

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of March 4, 2015

The following activity, as more fully described in the attached litigation report, has occurred since the report dated February 5, 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)	Mar 2	NEPGA, Entergy request rehearing of Jan 30 order denying Complaint
1	New Entry Pricing Rule Complaint (EL15-23)	Mar 2	Exelon/Calpine request rehearing of Jan 30 order denying Complaint
2	206 Proceeding: Importers' FCA Offers Review/Mitigation (EL14-99; ER15-117)	Feb 12	FERC issues tolling order affording it additional time to Public Citizen's request for rehearing of Dec 15 order
3	Base ROE Complaints (2012 & 2014) Consolidated (EL14-86 & EL13-33)	Feb 26	Judge Sterner issues an order to show cause why certain TO testimony should not be stricken, in whole or in part, or why other measures should not be taken; oral argument scheduled for Mar 17
7	Base ROE Complaint (2011) (EL11-66)	Mar 3	FERC denies rehearing of <i>Opinion 531</i> and <i>Opinion 531-A</i>
II. Rate, ICR, FCA, Cost Recovery Filings			
* 8	FCA9 Results Filing (ER15-1137)	Feb 27 Mar 2-3	ISO files results of ninth FCA; comment date Apr 13 NESCOE, EPSA, HQ intervene
8	ICR, HQICCs and Related Values - 2018/19 Power Year (ER15-325)	Feb 27	FERC grants NEPOOL's request for clarification of Jan 2 order
III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests			
* 9	Forward Reserve Obligation Charge Changes (ER15-1009)	Feb 6 Feb 9-27	ISO and NEPOOL jointly submit revised Tariff Section III.10.4 to change calculation of Forward Reserve Obligation Charge Dominion, Entergy, Eversource, Exelon, PSEG intervene
9	ORTP Exemption for Distributed Renewable Technology Resources (ER15-716)	Feb 20	FERC accepts Market Rule changes, effective Feb 21
9	CSO Deferral: ISO Proposal (ER14-2440)	Feb 23	FERC denies PSEG/NRG request for rehearing of Sep 12, 2014 order
10	Winter 2014/15 Reliability Program (ER14-2407)	Feb 19 Mar 4	ISO requests rehearing of Jan 20 <i>Winter Reliability Program Clarification Order</i> NESCOE files answer to ISO Feb 19 rehearing request
10	Demand Curve Changes (ER14-1639)	Mar 2	ISO submits compliance filing clarifying that a resource cannot use both the price lock-in election and the renewable resource exemption (beginning with FCA-10); comment date Mar 23
IV. OATT Amendments / TOAs / Coordination Agreements			
* 12	ETU Rule Changes (ER15-1050)	Feb 13 Feb 23- Mar 4	ISO, NEPOOL, PTO AC jointly submit Tariff revisions to improve the ETU process and incorporate them into FCM; comment date Mar 6 ConEd, Entergy, HQUS, NESCOE, NHT, NRG intervene

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

15	LGIA – NU/CPV Towantic (ER15-200)	Feb 6	Settlement Judge Coffman schedules Mar 27 (3rd) settlement conference held
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VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 16	Capital Projects Report - 2014 Q4 (ER15-1036)	Feb 12 Feb 18	ISO files Report NEPOOL files comments supporting filing
16	Future Winter Reliability Program Progress Reports (ER14-2407)	Feb 6	ISO submits second progress report on Winter Reliability Program
* 16	IMM Quarterly Markets Reports - 2014 Q4 (ZZ14-4)	Feb 18	Internal Market Monitor files report for Q4 2014

IX. Membership Filings

* 16	March 2015 Membership Filing (ER15-1131)	Feb 27	<i>New Member</i> : Epico USA; <i>Termination</i> of the Participant status of J. P. Morgan Ventures Energy Corp.; comment date Mar 20
17	February 2015 Membership Filing (ER15-937)	Feb 27	FERC accepts filing
17	January 2015 Membership Filing (ER15-780)	Feb 12	FERC accepts filing
* 17	Suspension Notices (not docketed)	Feb 23 Feb 24	Negawatt and NAPP suspended from New England Markets ISO files notice of suspensions

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

* 17	FFT Report: Feb 2015 (NP15-22)	Feb 26	NERC files report
* 17	Revised Reliability Standards: PRC-004-2.1(i)a, PRC-004-4; PRC-005-2(i), PRC-005-3(i), VAR-002-4 (RD15-4)	Feb 6	NERC files revised Standards; comment date Mar 9
* 18	Revised Reliability Standards: CIP-003-6, CIP-004-6, CIP-006-6, CIP-007-6, CIP-009-6, CIP-010-2, CIP-011-2 (RM15-14)	Feb 13	NERC files CIP Changes for approval
* 19	Revised Reliability Standard: PRC-010-1 (RM15-12)	Feb 6	NERC files UVLS Changes for approval
21	<i>Order 804</i> : Revised Rel. Standard: MOD-031-1	Feb 19	FERC approves MOD-031-1 changes, and directs NERC to modify MOD-031-1 to clarify certain obligations to provide data to Regional Entities and consider compliance obligations associated with requests for confidential information

XI. Misc. - of Regional Interest

25	203 Application: EquiPower / Dynegy (EC14-140)	Feb 6 Feb 20 Feb 24	Applicants amend application by responding to FERC deficiency letter; Dynegy Applicants file settlement with PJM IMM UWUA Local 464 renews protest in response to Feb 6 amendment Applicants respond to UWUA Local 464 Feb 20 pleading
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* 26	LCC Services Agreement – NSTAR/Braintree (ER15-1040)	Feb 13	NSTAR files LCC Services Agreement; comment date Mar 6
27	IA – CMP/Kennebec Water District (ER15-757)	Feb 6	FERC accepts IA, effective Jan 1
27	E&P Agreement CL&P/CPV Towantic (ER15-715)	Feb 6	FERC accepts E&P Agreement, effective Dec 5, 2014
28	<i>Opinion 531-A</i> Compliance Filing: NGrid IFA Amendments (ER15-418)	Feb 18	National Grid responds to FERC deficiency letter; comment date Mar 11
28	FERC Enforcement Action: Maxim Power and K. Mitton (IN15-4)	Feb 18 Feb 20 Feb 24 Mar 4	Maxim Respondents request extension of time, until Mar 30, to answer the <i>Maxim Show Cause Order</i> OE opposes Maxim Respondents’ Feb 18 request FERC denies Maxim Respondents’ motion for an extension of time Maxim Respondents answer <i>Maxim Show Cause Order</i>
29	FERC Enforcement Action: Powhatan Energy, HEEP Fund, CU Fund, and H. Chen (IN15-3)	Feb 9 Feb 19 Mar 2	Powhatan Respondents supplement Feb 2 answers Powhatan Respondents submit letter to FERC Commissioners highlighting two post-order <i>ex parte</i> concerns OE responds to Feb 2 answers

XII. Misc. - Administrative & Rulemaking Proceedings

30	Technical Conferences on Implications of Environmental Regulations (AD15-4)	Feb 6 – Mar 2 Mar 4	Parties submit post-technical conference comments FERC issues supplemental notice of Mar 11 Eastern Region conference
31	Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14)	Feb 9 Feb 19- Mar 2	FERC extends deadline to file comments to and including Mar 6, 2015 Potomac Economics, Energy Trading Analytics, MISO submit comments
32	RTO/ISO Winter 2013/14 Operations and Market Performance (AD14-8)	Feb 18	RTO/ISOs submit reports in compliance with Nov 20 order; comment date Mar 20
* 32	NOPR: Third-Party Provision of Primary Frequency Response Service (RM15-2)	Feb 19	FERC issues NOPR; comment date Apr 27

XIII. Natural Gas Proceedings

38	Algonquin Incremental Market Project (AIM Project) (CP14-96)	Mar 3	Certificate of public convenience and necessity granted (must be constructed and in service within two years)
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XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

39	FCA8 Results (ER14-1244 (consol.))	Feb 5 Feb 18	FERC replies to Connecticut and Public Citizen motions Chairman LaFleur responds to New England Congressional delegation regarding request to re-examine FCA8 results
40	2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consol.))	Feb 13 Mar 2	Respondent files brief Respondent-Intervenors file brief

40	<i>FERC v. EPSA</i> (Orders 745, 745-A) (Supreme Court, 14-840)	Feb 11 Feb 17-18	Court extends to Mar 19 deadline for all respondents to file responses to FERC petition for writ of certiorari; EPSA consents to <i>amicus curiae</i> briefs Respondents CAISO, CA PUC file supporting briefs; Fourteen Utilities Including Consolidated Edison Co. of New York and Affiliates, Delaware Division of the Public Advocate. et al., and Electricity Consumers and Demand Response Providers file <i>amici curiae</i> briefs
41	<i>CPV Maryland, LLC v. PPL EnergyPlus et al.</i> (Supreme Court, 14-623)	Feb 11 Feb 24	Respondents (PPL EnergyPlus, LLC, et al) file brief Petitioner (CPV Maryland) files response
43	<i>CPV Power Development, Inc., et al. v. PPL EnergyPlus, LLC, et al.</i> (Supreme Court, 14-634, 14-694)	Feb 11 Feb 20	Respondents (PPL EnergyPlus, LLC, et al.) oppose writ of certiorari Petitioners (CPV Power Development, Inc., et al.) reply to Respondents' Feb 11 brief
* 44	<i>Entergy Nuclear Fitzpatrick, LLC et al v. Zibelman et al</i> (N.D.N.Y. 5:15-cv-00230-DNH-TWD)	Feb 27	Entergy seeks declaratory judgment that the NYPSC order approving an agreement to keep the Dunkirk facility in the NYISO market is preempted by the FPA and invalid under the U.S. Constitution's dormant Commerce Clause

