatan Respondents engaged in manipulative Up To Congestion trading in PJM, trades which amounted to wash trading, long prohibited by the FERC. Specifically, Staff alleges that the transactions were 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. On December 31, the answer period was extended by the FERC, so that Powhatan Respondents' answers were due on or before February 2, 2015.

On January 12, Powhatan Respondents invoked their statutory rights to prompt assessment of a penalty and a de novo review of that penalty in federal district court. On January 27, Powhatan Respondents requested a two-week extension of time for its answers, citing a need to review yet-to-be disclosed exculpatory evidence. On January 29, FERC staff opposed the requested extension, but provided additional materials. On January 30, the FERC denied the requested extension, but indicated that Powhatan Respondents would be permitted to provide by February 9 a supplemental answer in response to the materials provided with staff's Jan 29 motion. Powhatan Respondents submitted their answers to the *Powhatan Show Cause Order* on February 2. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FERC Enforcement Action: Twin Cities (IN15-2)**

On December 30, 2014, the FERC approved four Stipulation and Consent Agreements, one between OE and Twin Cities¹¹⁹ and three between OE and three Twin Cities' individual traders, Allan Cho, Jason F. Vaccaro, and Gaurav Sharma. Twin Cities, which admitted to violating the FERC's Anti-Manipulation Rule by scheduling and trading physical power in MISO to benefit related swap positions that settled off of real-time MISO prices, including the Cinergy Hub Balance-of-Day Swap traded on IntercontinentalExchange, Inc. (“ICE”), during the January 1, 2010 through January 31, 2011 period, agreed to pay a ***\$2.5 million civil penalty*** and to ***disgorge \$978,176*** plus interest. The individual traders, while neither admitting nor denying the alleged violations, each agreed to civil penalties and physical trading bans as follows: Vaccaro (***\$400,000; 5-year ban***); Cho (***\$275,000; 4-year ban***); and Sharma (***\$75,000; 4-year ban***). If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹¹⁸ *Houlian Chen, Powhatan Energy Fund, LLC, HEEP Fund, LLC, and CU Fund, Inc.*, 149 FERC ¶ 61,261 (Dec. 17, 2014), *as revised*, 149 FERC ¶ 61,263 (Dec. 18, 2014) (“*Powhatan Show Cause Order*”).

¹¹⁹ “Twin Cities” includes Twin Cities Power – Canada, Ltd., Twin Cities Energy, LLC, and Twin Cities Power, LLC.

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

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

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.¹²⁰ 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

- **Technical Conferences on Implications of Environmental Regulations (AD15-4)**

The FERC initiated this proceeding, on December 9, 2014, in order to discuss, in a series of technical conferences, the implications of compliance approaches to the Environmental Protection Agency’s (“EPA”) proposed Clean Power Plan issued June 2, 2014.¹²¹ The technical conferences will focus on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure. There will be one, Commissioner-led National Overview technical conference to be held on February 19. There will be three, staff-led regional technical conferences, with the Eastern region conference to be held March 11 at FERC headquarters.

Feb 19 National Overview technical conference. This conference will include discussion of the following overarching topics: (1) whether industry participants (state utility and environmental regulators, regulated entities, etc.) have the appropriate tools to identify reliability and/or market issues that may arise; (2) potential strategies for compliance with the EPA regulations and coordination with FERC-jurisdictional wholesale and interstate markets; and (3) how relevant planning entities, industry, and states coordinate reliability and infrastructure planning processes with state and/or regional environmental compliance efforts to ensure the adequate development of new infrastructure and to manage any potential reliability and operational impacts of proposed compliance plans. On January 6, 2015, the FERC issued a supplemental notice of the technical conference with a proposed agenda for the February 19 discussion. On February 2, the FERC issued a supplemental notice that updated the agenda and identified panelists for the National Overview conference. Those interested are encouraged to register by February 13. Thus far, comments have been filed by the Energy Policy Group and the ISO/RTO Council (“IRC”).

