

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of April 29, 2015

The following activity, as more fully described in the attached litigation report, has occurred since the report dated April 9, 2015 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints

1	NRG Canal 2 2015/16 ARA3 Complaint/Waiver Req. (EL15-57)	Apr 16-29	NEPOOL, Calpine, ConEd, Entergy, NESCOE intervene
4	Base ROE Complaints (2012 & 2014) Consolidated (EL14-86 & EL13-33)	Apr 21	TOs submit cross-answering testimony; Complainant-Aligned Parties notice May 8 deposition of W. Avera
6	NESCOE FCM Renewables Exemption Complaint (EL13-34)	Apr 20	FERC denies rehearing of its Feb 12, 2013 order denying NESCOE's FCM Renewable Exemption Complaint
7	Base ROE Complaint (2011) (EL11-66)	Apr 10	FERC grants an extension of time to complete refunds and refund reports - to Nov 2, 2015, for local refunds and to Dec 31, 2015, for a final refund report

II. Rate, ICR, FCA, Cost Recovery Filings

8	FCA-10 Capacity Zone Boundaries (ER15-1462)	Apr 13-28	Champlain VT, ConEd, Dynegy, Emera, Entergy, Eversource, Exelon, Footprint, GDF Suez, MMWEC, NESCOE, NHEC, SunEdison, Verso intervene
		Apr 21	NEPOOL submits comments
		Apr 27	Calpine comments; Dominion, NEPGA, New England Suppliers, NRG, PSEG file protests
8	Opinion 531-A Compliance Filing: TOs (ER15-414)	Apr 22	TOs submit amended <i>Opinion 531-A</i> compliance filing; comment date May 13
9	FCA9 Results Filing (ER15-1137)	Apr 13	CPV Towantic, NEPGA, intervene
		Apr 13	UWUA Local 464 files protest
		Apr 28	NEPGA answers UWUA Local 464 protest
* 10	ISO Securities: Authorization for Future Drawdowns (ES15-15)	Apr 15	ISO requests continued authorization for drawdowns under previously authorized Revolving Credit Line and Payment Default Shortfall Fund; comment date May 6
* 10	2014/2015 Power Year Transmission Rate Filing (ER09-1532; RT04-2)	Apr 28	Public Representatives protest in part PTO AC Jul 31, 2014 informational filing (inclusion of planning costs for NHT's proposed "SeaLink" project)

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

* 10	DNE Dispatch Changes (ER15-1509)	Apr 15	ISO and NEPOOL jointly file changes to provide for the dispatch of certain wind and hydro Intermittent Power Resources using Do Not Exceed (DNE) Dispatch Points; comment date May 7
		Apr 16	ISO corrects eTariff sheet errors
		Apr 23-29	Dominion, Entergy, Exelon, NESCOE intervene
11	eTariff Corrections (ER15-1455)	Apr 22-23	Exelon, NEPOOL intervene
11	LMP Calculator Replacement (ER15-1238)	Apr 17	FERC accepts changes, effective May 27
11	PER Mechanism Elimination (FCA-10) (ER15-1184)	Apr 13	NEPOOL responds to the Mar 27 pleadings of NEPGA and GDF Suez

11	Winter 2014/15 Reliability Program (ER14-2407)	Apr 17	FERC grants rehearing of its Jan 20 <i>Winter Reliability Program Clarification Order</i>
13	FCM Redesign Compliance Filing: FCA8 Revisions (ER12-953 et al.)	Apr 20	FERC denies Mar 15, 2013 requests for rehearing of the <i>FCA8 Revisions Order</i>

IV. OATT Amendments / TOAs / Coordination Agreements

14	ETU Rule Changes (ER15-1050, -1051)	Apr 14	FERC accepts changes, effective Feb 16, 2015, and rejects Champlain VT's protest regarding transition period
14	Order 676-H Compliance: PTOs, SSPs, CSC et al. (ER15-517)	Apr 14	Filing Parties supplement Dec 1 compliance filing with request for waiver of NITS and SAMTS WEQ Standards; comment date May 5
16	Order 1000 Compliance Filing (ER13-193; ER13-196)	Apr 20 Apr 29	ISO-NE requests expedited clarification, and/or re-hearing of 2 aspects of FERC's Mar 19 <i>Order 1000 Compliance Rehearing Order</i> LSP Transmission opposes ISO-NE's Apr 20 motion

V. Financial Assurance/Billing Policy Amendments

* 17	Deposit Account Changes (ER15-1493)	Apr 10 Apr 22	ISO-NE and NEPOOL jointly file changes; comment date May 1 Exelon intervenes
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VI. Schedule 20/21/22/23 Changes

18	Schedule 20A-EM and 21-EM (ER15-1434)	Apr 22	Eversource intervenes
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VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 19	LFTR Implementation: 26 th Quarterly Status Report (ER07-476)	Apr 15	ISO files its 26th quarterly report
* 19	ISO-NE FERC Form 1	Apr 13	ISO submits 2014 annual report of Major Electric Utilities, Licensees and Others
* 19	ISO-NE FERC Form 582	Apr 15	ISO submits annual report of total MWh of transmission service

IX. Membership Filings

20	Suspension Notice (not docketed)	Apr 15 Apr 16	Demansys suspended from New England Markets ISO files notice of suspension
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X. Misc. - ERO Rules, Filings; Reliability Standards

22	NOPR: Revised Reliability Standard: PRC-005-4 (RM15-9)	Apr 16	FERC issues NOPR; comment date Jun 22
23	NOPR: Revised Reliability Standard: PRC-002-2 (RM15-4)	Apr 16	FERC issues NOPR; comment date Jun 22
24	<i>Order 808</i> : Revised Reliability Standard: COM-001-2 and COM-002-4 (RM14-13)	Apr 16	FERC approves COM changes; directs modification to COM-001-2 that addresses internal communications capabilities that could involve the issuance or receipt of Operating Instructions or other communications that could have an impact on reliability
24	<i>Order 810</i> : Revised Reliability Standard: BAL-001-2 (RM14-10)	Apr 16	FERC approves BAL-001 Changes, effective Jun 1, 2016; directs informational filing and changes to definition of ACE Reporting