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: March 4, 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 March 4, 2015. If you have questions, please contact us.¹

I. Complaints

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

Rehearing has been requested of the FERC’s January 30 order denying NEPGA’s PER Complaint.² As previously reported, the *PER Complaint Order* found that NEPGA had failed to meet its burden under section 206 of the Federal Power Act to demonstrate that the existing ISO Tariff provisions were unjust and unreasonable.³ On March 2, NEPGA and Entergy challenged the *PER Complaint Order*. NEPGA argued the FERC should “reverse its finding ... that NEPGA did not satisfy its Section 206 burden in the Complaint with respect to the relief sought for Capacity Commitment Periods 5 through 8” and “clarify that the [FERC], not the complainant, carries the burden under Section 206 of establishing a just and reasonable “replacement” rate”. If rehearing is denied, NEPGA asked the FERC to clarify that it “did not intend to prejudice any future proceeding on the PER Adjustment issue by establishing a required evidentiary standard” in the *PER Complaint Order*. In its request, Entergy, adopting and incorporating NEPGA’s request, provided additional bases to support its request for rehearing of the *PER Complaint Order*. Entergy challenged further the FERC’s reliance on (i) the ISO’s assessment of the PER adjustment’s reliability impacts and, with respect to Capacity Commitment Periods 5-8, (ii) the stakeholder process considering changes to the PER rules. The requests for rehearing are pending before the FERC, with FERC action required on or before April 1, 2015 or the requests will be deemed denied. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On March 2, Exelon and Calpine requested rehearing of the FERC’s January 30 order denying the New Entry Pricing Rule Complaint.⁴ As previously reported, the *New Entry Pricing Rule Complaint Order*

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*”), *reh’g requested*.

³ NEPGA’s Dec. 3, 2014 complaint requested 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 the Complaint were considered but not supported by the Participants Committee at its October 3, 2014 meeting.

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

found 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. In their rehearing request, Exelon and Calpine assert, among other things, that the *New Entry Pricing Rule Complaint Order* (i) did not provide a reasoned basis for finding that there is no artificial price suppression in post-entry FCAs; (ii) did not address Exelon/Calpine's arguments regarding artificial price suppression in the entry FCA; and (iii) ignored arguments regarding the undue discrimination that results from the current Market Rules. The Exelon/Calpine request for rehearing is pending before the FERC, with FERC action required on or before April 1, 2015 or the request will be deemed denied. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

NEPGA's November 14, 2014 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. As previously reported, 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,⁵ Enerwise, Environmental Advocates,⁶ 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 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 Federal Power Act ("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.⁷ The FERC directed the ISO to submit those Tariff revisions or support for why Tariff revisions should not be required on or before October

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*"), *reh'g requested*.

⁵ "Conn/RI" is CT PURA, CT AG, CT DEEP, CT OCC, and the Rhode Island Division of Public Utilities and Carriers ("RI PUC").

⁶ Environmental Advocates are the Sustainable FERC Project, Sierra Club, Environmental Defense Fund, and Acadia Center.

⁷ *ISO New England Inc.*, 148 FERC ¶ 61,201 (Sep. 16, 2014) ("*September 16 Order*").

16, 2014. September 24, 2014 is the refund effective date.⁸ On October 16, Public Citizen requested 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”.

ISO Response to Show Cause Order (ER15-117): On December 15, 2014, the FERC conditionally accepted, subject to two additional compliance filings, the ISO’s October 16 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.”⁹ The first compliance filing was due on or before January 14, 2015 and needed to correct an incorrect cross-reference in Section III.13.1.3.5.7 (Qualification Determination Notification for New Import Capacity Resources).¹⁰ 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).¹¹ 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 (ER15-117-003). On January 26, NEPGA answered Public Citizen’s request. On February 12, 2015, the FERC issued a tolling order affording it additional time to consider Public Citizen’s rehearing request, which remains pending before the FERC.

Compliance Filing I (ER15-117-001): 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 Compliance Filing I is pending before the FERC.

Compliance Filing II: Changes to allow importers to submit up to five price-quantity pairs starting in FCA-10, in response to the FERC’s directive in the *Imports Mitigation Order* were unanimously recommended for Participant Committee support by the Markets Committee at its February 10-11 meeting and will be considered as part of the March 6 Consent Agenda (item no. 2).

If you have any questions concerning these matters, 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).

- **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 EL14-86¹² with EL13-33,¹³ and setting a refund effective date for EL14-86

⁸ The Sep. 17 notice of this proceeding was published in the *Fed. Reg.* on Sep. 24, 2014 (Vol. 79, No. 185) p. 57,075.

⁹ *ISO New England Inc.*, 149 FERC ¶ 61,227 (Dec. 15, 2014) (“*Imports Mitigation Order*”), *reh’g requested*.

¹⁰ *Id.* at P 53.

¹¹ *Id.* at PP 41-45, 64.

¹² 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.

¹³ The 2012 Base ROE Complaint challenged the TOs’ 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

of July 31, 2014.¹⁴ 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.”¹⁵ 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.

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.¹⁶ 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.”¹⁷ 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*.¹⁸ 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,¹⁹ 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. 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). Since the last Report, Judge Sterner issued, on February 26, an order to show cause and notice of a March 17 oral argument to determine why certain TO testimony should not be stricken, in whole or in part, or why other remedial measures should not be taken. Discovery is on-going.

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).

¹⁴ *Mass. Att’y Gen. et al. -v- Bangor Hydro et al.*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh’g requested*.

¹⁵ *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).

¹⁶ *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*.

¹⁷ *Id.* at P 26.

¹⁸ *Id.*

¹⁹ “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”).

- **206 Investigation: FCM Performance Incentives (Compliance Proceedings) (EL14-52; ER14-2419)**

Rehearing remains pending of the FERC's May 30, 2014 *PI Order*²⁰ on the FCM PI Jump Ball Filing and its *October 20 Order*²¹ on the first compliance filing in response to the *PI Order*. As previously reported, the FERC instituted this proceeding, pursuant to section 206 of the FPA, in its May 30 *PI Order* on the FCM Performance Incentives Jump Ball filing. In the *PI Order*, the FERC concluded that the ISO's FCM payment design was "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 was June 9, 2014.²⁴ Requests for clarification and/or 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/NRG. On July 28, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

FCM PI Jump Ball Compliance Filing I (ER14-2419-001). On October 2, 2014, the FERC accepted in part, subject to condition, and rejected in part, the ISO's July 14, 2014 compliance filing ("Compliance Filing I") that, as previously reported, had been filed in response to directives in the *PI Order*.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 (since filed and accepted) 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.

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

²⁰ *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (May 30, 2014) ("*PI Order*"), *clarif. and reh'g requested*.

²¹ *ISO New England Inc.*, 149 FERC ¶ 61,009 (Oct. 2, 2014) ("*October 2 Order*"), *reh'g requested*.

²² *PI Order* at P 23.

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.

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.

- **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*:

(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; dt_doot@daypitney.com), Joe Fagan (202-218-3901; jfagan@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 Complaint³² remains pending before the FERC. As previously reported, NESCOE instituted this December 28, 2012 complaint in response to the ISO's December 3, 2012 FCM compliance filing that implemented buyer-side mitigation without an exemption for state-sponsored public policy resources. NESCOE asserted that the ISO's proposed Minimum Offer Price Rule ("MOPR") would likely exclude from the FCM new renewable resources developed pursuant to state statutes and regulations, and thereby result in customers being forced to purchase more capacity than is necessary for resource adequacy and proposed an alternative renewables exemption (the "Renewables Exemption Proposal"). In denying the Complaint, the FERC found that "NESCOE has failed to meet its burden under section 206 to demonstrate that ISO-NE's MOPR is unjust, unreasonable or unduly discriminatory" as applied to the New England Capacity Market.³³ 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),³⁴ 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.

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.

³¹ *Id.* at P 19.

³² *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (Feb. 12, 2013), *reh'g requested*.

³³ *Id.* at P 32.

³⁴ *Id.* at P 30.

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

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

On March 3, the FERC issued *Opinion 531-B*,³⁵ denying rehearing of *Opinion 531*³⁶ and *Opinion 531-A*.³⁷ Other than the filing of regional and local refund reports, and absent a successful challenge in the federal courts of appeals or Supreme Court, these proceedings have now been concluded. Challenges, if any, to *Opinions 531, 531-A* and/or *531-B* must be filed in a federal court of appeals on or before May 4, 2015. Any such further developments will be reported on in the federal court section of future Reports.

As previously reported, *Opinion 531*, affirmed in part, and reversed in part, Judge Cianci's *Initial Decision*.³⁸ 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.³⁹ Several parties requested rehearing and/or clarification of *Opinion 531*, including the TOs, EMCOS, American Municipal Power ("AMP"), and NRECA/APPA.⁴⁰

Opinion 531-A set 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. The TOs' requested rehearing and clarification of *Opinion 531-A* on November 17, 2014.

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).

³⁵ *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

³⁶ *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), *reh'g denied*, 150 FERC ¶ 61,165 (Mar. 3, 2015).

³⁷ *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

³⁸ *Martha Coakley, Mass. Att'y Gen. et al.*, 144 FERC ¶ 61,012 (July 5, 2013) ("*Initial Decision*") (finding unjust and unreasonable the TO's 11.14% ROE and that the ROE should be 10.6% for the Oct. 2011 through Dec. 2012 "locked in/refund period" and 9.7% from Jan. 2013 forward, subject to further updating or modification by the FERC).