Mar 11 Eastern¹²² Regional conference. This conference will include discussion of the following topics: (1) potential reliability impacts in each region under various compliance approaches; (2) potential impacts on power system operations and generator dispatch in each region under various compliance approaches; and (3) potential impact on each region’s current or expected infrastructure (electric transmission, natural gas pipelines, generation, etc.) to address compliance with the proposed rule, and additional infrastructure that may be required.

¹²⁰ 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).

¹²¹ *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, Notice of Proposed Rulemaking, 79 Fed. Reg. 34,830 (June 18, 2014).

¹²² The Eastern Region includes New England, Northern Maine Independent System Administrator, New York, PJM, Southeastern Regional Transmission Planning (“SERTP”), South Carolina Regional Transmission Planning (“SCRTP”), and the Florida Reliability Coordinating Council (“FRCC”).

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

As previously reported, FERC Staff published a “Common Metrics” report on August 26, 2014, 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
- ▶ 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.”

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 was held on December 9. The December 9 workshop focused on RTO/ISO operator actions that affect price. New England speakers included, among others, Joel Gordon, Tom Kaslow, David Patton, Pete Brandein, and Matt White. Speaker materials are posted in the FERC’s eLibrary.

Post-Technical Workshop Comments. On January 16, the FERC invited all interested to file post-technical workshop comments on any or all of the 12 questions listed in the attachment to its January 16 Notice, with any such comments due on or before February 19. A 15-day extension of time to file such comments, to and including March 6, was jointly requested by APPA, EPSA and NRECA. CAISO, NYISO, PJM and SPP jointly filed a motion supporting the trade associations’ request. On February 3, ISO-NE also asked for an extension of time, but only with respect to questions 5-12, but to and including March 20, 2015. The requests are pending before the FERC.

The FERC web page for this issue is 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.¹²³ 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.”¹²⁴ Since the last Report, INGAA submitted comments related to the November 20 order.

- **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.¹²⁵ 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, 2014.¹²⁶ Over 25 parties filed comments and Berkshire Hathaway, Barrick Mines, and EPSA filed reply comments. 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 (“OATT”) requirements of 18 CFR 35.28 (2013), the Open Access Same-Time Information System (“OASIS”) 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”),¹²⁷ 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

¹²³ *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.”

¹²⁴ *Id.* at P 19.

¹²⁵ *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Svcs. by Public Utils.*, 147 FERC ¶ 61,232 (June 19, 2014) (“*MBR NOPR*”).

¹²⁶ The *MBR NOPR* was published in the *Fed. Reg.* on July 25, 2014 (Vol. 79, No. 143) pp. 43,536-43,572.

¹²⁷ ICIF is the term used by the FERC in the NOPR to refer to “generator tie lines”.

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, 2014.¹²⁸ Comments were submitted by over 20 parties, including: APPA, AWEA, EEI, EPSA, First Wind, NextEra, NRECA, and NRG. The MISO Transmission Owners filed comments replying to the comments of MISO and the ITC Companies. This NOPR is pending before the FERC.

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

On June 26, 2013, WIRES¹²⁹ 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*,¹³⁰ 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, 2013.¹³¹ 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*.¹³² *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

¹²⁸ The NOPR was published in the *Fed. Reg.* on May 30, 2014 (Vol. 79, No. 104) pp. 31,061-31,072.

¹²⁹ WIRES, the Working group for Interest in Reliable and Economic Electric Systems, describes itself as a national non-profit association of investor-, member-, and publicly-owned entities dedicated to promoting investment in a strong, well-planned, and environmentally beneficial high voltage electric transmission grid. Information about its principles and members is available on its website www.wiresgroup.com.

¹³⁰ *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).

¹³¹ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹³² *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

in a timely manner to the e-Tags covered by *Order 771*.¹³³ The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

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

On September 18, 2014, the FERC issued *Order 676-H*,¹³⁴ 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 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, 2014.¹³⁵ 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.

Compliance Deadlines Extended. On January 15, the FERC extended for all entities subject to these requirements the deadline for compliance with the Version 003 business practice standards, with the exception of the OASIS template (for which compliance is required by March 24, 2016), to and including May 15, 2015. All other compliance obligations set forth in *Order 676-H* remain in force.