XI. Misc. - of Regional Interest

* 26	203 Application: CSC/AIA Energy (EC15-122)	Apr 15	CSC and AIA Energy request authorization of a transaction that will make CSC an indirect, wholly-owned subsidiary of AIA Energy; comment date May 6
* 26	Riggs v. RI PUC: Deepwater Wind FPA/PURPA/Supremacy Clause Complaint (EL15-61)	Apr 21	Riggs files complaint alleging RI PUC approval of 20-year PPA violates the FPA and US Constitution's Supremacy Clause; comment date May 12
* 27	IAs – CMP/Brookfield/FPL Energy (ER15-1553 et al.)	Apr 22	CMP files four, non-conforming IAs to replace a single Continuing Site/Interconnection Agreement (also to be cancelled); comment date May 13
* 28	Termination of Braintree Participation in REMVEC II Agreement (ER15-1530)	Apr 17	National Grid files materials supporting termination; comment date May 8
* 28	CL&P Amended Wholesale Distribution Service Agreement with CMEEC (ER15-1525)	Apr 17	NU, on CL&P's behalf, files amended agreement; comment date May 8
28	EPC Agreement: Blue Sky West & Emera Maine (ER15-1459)	Apr 24	SunEdison intervenes
28	Emera MPD OATT Changes (ER15-1429)	Apr 22 Apr 29	MPUC and Maine Customer Group file protests Emera Maine replies to protests
29	Emera Maine Order 676-H Compliance Filing (ER15-1419)	Apr 28	Emera Maine amends filing to withdraw its request for waiver of NAESB business practice standard WEQ-012
29	NSTAR/HQ US CMEEC Use Rights Transfer Agreement (ER15-1383)	Apr 16	CMEEC requests that effective date of Agreement be set at Mar 26, 2015
29	Opinion 531-A Compliance Filing: NGrid IFA Amendments (ER15-418)	Apr 16	FERC rejects compliance filing
30	FERC Enforcement Action: City Power Marketing and Tsingas (IN15-5)	Apr 20 Apr 21 Apr 23	Enforcement requests revised briefing schedule FERC denies Enforcements Apr 20 request City Power Respondents respond to PJM's Apr 1 comments
30	FERC Enforcement Action: Maxim Power and K. Mitton (IN15-4)	Apr 14	Maxim Respondents supplement their Apr 6 reply to Enforcement's Mar 23 answer
31	FERC Enforcement Action: Powhatan Energy, HEEP Fund, CU Fund, and Chen (IN15-3)	Apr 14 Apr 23	Powhatan Respondents answer PJM's comments Powhatan Respondents highlight authority in <i>ONEOK</i> case they assert has relevance to this proceeding

XII. Misc. - Administrative & Rulemaking Proceedings

32	Technical Conferences on Implications of Environmental Regulations (AD15-4)	Apr 10-27 Apr 21	America's Natural Gas Alliance, AEP, Southern Company submit comments NERC submits chapter from report entitled " <i>Potential Reliability Impacts of EPA's Proposed Clean Power Plan – Phase I</i> "
34	RTO/ISO Winter 2013/14 Operations and Market Performance (AD14-8)	Apr 21	Organization of MISO States submits comments regarding fuel assurance activities being undertaken by regulatory commissions in the MISO footprint
34	NOPR: Third-Party Provision of Primary Frequency Response Service (RM15-2)	Apr 17-27	Nearly 20 parties file comments
35	Order 807: Open Access and Priority Rights on ICIF (RM14-11)	Apr 20	APPA/TAPS and NRECA request rehearing of <i>Order 807</i>

37	<i>Order 676-H: Incorporation of WEQ Version 003 Standards (RM05-5)</i>	Apr 16	FERC grants clarification in part, but otherwise denies EEI and NYISO requests for rehearing and/or clarification of <i>Order 676-H</i>
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XIII. Natural Gas Proceedings

38	<i>Order 809: Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (RM14-2)</i>	Apr 16	FERC issues Final Rule, effective Jul 8, 2015; compliance filings due Jul 23, 2015
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XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

41	FCM Administrative Pricing Rules Complaint (15-1071**)	Apr 23	NEPGA files Docketing Statement, Statement of Issues, and Appearances; NEPGA requests case be held in abeyance pending a FERC order on rehearing in EL15-23
		Apr 24	NEPOOL, CT PURA, CT OCC, PSEG intervene
41	Demand Curve Changes (15-1070**)	Apr 21-27	NEPOOL, the ISO, CT PURA, NESCOE intervene
41	FCA8 Results (ER14-1244 (consol.))	Apr 10	Court orders joint proposal for briefing format to be filed by May 11
42	2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consol.))	Apr 15	Final Briefs filed
42	Orders 773 and 773-A (2nd Cir., 13-2316)	Apr 22	2nd Circuit denies petitions for review, concluding proceeding
42	FERC v. EPSA (Orders 745, 745-A) (Supreme Court, 14-840)	Apr 24	Case goes to conference without resolution; case scheduled to go to conference on May 1
* 46	ONEOK, Inc. v. Learjet, Inc. (Supreme Court, 13-271)	Apr 21	Court rules that the Natural Gas Act did not field pre-empt state law antitrust lawsuits filed against the interstate gas sellers, allowing purchasers who bought natural gas directly from the gas sellers at retail to maintain their state antitrust suits that claim that the latter manipulated gas indices used to help set natural gas retail and FERC-regulated wholesale prices

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: April 29, 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 April 29, 2015. If you have questions, please contact us.¹

I. Complaints

- **NRG Canal 2 2015/16 ARA3 Complaint/Waiver Request (EL15-57)**

On April 6, 2015, GenOn Energy Management filed an emergency complaint and, alternatively, a waiver request, related to the third annual reconfiguration auction (“ARA”) for the 2015/16 Capacity Commitment Period (“2015/16 ARA3”). Specifically, GenOn requested in its emergency complaint that the FERC find that the ISO violated the Tariff in conducting the 2015/16 ARA by submitting a demand bid into the March 2015 ARA as if Unit 2 at the Canal Generating Plant (“NRG Canal 2”) was still de-rated (303 MW), rather than treating Canal 2 at its full capability (577 MW). Alternatively, should the FERC find that the ISO acted in accordance with the Tariff, GenOn requested waiver of all necessary Tariff provisions to permit the ISO to recalculate the results of the 2015/16 ARA3 to reflect NRG Canal 2’s full capability. GenOn requested that the FERC act on this filing on or before May 25, 2015. Comments on, and any responses to, this Complaint are due on or before May 6, 2015. Thus far, doc-less interventions were filed by NEPOOL, Calpine, ConEd, Entergy, and NESCOE. 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 Peak Energy Rent (PER) Complaint (EL15-25)**

Rehearing remains pending 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

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 Oct. 3, 2014 meeting.