³⁹ *Opinion 531* at P 1.

⁴⁰ In *Opinion 531-B*, the FERC denied the requests for rehearing of AMP and NRECA/APPA on the basis that they were not parties to the proceeding (having failed in the first instance to meet their burden of justifying their late interventions). *Opinion 531-B* at P 15.

II. Rate, ICR, FCA, Cost Recovery Filings

- **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 Results Filing (ER15-1137)**

On February 27, the ISO filed the results of the ninth FCA (“FCA9”) held February 2, 2015. The ISO reported the following highlights:

- FCA9 Capacity Zones were Connecticut (“CT”), Northeastern Massachusetts/Boston (“NEMA/Boston”), Southeastern Massachusetts/Rhode Island (“SEMA/RI”) and Rest-of-Pool (Western/Central Massachusetts, New Hampshire, Vermont and Maine);
- FCA9 commenced with a starting price of \$17.728/kW-mo.
- Resources will be paid as follows:
 - ◆ In CT, NEMA/Boston, and Rest-of-Pool - \$9.551/kW-month
 - ◆ New York AC Ties imports - \$7.967/kW-month
 - ◆ New Brunswick imports - \$3.94/kW-month
 - ◆ SEMA/RI new resources - \$17.728/kW-month
 - ◆ SEMA/RI existing resources - \$11.08/kW-month
- No de-list bids were rejected for reliability reasons

The ISO asked the FERC to accept the FCA9 rates and results, effective June 27, 2015. Comments on this filing are due on or before April 13, 2015. Thus far, interventions have been filed by EPSA, NESCOE, and HQ US. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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.⁴¹ 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.”⁴² 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

⁴¹ *ISO New England Inc.*, 150 FERC ¶ 61,003 (Jan. 2, 2015), *clarif. granted*, 150 FERC ¶ 61,155 (Feb. 27, 2015).

⁴² *Id.* at P 20.

Commitment Period.”⁴³ 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. The FERC granted NEPOOL’s requested clarification on February 27.⁴⁴ This proceeding is now concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **Forward Reserve Obligation Charge Changes (ER15-1009)**

On February 6, the ISO and NEPOOL jointly submitted a revised Market Rule Section III.10.4 to change the calculation of the Forward Reserve Obligation Charge that is assessed against Market Participants with resources that participate in the Forward Reserve Market and provide Operating Reserve (the “FROC Changes”). Specifically, the FROC Changes expand the scope of the Forward Reserve Obligation Charge so that it applies in two circumstances not picked up under the current Market Rule -- when a “higher quality” form of reserves (i.e., TMNSR) is used to satisfy a Forward Reserve Obligation for a “lower quality” form of reserves (i.e., TMOR), and when a Forward Reserve Resource in one Reserve Zone is assigned to satisfy a Forward Reserve Obligation in another Reserve Zone. The FROC Changes are designed to ensure that the Forward Reserve Obligation Charge does not take away the incremental compensation that a Market Participant receives for providing a more valuable, higher quality reserve service in Real-Time than obligated in the Forward Reserve Market. A June 1, 2015 effective date was requested. These changes were supported by the Participants Committee at the February 6, 2015 meeting by way of Consent Agenda Item #1. Comments on this filing were due on or before February 27; none were filed. Doc-less interventions were filed by Dominion, Entergy, Eversource, Exelon, and PSEG. 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).

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

On February 20, the FERC accepted revisions to Market Rule 1, jointly filed by the ISO and NEPOOL, 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.⁴⁵ The revisions were accepted February 21, 2015, as requested. Unless the February 20 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)**

On February 23, the FERC denied the PSEG/NRG request for rehearing⁴⁶ 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 CSO.⁴⁷ The FERC did not find any of the PSEG/NRG arguments persuasive. Challenges, if any, to the order denying rehearing must be filed in before a federal court of appeals on or before April 24, 2015, and if so, will be reported on in Section XV below. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁴³ *Id.* at P 7.

⁴⁴ *ISO New England Inc.*, 150 FERC ¶ 61,155 (Feb. 27, 2015).

⁴⁵ *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,120 (Feb. 20, 2015).

⁴⁶ *ISO New England Inc.*, 150 FERC ¶ 61,129 (Feb. 23, 2015).

⁴⁷ *ISO New England Inc.*, 148 FERC ¶ 61,185 (Sep. 12, 2014), *reh’g denied*, 150 FERC ¶ 61,129 (Feb. 23, 2015).

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

As previously reported, the FERC granted, on January 20, 2015, the clarification⁴⁸ requested by NEPGA of the *Winter 2014/15 Reliability Program Order*.⁴⁹ In the *Winter Reliability Program Clarification 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.” On February 19, the ISO requested rehearing of the *Clarification Order*, asking the FERC “to reverse this decision and permit the continuation of the winter reliability program construct, possibly with an expanded scope to encompass other resource types. The reversal is warranted given that ... the options for developing a market-based solution in the context of existing obligations are, at best, potentially less effective than the winter reliability programs, and, at worst, less effective, inefficient, controversial and expensive to implement.” On March 4, NESCOE filed an answer to the ISO’s rehearing request. In its answer, NESCOE asked that, should the FERC direct implementation of a new market-based program, it clarify that such a program must be “measured by the benefits provided to consumers” and “compared against the costs of the 2013/14 and 2014/15 winter programs.” NESCOE also asked that the FERC not direct, in this proceeding, dramatic changes to the winter program, particularly not increases or changes to the RCPFs. The ISO’s request is pending before the FERC, with FERC action required on or before March 23, 2015 or the request will be deemed denied. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC denied rehearing of the *Demand Curve Order*,⁵⁰ 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).⁵¹ Accordingly, 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. The changes proposed in response to that directive were unanimously recommended for Participants Committee support by the Markets Committee at its February 10-11 meeting and will be considered as part of the March 6 Consent Agenda (item no. 4).

Compliance Filing (ER14-1639-004). On March 2, the ISO submitted changes, in response to the *Demand Curve Clarification Order*, clarifying that a resource, including generation resources and eligible demand resources, cannot utilize both the price lock-in election and the renewable resource exemption. The ISO requested a March 2 effective date for the changes (beginning with FCA-10), noting that the changes would not apply to the already-completed qualification process for FCA9. The ISO reported that, in FCA9, resources totaling 12.96 MW utilized both the renewable resource exemption and the price lock-in election. Comments on the ISO’s compliance filing are due on or before March 23. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁴⁸ *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,029 (Jan. 20, 2015) (“*Winter Reliability Program Clarification Order*”), *reh’g requested*.

⁴⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 148 FERC ¶ 61,179 (Sep. 9, 2014) (“*Winter 2014/15 Reliability Program Order*”), *clarif. 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*”).

⁵⁰ *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).

⁵¹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,065, at P 27 (Jan. 30, 2015) (“*Demand Curve Clarification Order*”).

- **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". As explained above, on May 30, 2014, the FERC issued an order in response to the jump ball filing.⁵² 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. 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, 2014, 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.

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

- **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.⁵³ 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;⁵⁴ unit specific offer review;⁵⁵ the ISO's proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports' treatment under MOPR;⁵⁶ no exemptions to MOPR for new Self-Supplied Resources;⁵⁷ the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;⁵⁸ \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;⁵⁹ and a number of other additional revisions.⁶⁰ 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

⁵² *See PI Order.*

⁵³ *ISO New England Inc.*, 142 FERC ¶ 61,107 (Feb. 12, 2013) ("*FCA8 Revisions Order*").

⁵⁴ *FCA8 Revisions Order* at PP 37-38.

⁵⁵ *Id.* at P 53.

⁵⁶ *Id.* at P 70.

⁵⁷ *Id.* at P 80.

⁵⁸ *Id.* at P 97.

⁵⁹ *Id.* at P 126.

⁶⁰ *Id.* at P 127.

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

IV. OATT Amendments / TOAs / Coordination Agreements

- **ETU Rule Changes (ER15-1050)**

On February 13, the ISO, NEPOOL and PTO AC jointly submitted changes to the Tariff and TOA to improve the Elective Transmission Upgrade (“ETU”) process (“ETU Rule Changes”). The ETU Rule Changes incorporate into the ISO OATT new Schedule 25 that will govern the interconnection of all forms of ETUs to the New England System, defining “Interconnection Service” for ETUs, and introducing two new forms of capacity and energy interconnection service – Capacity Network Import Interconnection Service (“CNIIS”) and Network Import Interconnection Service (“NIIS”) – for the interconnection of all new controllable External ETUs that are classified as Merchant Transmission Facilities (“MTF”) or Other Transmission Facilities (“OT”) to the Administered Transmission System in a manner similar to internal Generating Facilities. The ETU Rule Changes also provide for the allocation of capacity interconnection service to controllable MTF/OTF External ETUs for the import of capacity into New England through the FCM, and provide that Internal ETUs may become directly associated with a specific Generating Facility seeking CNRIS so that they can be studied together and thereby increase the Generating Facility’s ability to qualify for the FCM. Other changes necessary to support the revised treatment of EUs include: changes to the Tie Benefits calculation to exclude external ETUs eligible for CNIIS and NIIS, inclusion of ETUs in the FCM Network Model Assumptions, transition rules for ETU applications, and conforming and other ministerial Tariff revisions. A February 16, 2015 effective date was requested. These changes were unanimously supported by the Participants Committee at the February 6, 2015 meeting by way of Consent Agenda Item #s 2-4. Comments on this filing are due on or before March 6. Thus far, doc-less interventions have been filed by ConEd, Entergy, HQUS, NESCOE, NHT, and NRG. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On December 1, 2014, 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 remains 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, 2014, the PTO Administrative Committee (“PTO AC”), on behalf of the Participating Transmission Owners (“PTOs”), the Schedule 20A Service Providers (“SSPs”), Cross-Sound Cable

⁶¹ *Id.* at PP 63-64.