¹³³ *Order 771-A* clarified that: (1) Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of *Order 771*; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the FERC in the CC field; (3) the requirement for the FERC to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the FERC will deem all e-Tag information made available to the FERC pursuant to *Order 771* as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the FERC is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure FERC access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

¹³⁴ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-H, 148 FERC ¶ 61,205 (Sep. 18, 2014) (“*Order 676-H*”).

¹³⁵ *Order 676-H* was published in the *Fed. Reg.* on Sep. 24, 2014 (Vol. 79, No. 185) pp. 56,939-56,955.

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.

- **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.¹³⁶ Specifically, the NOPR proposes to: (i) start the Gas Day earlier, at 4:00 a.m. Central Clock Time (“CCT”)¹³⁷ 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.

¹³⁶ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

¹³⁷ CCT, pursuant to the NAESB WGQ standards, reflects daylight savings changes.

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, 2014.¹³⁸ 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.

On December 12, 2014, the FERC issued a data request to ISO-NE (along with other ISOs) related to the Commission's proposal to move the start of the gas day. Specifically, the FERC asked ISO-NE a series of questions regarding the frequency and timing of generators' exhausting their daily nomination of natural gas transportation service prior to the end of the gas day during 2013 and 2014. The ISO the ISO/RTO Council requested an extension of time, to and including January 22, for the RTO/ISO responses to the December 12 data requests., which the FERC granted.

On January 22, 2015, ISO-NE submitted its response to the data request.¹³⁹ The ISO stated that moving the gas day will "help minimize the risks of generators running out of gas during the morning ramp," but also stressed that it had already taken a number of actions to alleviate these issues. The ISO also acknowledged that it needs its generating resource owners and other entities to invest in firm fuel supplies and transportation and to maintain on-site fuel inventory and dual fuel capability. On February 2, comments in response to the ISO/RTO data responses were filed by four parties: the Coalition for Enhanced Electric and Gas Reliability, the Natural Gas Council, the New England Local Distribution Companies ("LDCs"), and the American Public Gas Association ("APGA").

- **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

¹³⁸ The NOPR was published in the *Fed. Reg.* on Apr. 1, 2014 (Vol. 79, No. 62) pp. 18,223-18,243.

¹³⁹ Responses to the data request were also submitted by NYISO, MISO, PJM and SPP.

Commission's regulations.¹⁴⁰ On or before May 19, natural gas pipelines were required to 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.¹⁴¹ 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. The Show Cause Order required each pipeline to explain in its compliance filing how it will fully comply with section 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 Internet website.

In total, the FERC received, and addressed in one omnibus order, 157 compliance filings.¹⁴² Of the 157 filings, 64 pipelines revised their respective tariffs to provide for the posting of offers to purchase released capacity in a manner that complies with section 284.8(d), and 23 pipelines demonstrated that their tariffs already comply with that section. The FERC found that, and identified in its omnibus order on the compliance filings the, 69 compliance filings that did not appear to be in full compliance with that section, and directed further compliance filings from those companies as described in the omnibus order.

- **Natural Gas-Related Enforcement Actions**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines. Since the last Report, there was a great deal of activity in the following on-going, gas-related enforcement proceeding:

<u>Company</u>	<u>Alleged Violation(s)</u>	<u>Civil Penalty/Disgorgement</u>
BP America Inc. BP Corp. N. Amer. BP Amer. Production BP Energy Co. (together, "BP") (IN13-15)	The FERC established a hearing to determine whether BP violated section 4A of the Natural Gas Act and the FERC's Anti-Manipulation Rule as alleged by OE Staff. OE Staff alleged that BP traded physical natural gas at Houston Ship Channel ("HSC") to increase the value of BP's financial position at HSC, uneconomically using BP's transportation capacity, making repeated early uneconomic sales at HSC, taking steps to increase BP's market concentration at HSC. In doing so, OE staff alleged, BP suppressed the HSC Gas Daily index with the goal of increasing the value of BP's financial position at HSC. The activity occurred from mid-September 2008 through November 2008.	Show Cause Order ¹⁴³ \$28 million (civil penalty) \$800,000 (disgorgement)

¹⁴⁰ *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

¹⁴¹ *Id.* at P 6.