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. On April 1, 2015, the FERC issued a tolling order affording it additional time to consider NEPGA’s and Entergy’s rehearing requests, which remain pending before the FERC. 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)**

Exelon and Calpine’s request for rehearing of the FERC’s January 30 order denying the New Entry Pricing Rule Complaint⁴ remains pending. As previously reported, the *New Entry Pricing Rule Complaint Order* 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. On April 1, 2015, the FERC issued a tolling order affording it additional time to consider Exelon’s and Calpine’s rehearing request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

NEPGA’s November 14, 2014 complaint remains pending before the FERC. As previously reported, the complaint requests that (i) Demand Response (“DR”) Capacity Resources 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*). 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

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

⁵ “Conn/RI” is the Connecticut Public Utilities Regulatory Authority (“CT PURA”), George Jepsen, Att’y Gen. for the State of Conn. (“CT AG”), the Conn. Department of Energy and Environmental Protection (“CT DEEP”), the Conn. Office of Consumer Counsel (“CT OCC”), and the Rhode Island Div. of Public Utilities and Carriers (“RI PUC”).

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

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 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. Compliance Filing I is pending before the FERC.

Compliance Filing II (ER15-117-004): On April 1, the ISO and NEPOOL submitted Market Rule changes, in response to the FERC's directive in the *Imports Mitigation Order*, to allow New Import Capacity Resources to submit up to five price-quantity pairs as part of their FCA offer information. The changes were unanimously supported by the Participants Committee at its March 6 meeting (Consent Agenda item no. 2). Comments on Compliance Filing II were due on or before April 22; none were filed. Compliance Filing II is also pending before the FERC.

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

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.

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

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

As previously reported, the FERC issued an order on November 24, 2014, establishing a trial-type, evidentiary hearing, consolidating EL14-86¹² with EL13-33,¹³ and setting a refund effective date for EL14-86 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 (now known as Acadia Center, “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’s most recent, revised procedural was issued on March 16 and now leads to hearings beginning June 25, 2015 and an initial decision by December 30, 2015. As previously reported, the active Participants filed a preliminary joint statement of issues on December 9 and a discovery

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%.

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.*

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, on April 21, the TOs submitted their cross-answering testimony, and a notice of the deposition of Mr. Avera was filed by the Complainant-Aligned Parties. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

Rehearing remains pending of the FERC's May 30, 2014 *PI Order*²⁰ on the FCM PI Jump Ball Filing and its *October 2 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*. 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.²⁷ The FERC found that

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").

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 CT PURA, CT OCC, CT AG, CT DEEP, the United Illuminating Company ("UI") and the 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 *October 2 Order* at P 56.

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.²⁸ Connecticut/Rhode Island²⁹ and Public Systems³⁰ requested rehearing of the *October 2 Order* on November 3, 2014. On December 3, 2014, 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).

- **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).³¹ 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* (or, as discussed in Section XIII below, Thursday, July 23, 2015):

(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.³²

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 (or October 21, 2015). 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)**

On April 20, the FERC denied rehearing of its February 12, 2013 order³³ denying NESCOE's FCM Renewable Exemption Complaint.³⁴ The FERC found that, in light of its rulings in ER14-1639,³⁵ which

²⁸ *October 2 Order* at P 1; Ordering Paragraph (A).

²⁹ "Connecticut/Rhode Island" are the CT PURA, CT AG, CT OCC, CT DEEP, and the RI PUC.

³⁰ "Public Systems" are CMEEEC, MMWEC, NHEC, and VEC.

³¹ *Cal. Indep. Sys. Op. Corp. et al.*, 146 FERC ¶ 61,202 (Mar. 20, 2014). The New England 206 proceeding was docketed as EL14-23.

³² *Id.* at P 19.

³³ *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (Feb. 12, 2013), *reh'g denied*, 151 FERC ¶ 61,056 (Apr. 20, 2015) ("*Renewables Exemption Complaint Order*"). As previously reported, the Renewable Exemption Complaint 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

superseded its rulings in this proceeding, NESCOE's arguments on rehearing in favor of a renewable resource exemption were moot.³⁶ Accordingly, the request for rehearing was denied, concluding this proceeding. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

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

On March 3, the FERC issued *Opinion 531-B*,³⁷ denying rehearing of *Opinion 531*³⁸ and *Opinion 531-A*.³⁹ 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 (Section XV) of future Reports.

As previously reported, *Opinion 531*, affirmed in part, and reversed in part, Judge Cianci's *Initial Decision*.⁴⁰ 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.⁴¹ Several parties requested rehearing and/or clarification of *Opinion 531*, including the TOs, EMCOS, American Municipal Power ("AMP"), and NRECA/APPA.⁴²

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.

in customers being forced to purchase more capacity than is necessary for resource adequacy and proposed an alternative renewables exemption.

³⁴ *New England States Comm. on Elec. v. ISO New England Inc.*, 151 FERC ¶ 61,056 (Apr. 20, 2015).

³⁵ *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).

³⁶ *Id.* at P 21.

³⁷ *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

³⁸ *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).

³⁹ *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁴⁰ *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).

⁴¹ *Opinion 531* at P 1.

⁴² 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.

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. On March 31, the TOs requested a second extension of time. In light of the changes in the refund calculation resulting from *Opinion No. 531-B* and additional time required by the ISO, the TOs requested that the following deadlines be permitted: August 31, 2015, for regional refunds; October 31, 2015, for the regional refund report; October 31, 2015, for local refunds; and December 31, 2015, for the final local refund report. On April 10, the FERC granted an extension of time to complete refunds and refund reports to and including November 2, 2015, for local refunds; and to and including December 31, 2015, for a final refund report. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- ***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.