Company, LLC (“CSC”), New England Power Company (“NGrid”), Northeast Utilities Service Company (“NUSCO”), Unil 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 also remains 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 Organizations⁶² 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 filing⁶³ (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,

⁶² “Public Interest Organizations” are Conservation Law Foundation, Acadia Center, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

⁶³ *ISO New England Inc.*, 143 FERC ¶ 61,150 (May 17, 2013) (“*Order 1000 Compliance Order*”).

rather than the New England states, the entity that evaluates and selects which transmission projects will be built to meet transmission needs driven by public policy; and (ii) include an *ex ante* default cost allocation method, transparent to all stakeholders, developed in advance of particular transmission facilities being proposed, rather than leaving it to the states to decide cost allocation on a project-specific basis after particular projects are proposed. While requiring these fundamental changes to the public policy transmission part of the filing, the *Order 1000 Compliance Order* also allowed for the NESCOE-driven proposal for both selection of projects and cost allocation to remain in the tariff as a complementary process for voluntary transmission projects alongside the *Order 1000*-compliant process. A more detailed summary of the *Order 1000 Compliance Order* was circulated to the Participants Committee on May 20, 2013. On June 17, the ISO, LS Power, PTO AC and NESCOE each filed requests for clarification and/or rehearing of the *Order 1000 Compliance Order*. On June 28, the ISO answered LSP Power's request concerning the effective date for the *Order 1000* compliance changes. On July 16, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC.

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

Comments on the November 15 filing were filed by **NEPOOL** (seeking two sets of changes to the Planning Revisions filed by the ISO and PTO AC (i) limiting the scope of transmission projects that are grandfathered under the old, non-competitive processes, so that Proposed Projects are not grandfathered but instead are open to competition; and (ii) ensuring that all Qualified Transmission Project Sponsors (“QTPS”) are on an equal footing regarding consulting with the ISO in assessing regional transmission needs and solutions (together, the “NEPOOL Alternative”); but taking no position on the Cost Allocation revisions); **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**⁶⁴ (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**⁶⁵ (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**⁶⁶ (protesting the Cost Allocation Revisions).

⁶⁴ “Environmental Groups” are Acadia Center, 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.

⁶⁵ In this proceeding, “Public Systems” are MMWEC and NHEC.

⁶⁶ “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”).

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

No Activity to Report.

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 Agreement⁶⁷ 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.⁶⁸ 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

⁶⁷ *ISO New England Inc., et al.*, 148 FERC ¶ 61,097 (Aug. 4, 2014).

⁶⁸ *ISO New England Inc. and Northeast Utilities Service Co.*, 149 FERC ¶ 61,274 (Dec. 24, 2014).

VIII. Regional Reports

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

As directed in the *Winter 2014/15 Reliability Program Order*,⁶⁹ the ISO submitted on February 6, 2015, its second 60-day progress report on efforts to address reliability concerns for the 2015-2016 winter and future winters, as necessary. As a result of the Commission decision issued January 20, 2015 (summarized in Section III), the ISO indicated that it is currently considering next steps, and will outline its proposed direction at the NEPOOL Markets Committee meeting on February 10-11, 2015. In its first report, submitted on December 8, the ISO also 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).

- **Capital Projects Report - 2014 Q4 (ER15-1036)**

In a new matter since the last Report, the ISO filed on February 12 its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter (“Q4”) of calendar year 2014 (the “Report”). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Highlights include the following new projects: (i) 2015 Issue Resolution Project Phase I (\$950,000); (ii) LMP Calculator Replacement (\$735,700); and (iii) Human Resources and Payroll System - Phase II (\$65,900). One project reported to have had a significant change was the Simultaneous Feasibility Test Lite Production Version Project (which experienced a \$967,000 decrease due to primary project vendor resource constraints, which will delay further work on this project until Q4 2015. The bulk of remaining budget was returned to Emerging Work fund). On February 18, NEPOOL filed comments supporting the filing. Any further comments are due on or before March 5. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Kristin Sullivan (617-345-4657; kmsullivan@daypitney.com).

- **IMM Quarterly Markets Reports - 2014 Q4 (ZZ14-4)**

On February 18, the Internal Market Monitor (“IMM”) filed with the FERC its report for the fourth quarter of 2014 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. Highlights from this report will be reviewed by the IMM at the March 6, 2015 Participants Committee meeting (agenda item # 6). These filings are not noticed for public comment by the FERC.

IX. Membership Filings

- **March 2015 Membership Filing (ER15-1131)**

On February 27, NEPOOL requested that the FERC accept the membership of Epico USA, Inc. (AR Sector, Small RG Group Member) and the termination of J. P. Morgan Ventures Energy Corp. (Supplier Sector). Comments on this filing are due on or before March 20.

⁶⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 148 FERC ¶ 61,179 (Sep. 9, 2014) (“*Winter 2014/15 Reliability Program Order*”), *clarif. 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*”).

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

On February 27, the FERC accepted the termination of the Participant status of Dominion Retail and Hess (Jan 1, 2015), and the Cianbro, PallettOne, and Hannaford Companies (Feb 1, 2015).

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

On February 12, the FERC accepted (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).

- **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 Payment Default:

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Feb 23/24	Negawatt Business Solutions	Remains suspended
Feb 23/24	North America Power Partners 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: February 2015 (NP15-22)**

NERC submitted on February 26, 2015 its Find, Fix, Track and Report (“FFT”) informational filing for the month of February 2015. The February FFT resolves 18 possible violations of 9 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁷⁰ FFT filings are for information only and are not be noticed for public comment by the FERC.

- **Revised Reliability Standards: PRC-004-2.1(i)a, PRC-004-4; PRC-005-2(i), PRC-005-3(i), VAR-002-4 (RD15-4)**

On February 6, 2015, NERC filed for approval changes to VAR-002-4 (Generator Operation for Maintaining Network Voltage Schedules), and multiple versions of PRC-004 (Protection System Misoperation Identification and Correction) and PRC-005 (Protection System and Automatic Reclosing Maintenance), and the associated VRFs and VSLs (the “Dispersed Generation Resource Changes”).⁷¹ NERC stated that the Dispersed Generation Resource Changes tailor the Standards to account for the reliable operations of variable resources.

⁷⁰ 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.

⁷¹ “Dispersed Generation Resources”, as used in NERC’s petition, are variable generation that depends on a primary fuel source which varies over time and cannot be stored.

NERC requested that the Dispersed Generation Resource Changes be approved for effectiveness in accordance with the corresponding Implementation Plans (or immediately upon approval for those Standards in effect, or upon effectiveness of the pending but approved Standards). Comments on the Dispersed Generation Resource Changes are due on or before March 9, 2015.

- **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*⁷² 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 create a single Reliability Standard requiring Transmission Owners, Generator Owners, and Distribution Providers to identify and correct causes of Misoperations of certain Protection Systems for Bulk Electric System Elements. NERC requested that the PRC-004 Changes be approved, and the existing PRC-004-2.1a and PRC-003-1 be retired, effective on the first day of the first calendar quarter that is one year after the date of FERC approval. Comments on the PRC-004 Changes were due on or before October 20, 2014; none were filed. The PRC-004 Changes are pending before the FERC.

- **Revised Reliability Standards: CIP-003-6, CIP-004-6, CIP-006-6, CIP-007-6, CIP-009-6, CIP-010-2, CIP-011-2 (RM15-14)**

On February 13, NERC filed for approval changes to seven CIP (“Critical Infrastructure Protection”) Reliability Standards to improve the cyber security protections required by the CIP Standards and collectively address the FERC’s four directives from *Order 791* (the “CIP Changes”). NERC stated that the CIP Changes (i) remove the “identify, assess, and correct” language from the 17 requirements in the CIP Version 5 Standards that included such language; (ii) require responsible entities to implement cyber security plans for assets containing low impact BES Cyber Systems; (iii) include specific requirements applicable to transient devices to further mitigate the security risks associated with such devices; and (iv) require entities to implement security controls for non-programmable components of communication networks at Control Centers with high or medium impact BES Cyber Systems. NERC requested that the CIP Changes be approved, effective on **April 1, 2016**. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Revised Reliability Standards: Transition to “Remedial Action Scheme” RM15-13)**

On February 3, NERC filed for approval proposed revisions to the definition of “Remedial Action Scheme” and changes to nearly 20 Reliability Standard to insert that term in place of the term “Special Protection System”, which are used interchangeably throughout the Reliability Standards (the “RAS Changes”). NERC

⁷² *Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards*, Order No. 763, 139 FERC ¶ 61,098 (2012), *order on clarif.*, 140 FERC ¶ 61,164 (2012).

requested that the RAS Changes be approved, effective the first day of the first calendar quarter that is one year after the date of 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-010-1 (RM15-12)**

On February 6, NERC filed for approval PRC-010-1 (Undervoltage Load Shedding), a definition of “Undervoltage Load Shedding Program (UVLS Program)”, and associated VRFs and VSLs (together, the “UVLS Changes”). NERC stated that the purpose of the UVLS Changes is to “establish an integrated and coordinated approach to the design, evaluation, and reliable operation of UVLS Programs”. The UVLS Changes consolidate requirements from four existing Reliability Standards⁷³ into a single Reliability Standard. NERC requested that the UVLS Changes be approved, effective the first day of the first calendar quarter that is one year after the date of FERC approval. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **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.⁷⁴ 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.⁷⁵ 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*⁷⁶ 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

⁷³ The currently effective Standards being replaced are PRC-010-0 (Assessment of the Design and Effectiveness of UVLS Program); PRC-020-1 (Under-Voltage Load Shedding Program Database); PRC-021-1 (Under-Voltage Load Shedding Program Data); and PRC-022-1 (Under-Voltage Load Shedding Program Performance).