¹⁴² *See BR Pipeline Co. et al.*, 149 FERC ¶ 61,031 (Oct. 16, 2014).

¹⁴³ *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

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 issued on Jan 23, 2015.
 - ▶ 90-day Federal Authorization Decision Deadline April 23, 2015.
 - ▶ 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

No Activity to Report.

XV. Federal Courts

The following are matters of interest, including petitions for review of FERC decisions in NEPOOL-related proceedings, that are currently pending before the federal courts (unless otherwise noted, the cases are before the U.S. Court of Appeals for the District of Columbia Circuit). An “**” following the Case No. indicates that NEPOOL has intervened or is a litigant in the appeal. The remaining matters are appeals as to which NEPOOL has no organizational interest but that may be of interest to Participants. For further information on any of these proceedings, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
Underlying FERC Proceedings: ER14-1409¹⁴⁴
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 were filed by Petitioners by December 22, 2014. On January 2, 2015, the FERC filed a motion to dismiss the petitions for lack of jurisdiction. The FERC argued that the Court lacks jurisdiction because Petitioners did not challenge a FERC “order” within the meaning of section 313 of the FPA, or “agency action” reviewable under the Administrative Procedures Act. On January 15, EPSA and NEPGA jointly filed a motion supporting the FERC’s motion to dismiss. On January 26, Connecticut¹⁴⁵ and Public Citizen opposed the FERC’s motion to dismiss.

In a related development, members of the New England Congressional delegation sent a January 30 letter to the five FERC Commissioners asking that they re-examine the issue of the just and reasonableness of the rates produced by FCA8.

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**
Underlying FERC Proceedings: ER13-1851¹⁴⁶ and ER13-2266¹⁴⁷
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). At the FERC’s request, the Court ordered that a revised briefing schedule be applied in this case (effectively extending the overall briefing schedule by one month. Accordingly, Respondent Brief is due next, on February 13, 2015; Joint Brief

¹⁴⁴ 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).

¹⁴⁵ For purposes of this proceeding, “Connecticut” means the CT AG, CT PURA and CT OCC.

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

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

for Respondent-Intervenors, March 2, 2015; Joint Reply Brief for Petitioners, March 25, 2015; Deferred Appendix, April 1, 2015; and Final Briefs, April 15, 2015.

- **Orders 773 and 773-A (2nd Cir., 13-2316)**
Underlying FERC Proceedings: RM12-6 and RM12-7¹⁴⁸
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 and this matter is pending before the Court.

- **New England's Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹⁴⁹
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: RM10-17-000¹⁵⁰
Appellants: EPSA, CAISO, ODEC, EEL, CA PUC

As previously reported, the DC Circuit vacated *Order 745*¹⁵¹ 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

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

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

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

¹⁵¹ *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.

compensation. The Decision and preliminary implications of the Decision were summarized in more detail in the memo included with the supplemental materials circulated and posted for the June 6 meeting.

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

On September 22, the FERC and a group of intervenors¹⁵² 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. As previously reported, the DC Circuit directed its clerk to withhold the mandate through January 15, 2015, and, as earlier directed, if a petition for writ of certiorari is filed, to withhold issuance of the mandate pending the Supreme Court’s final disposition. On January 15, the Solicitor General of the United States, on behalf of the FERC, filed with the Supreme Court a petition for a writ of certiorari seeking review of the District Court’s May 23 Decision. Responses to that writ are due on or before February 7 and the issuance of the mandate will be withheld for the time being.

- **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. The parties consented to the filing of amicus curiae briefs, and such briefs were filed by NARUC, the State of Connecticut, and APPA. Responses are now due on or before February 11, 2015.

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 Maryland¹⁵³ 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.¹⁵⁴ In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field¹⁵⁵ and conflict pre-empted.¹⁵⁶

¹⁵² 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.