In light of *Opinion 531-B*, the TOs indicated in a March 31 motion that further amendments would be required. The TOs indicated that the amendments would likely resolve the contested issues raised by EMCOS and Complainant-Aligned Parties in response to the November 17 filing. Accordingly, the TOs requested that the FERC defer action on the pending November 17 filing until after the amendments have been filed and the corresponding period for comments has passed.

On April 22, the TOs submitted their amended *Opinion 531-A* compliance filing. They indicated that the April 22 reflected certain clarifications provided in *Opinion 531-B* and amends the Attachment F Annual Transmission Revenue Requirements used for determining RNS rates and the Schedule 21 Local Service Schedules for determining revenue requirements applicable to the TOs under the ISO OATT. Comments on the amended *Opinion 531-A* compliance filing are due on or before May 13, 2015.

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

- **FCA-10 Capacity Zone Boundaries (ER15-1462)**

On April 6, the ISO filed a notice identifying two potential new boundaries for Capacity Zones for the tenth Forward Capacity Auction ("FCA-10"): (1) a 'Southeastern New England ("SENE") Capacity Zone' (an import-constrained zone that is a combination of the existing NEMA/Boston and SEMA/RI Capacity Zones) and (2) a 'Northern New England ("NNE") Capacity Zone' (an export-constrained zone that is a combination of the existing Maine, New Hampshire and Vermont Load Zones). No changes are proposed to the West/Central MA or Connecticut zones. If the FERC approves the identified boundaries, then a determination as to whether the

potential zones will actually be modeled as separate Capacity Zones in FCA-10 will be conducted in accordance with Section III.12.4(b) of Market Rule 1 and addressed in the FCA-10 information filing to be submitted in early November 2015. An order accepting this filing on or before May 29, 2015 was requested. The annual assessment of transmission transfer capability that formed the basis for the identification of the new boundaries was presented to the PAC on March 24. Additional input on the assessment was solicited at an April 2 Reliability Committee meeting. At the April 2 meeting, the RC voted 34.25% in favor of recommending to the ISO that the identification of the zonal boundaries was performed in accordance with Section II, Attachment K and Section III.12.5 of the ISO Tariff. This matter was not considered by the Participants Committee. Comments on this filing were due on or before April 27, 2015.

Interventions were filed by Champlain VT, ConEd, Dynegy, Emera, Entergy, Eversource, Exelon, Footprint, GDF Suez, MMWEC, NESCOE, NHEC, SunEdison, and Verso. **Comments** were submitted by **NEPOOL** on April 21 ((i) seeking confirmation/affirmation that a Reliability Committee vote is a required predicate to material changes to Capacity Zone Boundaries, (ii) summarizing reasons why the new boundaries were not supported; and (iii) seeking guidance that process improvements to facilitate meaningful engagement between the ISO and NEPOOL members on proposed Capacity Zone changes are warranted) and by **Calpine** on April 27 (taking no position on the specific boundaries proposed, but expressing concern with the process for establishing new Capacity Zones that prevent meaningful stakeholder input and potentially create unnecessary and undesirable price volatility in FCM auctions).

Protests were filed by: **Dominion** (requesting that the ISO be directed to provide stakeholders with a more robust opportunity to review proposed potential zonal boundaries), **NRG** (protesting the manner in which the technical studies were presented to stakeholders and providing comments on how the system of establishing new capacity zones should be improved), **NEPGA** (requesting that the ISO be directed to amend the Tariff to require the ISO to: (i) identify and evaluate a relatively static set of transmission interfaces in the Step One process; (ii) model as an import-constrained Capacity Zone any Capacity Zone that has in a recent FCA signaled a need for new resources; (iii) make any other changes necessary to provide greater predictability to the transmission interfaces that will be evaluated as potential Capacity Zone boundaries; and (iv) provide stakeholders with an opportunity to participate in the identification of relevant transmission interfaces early enough in the Step One process for that participation to be meaningful), **New England Suppliers**⁴³ (NNE Capacity Zone), and **PSEG** (urging rejection of the filing and that the ISO be directed to model all of the existing load zones as capacity zones in FCA-10).

This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA9 Results Filing (ER15-1137)**

As previously reported, the ISO filed the results of the ninth FCA (“FCA9”) held February 2, 2015 on February 27, identifying 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

⁴³ “New England Suppliers” are Essential Power, Granite Ridge and NextEra.

The ISO asked the FERC to accept the FCA9 rates and results, effective June 27, 2015. Comments on this filing were due on or before April 13, 2015. Interventions were filed by NEPOOL, Calpine, CPV Towantic, Emera, Essential Power Entergy, EPSA, EquiPower, Exelon, HQ US, NEPGA, NESCOE, NextEra, NRG, PSEG, and TransCanada. The sole protest was filed on April 13 by Utility Workers Union of America Local 464 (“UWUA Local 464”) (alleging the results are the product of continued illegal market manipulation and violation of the ISO-NE Tariff). On April 28, NEPGA answered the UWUA Local 464 protest. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **ISO Securities: Authorization for Future Drawdowns (ES15-15)**

On April 15, the ISO requested the necessary continued FERC authorization for drawdowns under its previously authorized \$20 million Revolving Credit Line and \$4 million line of credit supporting the Payment Default Shortfall Fund.⁴⁴ (ISO authorization under the 2012 Order would otherwise terminate on June 30, 2015).⁴⁵ Comments on this filing are due on or before May 6. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **2014/2015 Power Year Transmission Rate Filing: Public Representatives’ Protest (ER09-1532; RT04-2)**

In a new matter since the last Report, On April 28, 2015, “Public Representatives”⁴⁶ filed a protest, in part, of the July 31, 2014 Participating Transmission Owners Administrative Committee (“PTO AC”) filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2014 through May 31, 2015. Specifically, Public Representatives protest the Annual Transmission Revenue Requirements calculation and the resulting RNS rates to the extent they included planning costs for NHT’s proposed “SeaLink” project, costs they asserted were contrary to the terms of the TOA and should be disallowed from RNS rate recovery. Public Representatives stated that the partial protest was filed in April 2015, rather than closer to the July 2014 informational filing, due to lengthy, but unsuccessful, discussions between the MA AG’s office and NHT to resolve this dispute. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **DNE Dispatch Changes (ER15-1509)**

On April 15, as corrected on April 16, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 to provide for the dispatch of certain wind and hydro Intermittent Power Resources using Do Not Exceed (“DNE”) Dispatch Points (“DNE Dispatch Changes”). The changes are designed to result in more efficient economic outcomes and better system reliability through the better use of economic dispatch signals to manage transmission system congestion and the minimization of the use of manual curtailment processes. An April 10, 2016 effective date was requested. These changes were supported unanimously by the Participants Committee at its March 6, 2015 meeting. Comments on this filing are due on or before May 6. Thus far, interventions have been filed by Dominion, Entergy, Exelon, and NESCOE. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁴⁴ See *ISO New England Inc.*, 139 FERC ¶ 62,248 (June 22, 2012) (“2012 Order”).