⁷⁴ *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (“*Order 779*”).

⁷⁵ *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).

⁷⁶ *Transmission Relay Loadability Reliability Standard*, Order No. 733, 130 FERC ¶ 61,221 (2010); *order on reh’g and clarif.*, Order No. 733-A, 134 FERC ¶ 61,127 (2011); *clarified*, Order No. 733-B, 136 FERC ¶ 61,185 (2011) (“*Order 733*”).

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 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*⁷⁷ with the “fill in the blank” aspects in PRC-002-1 and PRC-018-1.⁷⁸ 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, 2014.⁷⁹ 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,⁸⁰ 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

⁷⁷ *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*”).

⁷⁸ *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).

⁷⁹ *Physical Security Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 (Nov. 20, 2014) (“*Order 802*”).

⁸⁰ *Order 802* was published in the *Fed. Reg.* on Nov. 25, 2014 (Vol. 79, No. 227) pp. 70,069-70,085.

security and physical security purposes through the development of Reliability Standards that afford physical protection to all “High Impact” control centers.⁸¹ 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.

- **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”)⁸² 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, 2014,⁸³ and were filed by 7 parties, including by NERC, the ISO/RTO Council, EEI/EPISA, and NRECA. This NOPR is pending before the FERC.

- **Order 804: Revised Demand and Energy Data Reliability Standard: MOD-031-1 (RM14-12)**

On February 19, the FERC approved changes to MOD-31 (Demand and Energy Data).⁸⁴ As previously reported, the MOD-031 changes are designed to replace, consolidate and improve upon the “existing MOD-C Standards”⁸⁵ in addressing the collection and aggregation of Demand and energy data necessary to support reliability assessments performed by the ERO and Bulk-Power System planners and operators.⁸⁶ In approving MOD-031-1, the FERC also directed NERC to modify the Standard to clarify certain obligations to provide data to Regional Entities and to consider compliance obligations associated with requests for confidential

⁸¹ *Id.* at P 57.

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

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

⁸⁴ *Demand and Energy Data Reliability Standard*, Order No. 804, 150 FERC ¶ 61,109 (Feb. 19, 2015) (“*Order 804*”).

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

⁸⁶ 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. The Mod-031 Changes also revise, per FERC directives, 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.

information.⁸⁷ *Order 804* will become effective April 27, 2015;⁸⁸ the MOD-031 changes and the retirement of the existing MOD-C Standards, April 1, 2016. Challenges, if any, to *Order 804* will be due on or before March 23.

- **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.⁸⁹ As previously reported, the BAL-001 Changes add a frequency component to the 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, 2015,⁹⁰ 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”).⁹¹ 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.”⁹² In addition, the FERC directed NERC to modify PRC-005-3 to include maintenance and testing of supervisory relays associated with auto-reclosing relay schemes to which PRC-005-3 applies.⁹³ The PRC-005 Changes will become effective, and the existing PRC-005-2 retired, as of April 1, 2016.⁹⁴

- **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 Standards⁹⁵ 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

⁸⁷ Id. at PP 16, 18, 20.

⁸⁸ *Order 804* was published in the *Fed. Reg.* on Feb. 24, 2015 (Vol. 80, No. 36) pp. 9,596-9,600.

⁸⁹ *Real Power Balancing Control Performance Reliability Standard*, 149 FERC ¶ 61,139 (Nov. 20, 2014).

⁹⁰ 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.

⁹¹ *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.

⁹² Id. at P 25.

⁹³ Id. at P 31.

⁹⁴ *Order 803* was published in the *Fed. Reg.* on Jan. 27, 2015 (Vol. 80, No. 17) pp. 4,195-4,201.

⁹⁵ 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.

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, 2014,⁹⁶ 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 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 NOPR⁹⁷ 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).⁹⁸

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*

⁹⁶ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁹⁷ *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*").

⁹⁸ 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.

directives. NERC indicated in its April filing that the proposed TOP Standards are also more efficient than the currently-enforceable TOP Reliability Standards because they incorporate the necessary requirements from the eight currently-effective TOP Reliability Standards (TOP-001-1a, TOP-002-2.1b, TOP-003-1, TOP-004-2, TOP-005-2a, TOP-006-2, TOP-007-0, TOP-008-1) and the PER-001-0.2 Reliability Standard into three cohesive, comprehensive Reliability Standards that are focused on achieving a specific result.

Because the proposed TOP and IRO Reliability Standards were interrelated, and because the proposed revisions to Reliability Standard TOP-006-3 involved similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the FERC addressed all three proposals together in the one NOPR. Although the FERC acknowledged that the proposed TOP and IRO Reliability Standards contain some improvements over the current Standards, concerns that the changes would create reliability gaps in the Standards that are critical to reliable operation of the BPS resulted in the proposed remand of the proposed TOP Standards.⁹⁹ 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.¹⁰⁰

Initially, comments on the *Nov 21 NOPR* were due on or before February 3, 2014.¹⁰¹ 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. There has been no activity since the last Report.

- **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.¹⁰² 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

⁹⁹ *Id.* at P 4.

¹⁰⁰ *Id.*

¹⁰¹ The *Nov 21 NOPR* was published in the *Fed. Reg.* on Dec. 5, 2013 (Vol. 78, No. 234) pp. 73,112-73,128.

¹⁰² *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) (“BAL-002-1a Interpretation Remand NOPR”).

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, 2013,¹⁰³ and were 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: Dynegy/EquiPower (EC14-140)**

As previously reported, Dynegy and EquiPower (“Applicants”) 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.

Since the last Report, on February 6, Applicants submitted their response to the FERC’s deficiency letter. In response, UWUA Local 464 renewed its protest of the Application. On February 24, Applicants indicated that they had already fully responded to the concerns raised by UWUA Local 464 and would not respond further. In addition, also on February 6, the Dynegy Applicants submitted a settlement with the PJM Market Monitor that they reported satisfies all of the concerns raised by the PJM IMM in these proceedings and, subject to compliance with the terms of the Settlement, eliminates the PJM IMM’s opposition to FERC authorization of the acquisition. This matter is again pending before the FERC. 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 remains pending before the FERC. If you have any questions concerning this Complaint, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

¹⁰³ 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.

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

On May 23, 2014, the same day that DC Circuit vacated *Order 745* (see Section XV below), FirstEnergy filed a complaint against PJM requesting that the FERC require the “removal of all portions of the PJM Tariff allowing or requiring PJM to include demand response as suppliers to PJM’s capacity markets.” FirstEnergy also requested that the results of the PJM capacity auction due to be released that same day, to the extent it included and cleared demand response resources, be considered void and legally invalid. PJM’s response, and all comments and interventions were initially due on or before June 12, 2014. However, on June 11, the FERC extended that date to 30 days after the submission by FirstEnergy of an amended complaint. FirstEnergy filed its amended complaint on September 22, 2014.

Comments on the FirstEnergy Complaint were due October 22, 2014. More than 40 parties filed comments or responses to the FirstEnergy amended complaint. Many parties filed comments supporting the complaint (including Calpine, PSEG and PPL), while others opposed the complaint in its entirety (including Direct Energy and Enerwise). PJM’s response argued that the complaint failed to justify the market disruption that would result from recalculating past capacity auction results, PJM was instead more focused on minimizing “litigation risk.” A number of parties filed supporting comments in favor of removing demand response resources from the PJM tariff moving forward, but opposed to recalculating the results of past capacity auctions (including Exelon, the PJM IMM and NRG). Comments were also filed by National Grid and NYISO. A number of New England parties intervened, including NEPOOL (stressing that the FERC should not apply any ruling in this docket to the New England Market), Dominion, Duke Energy, Dynegy, Essential Power, Macquarie Energy, NEPGA, NESCOE, and NextEra. On November 14, FirstEnergy filed an answer to the answers, protests and comments submitted in response to its Complaint and Amended Complaint. Environmental Advocates¹⁰⁴ 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).

- **LCC Services Agreement – NSTAR/Braintree (ER15-1040)**

On February 13, NSTAR filed a Local Control Center (“LCC”) Services Agreement between itself and Braintree Electric Light Department (“Braintree”) that sets the terms pursuant to which NSTAR will operate and maintain a LCC to operate Braintree’s transmission facilities, implement the instructions, orders and directions received from the ISO related to the Braintree facilities, and perform other central dispatch functions all as delineated in and required under the TOA. LCC costs are billed directly to the ISO and recovered under Schedule 1 of the ISO Tariff. The LCC Agreement will supersede Braintree’s participation in REMVEC, which is scheduled to end on May 1, 2015. A May 1, 2015 effective was requested for the LCC Services Agreement. Comments on the Agreement are due on or before March 6. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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

¹⁰⁴ “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).

services completed). CMP requested that each of the terminations become effective April 6, 2015. Comments on these filings were due on or before February 25, 2015; none were filed. This matter is pending before the FERC.