¹⁵³ *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.

¹⁵⁴ *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467; 2014 U.S. App. LEXIS 10155.

¹⁵⁵ “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.

¹⁵⁶ “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.”

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.”¹⁵⁷ 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”),¹⁵⁸ and leaving “no room either for direct state regulation of the prices of interstate wholesales of [energy], or for state regulations which would indirectly achieve the same result.” Accordingly, the 4th Circuit concluded that the MD PSC Order “field preempted because it functionally sets the rate that CPV receives for its sales in the PJM auction.”¹⁵⁹ 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.”¹⁶⁰ 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.”¹⁶¹

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”.¹⁶² 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.’”¹⁶³ “Maryland’s initiative disrupts [the PJM scheme] by substituting the state’s preferred incentive structure for that approved by FERC.”¹⁶⁴ “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.”¹⁶⁵

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*.

- **CPV Power Development, Inc., et al. v. PPL EnergyPlus, LLC, et al. (Supreme Court, 14-634, 14-694)**

Petitions for a writ of certiorari in this case were filed on November 26, 2014 and December 10, 2014 and placed on the Supreme Court’s docket as case nos. 14-634 and 14-694, respectively. Responses are now due on or before February 11, 2015. The parties consented to the filing of amicus curiae briefs, and such briefs were filed by NARUC, the State of Connecticut, APPA, AWEA, and the NY PSC.

¹⁵⁷ Slip op. at p. 14.

¹⁵⁸ *Id.* at p. 10.

¹⁵⁹ *Id.* at p. 16.

¹⁶⁰ *Id.* at pp. 18-19.

¹⁶¹ *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.

¹⁶² *Id.* at p. 27.

¹⁶³ *Id.* at p. 23.

¹⁶⁴ *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.”)

¹⁶⁵ *Id.* at p. 25.

As previously reported, on September 11, 2014, the 3rd Circuit Court of Appeals affirmed¹⁶⁶ 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").¹⁶⁷ 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.¹⁶⁸

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. As noted above, petitions for *certiorari* to the U.S. Supreme Court were filed and are pending before the Supreme Court.

- **Allco Finance Limited v. Klee, (D. CT - 3:13cv1874 (JBA))**

On December 10, the United States District Court for the District of Connecticut upheld the constitutionality of Section 6 of Connecticut Public Act 13-303 ("Section 6"), which gives the Commissioner of CT DEEP the authority to solicit proposals for renewable power and to compel CL&P and UI to enter into wholesale power purchase agreements ("PPAs") for energy and/or RECs for a term of up to 20 years, serving up to 4% of Connecticut's electricity needs.¹⁶⁹

By way of background, Allco submitted proposals pursuant to CT DEEP's July 2013 solicitation under Section 6, but its proposals were not selected (two other projects were). Allco challenged CT DEEP's application of Section 6 because it asserted DEEP's application was not in accordance with PURPA; because DEEP hadn't demonstrated that the PPAs represented CL&P/UIs' avoided costs, DEEP's application of Section 6 was therefore in conflict the Federal Power Act.

Ultimately, the Connecticut District Court determined that Allco's claim failed for a number of reasons. First, Allco lacked standing, having not established that it had suffered a legally protected injury within the zone of interest protected by the FPA, or that a favorable decision would redress any possible injury. Allco's claim also failed on the merits, the Court held, because the Court found that Section 6 does not seek to regulate wholesale rates, and "is consistent with the 'broad powers' of the states 'to direct the planning and resource decisions of utilities under their jurisdiction.'"¹⁷⁰ This decision is noteworthy given the outcomes in the Maryland and New Jersey CfD cases.

¹⁶⁶ *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, ("NJ Order").

¹⁶⁷ *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

¹⁶⁸ *Id.* slip op. at 31.

¹⁶⁹ *Allco Finance Limited v. Klee*, No. 3:13cv1874, 2014 U.S. Dist. LEXIS 170674 (D. Conn. Dec. 10, 2014) ("*Allco*").

¹⁷⁰ *Id.* at *25 (quoting *Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393, 417).

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