⁴⁵ See *ISO New England Inc.*, 147 FERC ¶ 62,091 (May 6, 2014).

⁴⁶ “Public Representatives” are the MA AG, CT OCC, CT PURA, the RI PUC, the Attorney General of the State of Rhode Island (“RI AG”), the Maine Public Advocate (“MOPA”) and the Vermont Department of Public Service (“VT DPS”).

- **eTariff Corrections (ER15-1455)**

On April 6, the ISO submitted corrections to the following sections of the ISO's eTariff: I.2.2 (Definitions); III.2 and III.2 (LMPs, Real-Time Reserve Clearing Prices Calculation; Accounting/Billing); III.13.2(Annual FCA); III.13.7 (Performance, Payments & Charges in the FCM); and MR1 Appendix E2 (Load Response Program). The ISO explained that the corrections are needed due to the overlapping timing of the filing and acceptance of various prior Tariff filings. Comments on this filing were due on or before April 27. Interventions were filed by NEPOOL and Exelon; no comments were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **LMP Calculator Replacement (ER15-1238)**

On April 17, the FERC accepted revisions to Market Rule 1 to replace the part of the system dispatch software that calculates prices in the Real-Time Energy Market (the "LMP Calculator") jointly submitted by the ISO and NEPOOL on March 13. Real-Time price calculations will now be based on the same software and inputs used to produce the Dispatch Rates, ensuring that Real-Time Prices and Dispatch Rates are more closely aligned. The changes were accepted as of May 27, 2015, as requested. Unless the April 17 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).

- **PER Mechanism Elimination (FCA-10) (ER15-1184)**

On March 6, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 to eliminate the FCM Peak Energy Rent ("PER") mechanism beginning June 1, 2019, with the commencement of the Capacity Commitment Period associated with the tenth Forward Capacity Auction ("FCA-10"). A May 6, 2015 effective date was requested. These changes were supported by the Participants Committee at its March 6, 2015 (Agenda Item #6A). Comments on this filing were due on or before March 27. Interventions were filed by Calpine, CT AG, Dominion, Emera, Exelon, NESCOE, and NRG. Comments supporting the filing were filed by Entergy, GDF Suez and NEPGA. Entergy asked the FERC to accept the proposed changes without change or condition. NEPGA and GDF Suez asked the FERC to accept the proposed changes, but also asked the FERC to "direct NEPOOL and ISO-NE to commence a stakeholder consideration of Tariff changes for the period preceding the FCA 10 Capacity Commitment Period necessary to address subjecting resources to a reduction in capacity payments due to a real-time price the resources did not receive." On April 13, NEPOOL responded to the NEPGA and GDF Suez pleadings. 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).

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

On April 17, as requested⁴⁷ by the ISO, the FERC granted rehearing⁴⁸ of its January 20, 2015 clarification⁴⁸ of the *Winter 2014/15 Reliability Program Order*.⁴⁹ In the *Winter Reliability Program Clarification Order*, the FERC clarified, as requested by NEPGA, 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

⁴⁷ *ISO New England Inc. and New England Power Pool Participants Comm.*, 151 FERC ¶ 61,052 (Apr. 17, 2015) ("Winter Reliability Program Clarification Rehearing Order").

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 granted*, 151 FERC ¶ 61,052 (Apr. 17, 2015).

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), *reh'g granted*, 151 FERC ¶ 61,052 (Apr. 17, 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").

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.” The ISO requested rehearing of the *Winter Reliability Program Clarification Order* on February 19. On April 17, the FERC granted rehearing, finding “that an expanded version of the current winter program might better produce the desired results in terms of reliability than the introduction, at this point in time, of the market-based solutions examined by ISO-NE.”⁵⁰ Accordingly, the FERC will “allow the possibility that ISO-NE may file additional out-of-market winter reliability programs until the two-settlement capacity market design becomes effective in 2018.” The FERC noted its expectation that the ISO will “work with stakeholders to expand any future out-of-market winter reliability program to include “all resources that can supply the region with fuel assurance,” such as nuclear, coal, and hydro resources” and to “provide a detailed description of the options it considered to make the program fuel neutral and why those options were ultimately not included.”⁵¹ Further challenges, if any, will need to be addressed in federal court, and if so challenged, will be reported on in Section XV in future Reports. 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*,⁵² 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.⁵³ 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. On March 30, as reported more fully in Section XV below, NextEra, NRG and PSEG petitioned the DC Circuit Court of Appeals for review of the FERC’s Demand Curve orders. Developments in that proceeding will be reported in Section XV below.

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 were due on or before March 23. In its comments, NEPOOL reported that the Participants Committee unanimously supported the compliance changes at its March 6 meeting. The Compliance Filing is pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Rehearing of the *FCM PI Order* remains pending. As previously reported, the ISO and NEPOOL submitted on January 17, 2014, two alternative versions of Market Rule changes intended to improve the operating performance of capacity resources in New England -- the “ISO-NE Proposal” and the “NEPOOL Proposal”. As explained above, on May 30, 2014, the FERC issued an order in response to the jump ball filing.⁵⁴ 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

⁵⁰ *Winter Reliability Program Clarification Rehearing Order* at P 17.

⁵¹ *Id.*

⁵² *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).

⁵³ *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*”).