- **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 were due on or before February 24, 2015; none were filed. This matter is pending before the FERC.

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

On January 30, CL&P filed a non-conforming¹⁰⁵ 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 were due on or before February 20, 2015; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 were due on or before February 20, 2015; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On February 6, the FERC accepted a non-conforming¹¹⁴ interconnection agreement filed by CMP (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. The IA was accepted January 1, 2015, as requested. 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)**

Also on February 6, the FERC accepted an Engineering, Design, Permitting and Siting Agreement (“E&P Agreement”) between CL&P and CPV Towantic, LLC filed by Eversource (designated as service agreement IA-NU-30). As previously reported, 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. The E&P Agreement was accepted for filing as of December 5, 2014, as requested. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹⁰⁵ 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).

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

On November 17, 2014, National Grid submitted an amendment to the formula rates for integrated facilities service (“IFA Amendment”) under Schedule III-B of New England Power’s (“NEP’s”) Tariff No. 1. The IFA Amendment modifies the ROE components of the Tariff No. 1 formula rates so that they mirror those recently ordered in *Opinion 531-A*. The proposed IFA amendment also implements *Opinion 531-A*’s ROE cap to ensure that the total ROE does not exceed 11.74%. National Grid reports that the overall effect of the IFA Amendment is a rate decrease of approximately \$2.2 million. An October 16, 2014 effective date was requested. 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 in order for the FERC to process the filing. National Grid submitted that information on February 18, 2015. Comments on that filing are due on or before March 11. 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”,¹⁰⁶ 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”)¹⁰⁷ 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**).¹⁰⁸ 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

¹⁰⁶ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

¹⁰⁷ 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).

¹⁰⁸ *Maxim Power Corp. et al.*, 150 FERC ¶ 61,068 (Feb. 2, 2015) (“*Maxim Show Cause Order*”).

because of supposed gas supply problems, and collected make-whole payments based on those high prices, but in fact burned much less expensive gas. In many cases Maxim had already purchased gas when it submitted Day-Ahead offers based on oil prices because of supposed gas supply issues; in the third, 2010-2013, Maxim obtained inflated capacity payments by artificially raising the reported output of three of its plants by employing extraordinary measures during capacity tests that it did not use, and did not intend to use, during the ordinary operation of the plants. Staff also alleged that Maxim executives John Bobenic and Kyle Mitton engaged in certain of these schemes, and that Maxim also violated the FERC's Market Behavior Rules through schemes two and three.

On February 18, Maxim Respondents requested an extension of time, until March 30, 2015, to submit their answer to the Maxim Show Cause Order, stating that that additional time was needed to prepare a response to OE's report and accompanying documents. On February 20, 2015, OE filed a response opposing the Maxim Respondents' motion. On February 24, the FERC denied the Maxim Respondents' motion for an extension of time. On March 4, 2015, the Maxim Respondents filed answers to the *Maxim Show Cause Order*. This matter is again pending before the FERC. 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).¹⁰⁹ 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.

Since the last report, the Powhatan Respondents provided a supplemental answer on February 9, noting that the data that they expected to see was not in what Enforcement produced and, therefore, its February 2 answers need not be further supplemented. OE responded to the February 2 answers on March 2. In addition, on February 19, the Powhatan Respondents submitted a letter to the FERC Commissioners (other than Commissioner Bay, who did not participate in the *Powhatan Show Cause Order*) highlighting two pot-order *ex parte* concerns. These matters are pending before the FERC.

¹⁰⁹ *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*").

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 Cities¹¹⁰ 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).

- **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.¹¹¹ 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, 2014.¹¹² The technical conferences will focus on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure. There has been one, Commissioner-led National Overview technical conference held 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 included 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

¹¹⁰ "Twin Cities" includes Twin Cities Power – Canada, Ltd., Twin Cities Energy, LLC, and Twin Cities Power, LLC.

¹¹¹ See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh'g and clarif.*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

¹¹² *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, Notice of Proposed Rulemaking, 79 Fed. Reg. 34,830 (June 18, 2014).

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. Comments have been filed by more than 15 parties, including the Energy Policy Group, the ISO/RTO Council (“IRC”), AWEA, NEI, NRECA, CAISO, and PJM.

Mar 11 Eastern¹¹³ 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. A supplemental notice and agenda for the Eastern Regional conference was issued on March 4. Those interested in attending were encouraged to register by close of business March 6, 2015 at: <https://www.ferc.gov/whats-new/registration/03-11-15-eastern-form.asp>.

- **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,

¹¹³ 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”).

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. On February 9, the FERC extended the deadline to submit comments to and including March 6, 2015. Thus far, comments have been submitted by Potomac Economics, Energy Trading Analytics, and MISO.

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.¹¹⁴ 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.”¹¹⁵ Since the last Report, INGAA submitted comments related to the November 20 order.

On February 18, 2015, the RTOs/ISOs submitted their reports in compliance with the November 20 order. In its report, ISO-NE highlighted a number of initiatives to address fuel assurance concerns. The ISO stated that the centerpiece of its efforts is the Pay-For-Performance PCM design, which will take full effect in 2018. The ISO described its interim solutions, the two most recent Winter Reliability Programs and the yet-to-be-finally-determined program(s) to be implemented until PFP takes full effect. The ISO also identified the following additional initiatives helping to address fuel assurance and generator performance issues: increased RCPFs, Energy Market offer flexibility, clarification of generator fuel procurement obligations, Day-Ahead Energy Market timing changes, Replacement Reserves RCPF, information sharing with natural gas pipelines, fuel cost recovery in extraordinary circumstances, expansion of the FCM Shortage Event rigger, increased frequency of fuel surveys, and improvements to the ETU process. Comments on the RTO/ISO reports are due on or before March 20.

- **NOPR: Third-Party Provision of Primary Frequency Response Service (RM15-2)**

On February 19, the FERC issued a NOPR proposing to foster competition in the sale of primary frequency response service¹¹⁶ by permitting its sale at market-based rates by sellers with market-based rate authority for energy and capacity. The FERC stated that this NOPR is an extension of its policy reforms begun with *Order 784*¹¹⁷ and anticipates the potential interest in purchase of primary frequency response service from third-parties as a result of a new reliability standard (BAL-003-1) that requires a Balancing Authority to

¹¹⁴ *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.”

¹¹⁵ *Id.* at P 19.

¹¹⁶ Primary frequency response service would be a reserve product that involves dedicating capacity on a generator or other resource for autonomous, automatic, and rapid action to change its output (within seconds) to rapidly dampen large changes in frequency.

¹¹⁷ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 78 Fed. Reg. 46,178 (July 30, 2013), FERC Stats. & Regs. ¶ 31,349, at PP 6-7 (2013), *order on clarif.*, Order No. 784-A, 146 FERC ¶ 61,114 (2014) (“*Order 784*”).

maintain a minimum frequency response obligation. Comments on this NOPR are due on or before April 27, 2015.¹¹⁸

- **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.¹¹⁹ 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, 2014.¹²⁰ 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”),¹²¹ in whole or in part, and sells electric energy from its Generating Facility. The Commission also proposes to find that requiring the filing of an OATT is not necessary to prevent unjust or unreasonable rates or unduly discriminatory behavior with respect to ICIF over which interconnection and transmission services can be ordered. The NOPR also proposes a 5-year safe harbor period during which an ICIF owner subject to the blanket waiver, who initially has excess capacity on its ICIF because it intends to serve its own or its affiliates’ future phased generator additions or expansions, may establish a rebuttable presumption for priority right over third parties to use that excess capacity. Comments on this NOPR were due on or before July 29, 2014.¹²² 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, WIRES¹²³ 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

¹¹⁸ The NOPR was published in the *Fed. Reg.* on Feb. 26, 2015 (Vol. 80, No. 38) pp. 10,426-10,432.

¹¹⁹ *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*”).

¹²⁰ The *MBR NOPR* was published in the *Fed. Reg.* on July 25, 2014 (Vol. 79, No. 143) pp. 43,536-43,572.

¹²¹ ICIF is the term used by the FERC in the NOPR to refer to “generator tie lines”.

¹²² The NOPR was published in the *Fed. Reg.* on May 30, 2014 (Vol. 79, No. 104) pp. 31,061-31,072.

¹²³ WIRES, the **W**orking group for **I**nvestment in **R**eliable and **E**conomic **E**lectric **S**ystems, describes itself as a national non-profit association of investor-, member-, and publicly-owned entities dedicated to promoting investment in a strong, well-planned, and environmentally beneficial high voltage electric transmission grid. Information about its principles and members is available on its website www.wiresgroup.com.

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*,¹²⁴ 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, 2013.¹²⁵ 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*.¹²⁶ *Order 771-A* addressed only those issues that needed to be answered on an expedited basis to allow affected entities to comply with the requirement to ensure FERC access in a timely manner to the e-Tags covered by *Order 771*.¹²⁷ 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.

¹²⁴ *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 clarif.*, 142 FERC ¶ 61,181 (2013).

¹²⁵ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹²⁶ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

¹²⁷ *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.

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

On September 18, 2014, the FERC issued *Order 676-H*,¹²⁸ 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, 2014.¹²⁹ 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.

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.

¹²⁸ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-H, 148 FERC ¶ 61,205 (Sep. 18, 2014) (“*Order 676-H*”).

¹²⁹ *Order 676-H* was published in the *Fed. Reg.* on Sep. 24, 2014 (Vol. 79, No. 185) pp. 56,939-56,955.