⁵⁴ *See PI Order.*

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.)**

On April 20, the FERC denied the March 15, 2013 requests for rehearing of the *FCA8 Revisions Order*.⁵⁵ As reported previously, the FERC 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.⁵⁶ Two requests for rehearing of the *FCA8 Revisions Order* were filed on March 15, 2013, one by Public Systems,⁵⁷ the other by EMCOs.⁵⁸ In denying the requests, the FERC found that no arguments on rehearing were raised by either group that had not been previously addressed or that warranted reversal of the earlier rulings. Specifically, the FERC found that, although the unit-specific review process which EMCOs objected to may impose more procedural requirements on resources with costs below the benchmark than on others, those requirements are necessary to ensure the correct functioning of the FCM and neither results in nor is motivated by undue discrimination.⁵⁹ Addressing Public Systems’ arguments, the FERC (i) rejected the jurisdictional arguments; (ii) found that the FCM Market Rules do not prohibit Public Systems’ members, or any other party, from developing capacity or offering that new capacity into the market; (iii) found that payments that consumer-owned utilities receive from their members are out-of-market payments; and (iv) declined to impose a blanket MOPR exemption for self-supplied resources. Further challenges, if any, will need to be addressed in federal court, and if so challenged,

⁵⁵ *ISO New England Inc.*, 151 FERC ¶ 61,055 (Apr. 20, 2015) (“*FCA8 Revisions Rehearing Order*”).

⁵⁶ *ISO New England Inc.*, 142 FERC ¶ 61,107 (Feb. 12, 2013) (“*FCA8 Revisions Order*”), *reh’g denied*, 151 FERC ¶ 61,055 (Apr. 20, 2015). 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; unit specific offer review; the ISO’s proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports’ treatment under MOPR; no exemptions to MOPR for new Self-Supplied Resources; the application of mitigation to all new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives; \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids; and a number of other additional revisions. The *FCA8 Revisions Order* rejected: the ISO’s proposed methodology for reducing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA (directing the ISO to submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market); 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)).

⁵⁷ For purposes of this proceeding “Public Systems” are: MMWEC, NHEC, APPA, Northeast Public Power Association (“NEPPA”), and National Rural Electric Cooperative Association (“NRECA”).

⁵⁸ For purposes of this proceeding “EMCOS” includes Braintree, Hingham, Reading, and Taunton, together with Danvers.

⁵⁹ *FCA8 Revisions Rehearing Order* at P 22.

will be reported on in Section XV in future Reports. 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, -1051)**

On April 14, the FERC accepted the changes to the Tariff and TOA to improve the Elective Transmission Upgrade (“ETU”) process (“ETU Rule Changes”) jointly submitted by the ISO, NEPOOL and PTO AC in February.⁶⁰ As previously reported, 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 CNIIS 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. The changes were accepted as of February 16, 2015, as requested. In accepting the changes, the FERC declined, as requested by Champlain VT, to require the ISO to make retroactive determinations of whether changes to an ETU project constituted a material modification.⁶¹ The FERC found the changes to be just and reasonable, and therefore not required to consider alternative tariff provisions. The FERC noted that the proposal received unanimous support in the stakeholder process. Challenges, if any, to the April 14 order will be due on or before May 14. 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)**

As previously reported, the ISO submitted, on December 1, 2014, 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 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,

⁶⁰ *ISO New England Inc.*, 151 FERC ¶ 61,024 (Apr. 14, 2015).

⁶¹ *Id.* at P 31.

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.

Supplement. On April 14, the Filing Parties supplemented their December 1 compliance filing with a request for waiver of the Network Integration Transmission Service (“NITS”) and Service Across Multiple Transmission Systems (“SAMTS”) WEQ Standards.⁶² The Filing Parties stated that the NITS and SAMTS WEQ Standards are inapplicable in New England given the nature of the transmission services provided under the ISO OATT, and the failure to request waiver of those Standards in the December 1 filing was an oversight. Comments, if any, on the supplemental filing are due on or before May 5.

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 Organizations⁶³ 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).

⁶² The NITS Standards are contained in Version 003 WEQ-000, WEQ001, WEQ-002 and WEQ-003; the SAMTS Standards, Version 003 WEQ-000, WEQ-001, WEQ-002, WEQ-003 and WEQ-013.

⁶³ “Public Interest Organizations” are Conservation Law Foundation, Acadia Center, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

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

As previously noticed, the FERC issued, on March 19, 2015, its long-awaited Order on Rehearing and Compliance⁶⁴ of the region's *Order 1000* compliance filing.⁶⁵ A memo summarizing the 200-page order in more detail was circulated by NEPOOL Counsel on March 23 and posted on the NEPOOL website Litigation Report Updates page. As previously noted, *the Order 1000 Compliance Order*:

- Affirmed an effective date 60 days from the date of the issuance of the March 19 Order and required additional compliance filings within that same time period (i.e. on or before May 18, 2015).
- Grandfathered projects that are listed as "Proposed" or "Planned" as of the effective date as exempt from the new transmission development regime, unless the ISO is re-evaluating, or subsequently determines it necessary to reevaluate, the solution design for such transmission projects as of the effective date.
- Required the ISO to make a further compliance filing to provide a list of transmission providers and the enrollment process that defines how transmission providers enroll in the transmission planning region.
- Affirmed the finding that the existing framework of the Needs Assessment Study Group is inconsistent with the transparency principle of Order 1000 and accepted use of the PAC in its place.
- Affirmed FERC's prior determination that the ISO and not the States must be the one that selects solutions that meet transmission needs driven by Public Policy Requirements.
- Affirmed the elimination of the incumbent transmission owners' right of first refusal ("ROFR") to build and own transmission projects called for by the Regional System Plan.
- Affirmed the exception to the ROFR for reliability projects needed within three years (rather than five years).
- Granted rehearing to allow for provisions that recognize the incumbent transmission owners' rights to build upgrades to their transmission facilities and to retain use and control of their rights-of-way.
- Affirmed the ISO's proposed mechanism for evaluating the qualifications of transmission developers to operate and maintain projects.
- Required certain additional compliance changes to the Non-incumbent Agreement for transmission development.
- Affirmed elimination of the requirement for prospective transmission developers to provide feasibility studies to demonstrate how their proposed transmission solutions will address the identified needs.
- Required a further compliance filing providing additional details on the treatment of study deposits.
- Required a further compliance filing clarifying when project sponsors must submit proposals.
- Clarified that in cases where a project is abandoned or not being diligently pursued by the sponsor, the backstop obligation of the Participating Transmission Owners is to build a solution, not to build the selected project.
- Required a further compliance filing providing more clarity on backstop transmission solutions, and limiting the obligation on Participating Transmission Owners.
- Required a further compliance filing for cost allocation of reliability and market efficiency upgrades to ensure that costs for such upgrades are not imposed involuntarily on parties outside New England.

⁶⁴ *ISO New England Inc.*, 150 FERC ¶ 61,209 (Mar. 19, 2015) ("*Order 1000 Compliance Rehearing Order*"), *clarif. and/or reh'g requested*.

⁶⁵ *ISO New England Inc.*, 143 FERC ¶ 61,150 (May 17, 2013) ("*Order 1000 Compliance Order*"), *order on reh'g* 150 FERC ¶ 61,209 (Mar. 19, 2015).

- Affirmed the prior rejection of the State “opt-in” approach to cost allocation for public policy projects.
- Accepted the proposal for cost allocation for public policy projects that would allocate 70% of the costs of Public Policy Transmission Upgrades throughout the region based on load ratio shares and the remaining 30% of the costs would be allocated on a load ratio basis among those states with a public policy planning need that a particular project is intended to meet.
- Rejected consumer-owned systems’ request for an opt-out from public policy project cost allocation.

Among the requirements to be addressed in the 60-day (May 18) compliance filing are (i) to set forth in the OATT the enrollment process that defines how transmission providers enroll in the transmission planning region; (ii) to include a list of enrolled transmission providers in the OATT; (iii) to describe a just and reasonable and not unduly discriminatory process through which each Participating Transmission Owner will identify, out of the larger set of potential transmission needs driven by federal public policy requirements that may be proposed, those transmission needs for which transmission solutions will be evaluated in the local transmission planning process; (iv) to restore from the First Compliance Filing the proposed revisions to section 4.3(a) of the OATT and Schedule 3.09, section 1.1(f) of the TOA dealing with existing rights of way; (v) to revise the definition of non-incumbent transmission developer in the OATT to require that a Participating Transmission Owner that proposes to develop a transmission facility not located within or connected to its existing electric system enter into a Non-incumbent Agreement; (vi) to exempt from the hold harmless provision a Participating Transmission Owner’s own ordinary negligence and to remove the reference to FERC penalties; (vii) to modify the study deposit provisions to: (a) provide to each Qualified Sponsor a description of the costs to which the deposit will be applied, how those costs will be calculated, and an accounting of the actual costs, and (b) provide a provision that any disputes arising from this process be addressed under the ISO’s dispute resolution process; (viii) to clarify when a Qualified Sponsor whose Phase One or Stage One Proposal will be considered in Phase Two or Stage Two must submit the required information regarding its Phase Two or Stage Two Solution; (ix) to create a defined term for a backstop transmission solution and to use that term consistently in the OATT and TOA; and (x) to remove the new language in section 4.3(k) of Attachment K that would require a Participating Transmission Owner to continue developing a backstop transmission solution beyond what was originally proposed and that the Commission accepted in the First Compliance Order. Consideration of the 60-day compliance filing changes, initially scheduled for consideration at the May 1 Participants Committee meeting, have been deferred to a subsequent meeting.

On April 20, the ISO requested clarification and/or re-hearing of the *Order 1000 Compliance Rehearing Order*. Specifically, the ISO requested clarification (i) that the FERC’s concerns with the non-discriminatory applicability of the “hold harmless” clause contained in the Non-Incumbent Transmission Developer Operating Agreement (“NTDOA”) could be addressed by the inclusion of a similar clause in the Transmission Operating Agreement (“TOA”); and (ii) that no changes are required to comply with Regional Cost Allocation Principle 4 and that language providing that “the costs of any external impacts of New England regional projects will not be borne by New England customers” need not be removed from Schedule 15 of the OATT. The ISO’s request for rehearing is pending before the FERC, with FERC action required on or before May 20, 2015, or the request will be deemed denied. However, the ISO asked for expedited FERC action so that its proposed approaches can be reflected in its compliance filing due on May 18, 2015. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **Deposit Account Changes (ER15-1493)**

On April 10, the ISO and NEPOOL jointly submitted changes to the collateral requirements for foreign Market Participants. Specifically, the changes require foreign Market Participants to post a letter of credit to meet their financial assurance obligations (removing the option to provide cash that would be invested in one of six

BlackRock Liquidity Funds investment options (“Liquidity Funds”). The ISO reported that only two Participants will be required to take action in response to the revisions. In addition, additional clean-up revisions deleting outdated references to cash collateral were also submitted. These changes were supported by the Participants Committee at its April 10, 2015 meeting. Comments on this filing are due on or before May 1. Thus far, a doc-less intervention was filed by Exelon. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-NEP: BIPCO and Narragansett TSAs (ER15-1466)**

On April 7, New England Power Company d/b/a National Grid filed amendments to two local service agreements (“LSA”) under Schedule 21-NEP. The LSAs, one among the ISO, NEP and Block Island Power Company (“BIPCO”), and the other with The Narragansett Electric Company (“Narragansett”), were each amended in order to address a concern raised by the RI PUC that the Block Island Transmission System (“BITS”) Surcharge calculated under the LSAs did not fully conform with Rhode Island General Law Section 39-26.7(f). Accordingly, NGrid modified the BITS Surcharge by adding a collar to the calculation of the BIPCO Share Percentage such that the impact on the typical residential customer in the Town of New Shoreham cannot be lower than 120% of the impact on the typical residential customer of Narragansett. A June 7, 2015 effective date was requested. Comments on this filing are due on or before April 28; 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).

- **Schedule 20A-EM and 21-EM Changes (ER15-1434)**

On April 1, Emera Maine and the ISO filed changes to Schedule 21-EM (to ensure charges under the schedule reflect only costs of service over Emera Maine’s Non-PTF System that is subject to that schedule) and 20A-EM (corrections). A June 1, 2015 effective date was requested. Eversource submitted a doc-less motion to intervene on April 22. No comments on this filing 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).

- **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 Agreement⁶⁶ 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).