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

On March 20, 2014, the FERC issued a series of orders addressing gas-electric coordination. At the forefront, was this NOPR, in which the FERC proposes to revise its natural gas act regulations in order to better coordinate the scheduling of natural gas and electricity markets and to provide additional flexibility to natural gas shippers.¹³⁰ Specifically, the NOPR proposes to: (i) start the Gas Day earlier, at 4:00 a.m. Central Clock Time (“CCT”)¹³¹ rather than 9:00 a.m., in order to ensure that gas-fired generators are not running short on gas supplies during the morning electric ramp periods; (ii) institute a later start to the first day-ahead gas nomination opportunity (called the Timely Nomination Cycle), from 11:30 a.m. to 1 p.m. The FERC said that because the Timely Nomination Cycle is the most liquid of the gas nomination cycles, this change will allow electric utilities to finalize their scheduling before gas-fired generators must make gas purchase arrangements and submit nomination requests for natural gas transportation service to the pipelines; and (iii) modify the current intraday nomination timeline to provide 4 (rather than 2) intraday nomination cycles in order to provide greater flexibility to all pipeline shippers. The NOPR adds an early morning nomination cycle with a mid-day effective flow time and a new late-afternoon nomination cycle during which firm nominations would have precedence over or be permitted to bump already scheduled interruptible service. Ultimately, the standard cycles will be 8:00 a.m. CCT (bump), 10:30 a.m. CCT (bump), 4:00 p.m. CCT (bump) and 7:00 p.m. CCT (no-bump).

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

Noting that the natural gas and electricity industries are best positioned to work out the details of how changes in scheduling practices can most efficiently be made and implemented, consistent with the policies discussed in the NOPR, the FERC provided the industries 6 months to reach consensus on standards, consistent with FERC’s guidance in the NOPR, including any revisions or modifications to the proposals provided herein. Comments were due November 28, 2014.¹³² 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.

¹³⁰ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

¹³¹ CCT, pursuant to the NAESB WGQ standards, reflects daylight savings changes.

¹³² The NOPR was published in the *Fed. Reg.* on Apr. 1, 2014 (Vol. 79, No. 62) pp. 18,223-18,243.

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.¹³³ 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”).

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

Similar to the ISO/RTO 206 Order in EL14-22 et al. (*see* Section I above), the FERC also instituted a proceeding under Section 5 of the Natural Gas Act to examine whether interstate natural gas pipelines are providing notice of offers to purchase released pipeline capacity in accordance with section 284.8(d) of the Commission’s regulations.¹³⁴ 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.¹³⁵ 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.¹³⁶ 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.	The FERC established a hearing ¹³⁷ to determine whether BP violated section 4A of the Natural Gas	Show Cause Order ¹³⁷ \$28 million (civil penalty)

¹³³ Responses to the data request were also submitted by NYISO, MISO, PJM and SPP.

¹³⁴ *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

¹³⁵ *Id.* at P 6.

¹³⁶ *See BR Pipeline Co. et al.*, 149 FERC ¶ 61,031 (Oct. 16, 2014).

¹³⁷ *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

BP Amer. Production BP Energy Co. (together, "BP") (IN13-15)	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.	\$800,000 (disgorgement)
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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.
 - ▶ Certificate of public convenience and necessity granted Mar 3, 2015 (must be constructed and in service within two years).
 - ▶ 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 two years);
- ▶ 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: ER14-1409¹³⁸
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, Connecticut¹³⁹ and Public Citizen opposed the FERC’s motion to dismiss. On February 5, the FERC replied to the Public Citizen and CT AG responses.

In a related development, FERC Chairman LaFleur responded to each of the members of the New England Congressional delegation regarding their January 30 letter asking that the Commissioners re-examine the issue of the just and reasonableness of the rates produced by FCA8. Chairman LaFleur noted that the FCA8 issue could not be re-opened but, highlighting its sensitivity to ratepayer concerns regarding regional energy prices,

¹³⁸ 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).

¹³⁹ For purposes of this proceeding, “Connecticut” means the CT AG, CT PURA and CT OCC.

provided her assurance that the results of FCA9 would be fully evaluated “to ensure that the results are just and reasonable”.

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**
Underlying FERC Proceedings: ER13-1851¹⁴⁰ and ER13-2266¹⁴¹
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. Since the last Report, briefs for Respondent and Respondent-Intervenors were filed February 13 and March 2, respectively. Petitioners’ Joint Reply Brief is due next, on March 25, 2015. The Deferred Appendix is to be filed April 1, 2015; Final Briefs, April 15, 2015.

- **Orders 773 and 773-A (2nd Cir., 13-2316)**
Underlying FERC Proceedings: RM12-6 and RM12-7¹⁴²
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: ER11-4336¹⁴³
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 (FERC v. EPSA, Supreme Court, 14-840)**
Underlying FERC Proceedings: RM10-17-000¹⁴⁴
Appellants: EPSA

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.¹⁴⁵

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

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

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

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

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

Responses to that writ, pursuant to an order of the Court extending the time for responses, are due on or before March 19. Since the last Report, EPSA consented to the filing of amicus curiae briefs, and amicus curiae briefs were filed on February 17 and 18 by Fourteen Utilities Including Consolidated Edison Co. of New York and Affiliates, Delaware Division of the Public Advocate. et al., and Electricity Consumers and Demand Response Providers. Respondents CAISO and CA PUC filed briefs in support of the writ.

As previously reported, the DC Circuit vacated *Order 745*¹⁴⁶ in its entirety as impermissibly encroaching on “states’ exclusive jurisdiction to regulate the retail market” in a 2-1 decision (“Decision”) issued on May 23, 2014. The DC Circuit vacated *Order 745* on two separate and independent grounds. First, it held that the FERC does not have jurisdiction to regulate demand response. The Court reasoned that: (i) the states retain exclusive authority to regulate the retail market; (ii) absent an express statutory grant of authority, the FERC cannot regulate areas left to the states; (iii) the FPA provides the FERC with authority over wholesale sales of electricity, but demand response is not such a sale; (iv) the authority of the FERC to regulate wholesale power rates under the FPA cannot be read so broadly as to allow direct regulation of demand response; and (v) demand response, while not necessarily a retail sale, is part of the retail market, involving retail customers, their decision whether to purchase at retail, and the levels of retail electricity consumption. Therefore, the Court concluded, the FERC has no authority to directly regulate demand response. “FERC’s authority over demand response resources is limited: its role is to assist and advise state and regional programs.”

As an alternative and secondary basis for its decision against *Order 745*, the Court concluded that the FERC order was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” The Court found that the FERC failed to reasonably consider and address arguments that *Order 745* will result in over-compensation of demand response resources, resulting in unjust and discriminatory rates. The Court further found that the FERC failed to demonstrate how its proposed pricing construct would result in just compensation. The Decision and preliminary implications of the Decision were summarized in more detail in the memo included with the supplemental materials circulated and posted for the June 6 meeting.

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

On September 22, the FERC and a group of intervenors¹⁴⁷ 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.

- **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. Respondents (PPL EnergyPlus,

¹⁴⁵ *EPSA v. FERC*, 753 F.3d 216 (May 23, 2014).

¹⁴⁶ *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.

¹⁴⁷ 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.

LLC, et al.) filed a response on February 11. Petitioner CPV Maryland, LLC replied on February 24. This matter is now before the Court.

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 Maryland¹⁴⁸ 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.¹⁴⁹ In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field¹⁵⁰ and conflict pre-empted.¹⁵¹

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.”¹⁵² 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”),¹⁵³ 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.”¹⁵⁴ 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.”¹⁵⁵ 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.”¹⁵⁶

¹⁴⁸ *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.

¹⁴⁹ *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467; 2014 U.S. App. LEXIS 10155.

¹⁵⁰ “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.

¹⁵¹ “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.”

¹⁵² Slip op. at p. 14.

¹⁵³ *Id.* at p. 10.

¹⁵⁴ *Id.* at p. 16.

¹⁵⁵ *Id.* at pp. 18-19.

¹⁵⁶ *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.

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”.¹⁵⁷ 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.’”¹⁵⁸ “Maryland’s initiative disrupts [the PJM scheme] by substituting the state’s preferred incentive structure for that approved by FERC.”¹⁵⁹ “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.”¹⁶⁰

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. 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. Since the last Report, Respondents (PPL EnergyPlus, LLC, et al.) filed a brief opposing the writ of certiorari on February 11. Petitioners (CPV Power Development, Inc., et al.) replied to that brief on February 20.

As previously reported, on September 11, 2014, the 3rd Circuit Court of Appeals affirmed¹⁶¹ 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”).¹⁶² 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.¹⁶³

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.

¹⁵⁷ *Id.* at p. 27.

¹⁵⁸ *Id.* at p. 23.

¹⁵⁹ *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.”)

¹⁶⁰ *Id.* at p. 25.

¹⁶¹ *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, (“NJ Order”).

¹⁶² *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

¹⁶³ *Id.* slip op. at 31.

- **Entergy Nuclear Fitzpatrick, LLC et al v. Zibelman et al (NY PSC Commissioners) (N.D.N.Y. 5:15-cv-00230-DNH-TWD)**

In a new matter since the last Report, Entergy¹⁶⁴ filed, on February 27, in the United States District Court for the Northern District of New York, a Complaint that seeks a declaratory judgment that the NYPSC Commissioners' order ("Order") approving an agreement to keep NRG's 435 MW Dunkirk facility in the NYISO market, "repowered" as a natural gas-fired (rather than coal-fired) plant (the "Term Sheet")¹⁶⁵ is preempted by the FPA and invalid under the dormant Commerce Clause of the U.S. Constitution. Entergy also seeks a permanent injunction requiring the NYPSC Commissioners to withdraw its Order and/or preventing the NYPSC Commissioners from continuing to treat the Order as valid and binding. This case is noteworthy given the relationship of the issues raised to the Maryland and New Jersey CfD cases summarized above.

¹⁶⁴ Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

¹⁶⁵ The Term Sheet provides that, in exchange for Dunkirk's commitment to participate in the NYISO energy and capacity markets through 2025, Dunkirk will receive out-of-market payments of \$20.4 million per year from National Grid and a \$15 million one-time subsidy from a New York State agency. Entergy asserts that the contract structure will lead Dunkirk to bid below its actual costs in the capacity auction, causing the auction market to "clear" at a lower price than otherwise would have resulted, and resulting in all generators receiving lower capacity revenues than they otherwise would have received.

INDEX
Status Report of Current Regulatory and Legal Proceedings
as of March 4, 2015

I. Complaints

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

II. Rate, ICR, FCA, Cost Recovery Filings

Base ROE Complaint (2011).....	(EL11-66)	7
Base ROE Complaints (2012 and 2014) (Consolidated)	(EL13-33 and EL14-86).....	3
FCA9 Results Filing	(ER15-1137)	8
ICR-Related Values and HQICCs - 2018/19 Power Year	(ER15-325)	8
<i>Opinion 531-A</i> Compliance Filing: TOs	(ER15-414)	8

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

206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2	(EL14-23)	6
206 Investigation: FCM Performance Incentives (Compliance Proceeding).....	(EL14-52; ER14-2419).....	5
206 Proceeding: Importers' FCA Offers Review/Mitigation	(EL14-99; ER15-117).....	2
CSO Deferral: ISO Proposal.....	(ER14-2440)	9
Demand Curve Changes	(ER14-1639)	9
FCM Performance Incentives Jump Ball Filing	(ER14-1050)	11
FCM PI Jump Ball Compliance Filing I	(ER14-2419-001).....	5
FCM PI Jump Ball Compliance Filing II	(ER14-2419-002).....	5
FCM Redesign Compliance Filing: FCA8 Revisions.....	(ER12-953 et al.)	11
Forward Reserve Obligation Charge Changes.....	(ER15-1009)	9
ISO Response to Show Cause Order	(ER15-117)	2
NEPGA DR Capacity Complaint	(EL15-21)	2
NEPGA Peak Energy Rent (PER) Complaint	(EL15-25)	1
NESCOE FCM Renewables Exemption Complaint.....	(EL13-34)	6
New Entry Pricing Rule Complaint.....	(EL15-23)	1
ORTP Exemption for Distributed Renewable Technology Resources	(ER15-716)	9

IV. OATT Amendments/Coordination Agreements

ETU Rule Changes	(ER15-1050)	12
<i>Order 676-H</i> Compliance: PTOs, SSPs, CSC et al.	(ER15-517)	12
<i>Order 676-H</i> Compliance: Revisions to Schedule 24.....	(ER15-519)	12
<i>Order 1000</i> Compliance Filing.....	(ER13-193; ER13-196).....	13
<i>Order 1000</i> Interregional Requirements Compliance Filing	(ER13-1960; ER13-1957)....	13
<i>Order 1000</i> November 15 Compliance Order Changes.....	(ER13-193; ER13-196).....	13

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Updates

LGIA – NU/CPV Towantic (ER15-200) 15
Opinion 531-A Compliance Filing: CTMEEC (ER15-584) 15
Opinion 531-A Compliance Filing: GMP (ER15-412) 15

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

Capital Projects Report - 2014 Q4 (ER15-1036) 16
 Future Winter Reliability Program Progress Reports (ER14-2407) 16
 IMM Quarterly Markets Reports - 2014 Q4 (ZZ14-4) 16

IX. Membership Filings

February 2015 Membership Filing (ER15-937) 17
 January 2015 Membership Filing (ER15-780) 17
 March 2015 Membership Filing (ER15-1131) 16
 Suspension Notice (Negawatt Business Solutions) (not docketed) 17
 Suspension Notice (North America Power Partners LLC) (not docketed) 17

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

FFT Report: February 2015 (NP15-22) 17
 New Reliability Standard: EOP-011-1 (RM15-7) 20
 New Reliability Standard: PRC-026-1 (RM15-8) 19
 New Reliability Standard: TPL-007-1 (RM15-11) 19
 NOPR: BAL-002-1a Interpretation Remand (RM13-6) 24
 NOPR: Revised Rel. Standard: BAL-001-2 (RM14-10) 22
 NOPR: Revised Rel. Standard: COM-001-2 and COM-002-4 (RM14-13) 21
 NOPR: Revised Rel. Standard: MOD-001-2 (RM14-7) 22
 NOPR: Revised TOP and IRO Reliability Standards (RM13-15, -14, -12) 23
Order 802: New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15) 20
Order 803: Revised Rel. Standard: PRC-005-3 (RM14-8) 22
Order 804: Revised Rel. Standard: MOD-031-1 (RM14-12) 21
 Revised Reliability Standard: PRC-002-2 (RM15-4) 20
 Revised Reliability Standard: PRC-004-3 (RD14-14) 18
 Revised Reliability Standard: PRC-005-4 (RM15-9) 19
 Revised Reliability Standard: PRC-006-2 (RD15-2) 18
 Revised Reliability Standard: PRC-010-1 (RM15-12) 19
 Revised Reliability Standards: CIP-003-6, CIP-004-6, CIP-006-6, CIP-007-6,
 CIP-009-6, CIP-010-2, CIP-011-2 (RM15-14) (RM15-14) 18
 Revised Reliability Standards: PRC-004-2.1(i)a, PRC-004-4; PRC-005-2(i),
 PRC-005-3(i), VAR-002-4 (RD15-4) (RD15-3) 17

XI. Misc. Regional Interest

203 Application: EquiPower/Dynegy (EC14-140) 25
 E&P Agreement: CL&P/CPV Towantic (ER15-715) 27
 E&P Agreement Termination: Spruce Mountain Wind (ER15-975) 26
 E&P Agreement Termination: Record Hill Wind (ER15-974) 26
 E&P Agreement Termination: Highland Wind (ER15-973) 26
 E&P Agreement Termination: Patriot Renewables (ER15-972) 26
 FERC Enforcement Action: Maxim Power and K. Mitton (IN15-4) 28
 FERC Enforcement Action: Powhatan Energy, HEEP Fund, CU Fund, and H. Chen (IN15-3) 29
 FERC Enforcement Action: Twin Cities (IN15-2) 30
 FERC Enforcement Action Pending: Staff Notice of Alleged Violations – City Power and K. Tsingas 30
 FirstEnergy PJM DR Complaint (EL14-55) 26

HG&E Demarcation Agreement.....	(ER15-939)	27
IA – CL&P/Energy Stream.....	(ER15-947)	27
IA - CMP/Kennebec Water District.....	(ER15-757)	27
LCC Services Agreement – NSTAR/Braintree	(ER15-1040)	26
LSA Termination: Emera/ Black Bear HVGW	(ER15-962)	27
LVA/PSNH IA Complaint.....	(EL15-9)	25
MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area ..	(ER11-1844)	28
<i>Opinion 531-A</i> Compliance Filing: NGrid IFA Amendments.....	(ER15-418)	28

XII. Misc: Administrative & Rulemaking Proceedings

NOPR: MBR Authorization Refinements	(RM14-14)	33
NOPR: Open Access and Priority Rights on ICIF.....	(RM14-11)	33
NOPR: Third-Party Provision of Primary Frequency Response Service.....	(RM15-2)	32
<i>Order 676-H</i> : Incorporation of WEQ Version 003 Standards.....	(RM05-5)	35
<i>Order 771</i> : Availability of E-Tag Information to FERC Staff	(RM11-12)	34
Price Formation in RTO/ISO Energy & Ancillary Services Markets.....	(AD14-14)	31
RTO/ISO Winter 2013/14 Operations and Market Performance.....	(AD14-8)	32
Technical Conferences on Implications of Environmental Regulations.....	(AD15-4)	30
WIRES Request for Policy Statement on ROE for Electric Transmission.....	(RM13-18)	33

XIII. Natural Gas Proceedings

206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2	(EL14-23)	6
Enforcement Actions: BP	(IN13-15)	37
Inquiry Into Natural Gas Trading, and Proposal to Establish an Electronic Information and Trading Platform.....	(AD14-19)	35
New England Pipeline Proceedings.....		38
NOPR: Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities	(RM14-2)	36
Posting of Offers to Purchase Capacity (Section 5 Proceeding).....	(RP14-442)	37

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

2013/14 Winter Reliability Program and Bid Results	14-1104 (DC Cir.).....	40
<i>CPV Maryland, LLC v. PPL EnergyPlus et al.</i>	14-623 (Supreme Court)	41
<i>CPV Power Development, Inc., et al. v. PPL EnergyPlus, LLC, et al.</i>	14-634/694 (Supreme Ct)	43
<i>Energy Nuclear Fitzpatrick, LLC et al v. Zibelman et al</i>	5:15-cv-00230 (N.D.N.Y.).....	44
FCA8 Results	14-1244 (DC Cir.).....	39
New England’s <i>Order 745</i> Compliance Filing	12-1306 (DC Cir.).....	40
<i>Orders 745/745-A</i>	14-840 (Supreme Court)	40
<i>Orders 773/773-A</i>	13-2316 (2nd Cir.)	40