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

- **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.⁶⁷ Chief Judge Wagner appointed Judge David H. Coffman as the Settlement Judge. Settlement conferences have been held on January 8, February 5, and April 10. On April 6, Judge Coffman issued a report recommending that the settlement proceedings continue. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **LFTR Implementation: 26th Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the twenty-sixth of its Quarterly Status Reports regarding LFTR implementation on April 15. As noted in the business priorities discussions, the ISO reported that it expects to file its proposal (following completion of the Participant Processes) in the first half of 2016. Third party clearing design could then be implemented during Q4 2016 for the 2017 annual FTR auction, about six months later (mid-2017) for monthly auctions, and during Q4 2018 for an initial auction of LFTRs. The estimated 18-month LFTR implementation process, described in previous reports, would be initiated in 2016, presuming the third party clearing design is accepted and related FAP changes resolved. These status reports are not noticed for public comment and no comments have been filed.

- **ISO-NE FERC Form 1 (not docketed)**

On April 13, the ISO submitted its 2014 Annual Report of Major Electric Utilities, Licensees and Others. These filings are not noticed for filing.

- **ISO-NE FERC Form 582 (not docketed)**

On April 15, the ISO submitted a report of its total MWh of transmission service during 2014. These filings are not noticed for filing.

IX. Membership Filings

- **April 2015 Membership Filing (ER15-1417)**

On March 31, NEPOOL requested that the FERC accept (i) the memberships of Evergreen Wind Power II (SunEdison Related Person -- AR Sector, RG Sub-Sector) and Jericho Power (AR Sector, RG Sub-Sector); (ii) the termination of the Participant status of Lincoln Paper and Tissue (End User Sector); and (iii) the name change of Constellation Energy Services (f/k/a Integrys Energy Services). Comments on this filing were due on or before April 21; none were filed. This matter is pending before the FERC.

⁶⁷ *ISO New England Inc. and Northeast Utilities Service Co.*, 149 FERC ¶ 61,274 (Dec. 24, 2014).

- **Suspension Notices (not docketed)**

Since the last Report, the ISO filed, pursuant to Section 2.3 of the Information Policy, one notice with the FERC noting that the following Participant was suspended from the New England Markets on the date 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>
April 15/16	Demansys Energy, 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: March 2015 (NP15-23)**

NERC submitted on March 31, 2015 its Find, Fix, Track and Report (“FFT”) informational filing for the month of March 2015. The March FFT resolves 23 possible violations of 12 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁶⁸ FFT filings are for information only and are not be noticed for public comment by the FERC.

- **Revised Reliability Standards: PRC-001-1.1(ii), PRC-004-2.1(i)a, PRC-004-4; PRC-005-2(i), PRC-005-3(i), PRC-019-2 and PRC-024-2, VAR-002-4 (RD15-3)**

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”).⁶⁹ NERC stated that the Dispersed Generation Resource Changes tailor the Standards to account for the reliable operations of variable resources. 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 were due on or before March 9, 2015 and were filed by Dominion. On March 13, NERC supplemented its Dispersed Generation Resource Changes with changes to PRC-001-1.1(ii), PRC-019-2 and PRC-024-2. Comments on the supplemental changes, which NERC requested be accepted together with the Dispersed Generation Resource Changes, were due on or before April 9, 2015; none were filed. This matter is pending before the FERC.

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

The PRC-004 Changes remain pending before the FERC. 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

⁶⁸ Only possible violations that pose a minimal risk to Bulk-Power System reliability are eligible for FFT treatment. See *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (Mar. 15, 2012) at PP 46-56.

⁶⁹ “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.

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 TOP and IRO Reliability Standards (RM15-16)**

On March 18, NERC filed for approval changes reflected in the following Transmission Operations (“TOP”) and Interconnection Reliability Operations and Coordination (“IRO”) Reliability Standards:

- TOP-002-4 (Operations Planning);
- TOP-003-3 (Operational Reliability Data);
- IRO-001-4 (Reliability Coordination – Responsibilities);
- IRO-002-4 (Reliability Coordination –Monitoring and Analysis);
- IRO-008-2 (Reliability Coordinator Operational Analyses and Real-time Assessments);
- IRO-010-2 (Reliability Coordinator Data Specification and Collection);
- IRO-014-3 (Coordination Among Reliability Coordinators); and
- IRO-017-1 (Outage Coordination).

NERC indicated that the TOP/IRO Standards, which supersede the changes submitted in RM13-15, -14, and -12, but concurrently withdrawn, include improvements over the currently effective TOP and IRO Reliability Standards in key areas such as: (1) operating within SOLs and IROLs; (2) outage coordination; (3) situational awareness; (4) improved clarity and content in foundational definitions; and (5) requirements for operational reliability data. NERC requested that the TOP/IRO Changes be approved as of the first day of the first calendar quarter that is 12 months after the date that the Standards are approved, with the exception of TOP-003-3 and proposed IRO-010-2, which were requested to be approved 3 months earlier. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **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 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 Standards⁷⁰ 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.⁷¹ 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.

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

On April 16, 2015, the FERC issued a NOPR proposing to approve 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), and the associated VRFs and VSLs (together, the “PRC-005 Changes”).⁷² As previously reported, 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.⁷³ NERC requested that the PRC-005 Changes be approved, effective on the first day of the first calendar quarter following FERC approval. Comments on this NOPR are due on or before June 22, 2015.⁷⁴

- **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

⁷⁰ 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).

⁷¹ *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (“*Order 779*”).

⁷² *Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance Reliability Standard*, 151 FERC ¶ 61,026 (Apr. 16, 2015) (“*Protection System NOPR*”).

⁷³ *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).

⁷⁴ The *Protection System NOPR* was published in the *Fed. Reg.* on Apr. 22, 2015 (Vol. 80, No. 77) pp. 22,444-22,449.

FERC's directive in *Order 733*⁷⁵ to develop a Reliability Standard addressing undesirable relay operation due to stable power swings. NERC requested that PRC-026 be approved, effective as follows: R1 on the first day of the first full calendar year that is 12 months after FERC approval; R2-R4 on the first day of the first full calendar year that is 36 months after FERC approval. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

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

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

On April 16, 2015, the FERC issued a NOPR proposing to approve changes to PRC-002-2 (Disturbance Monitoring and Reporting Requirements), associated VRFs and VSLs, and the 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").⁷⁶ As previously reported, 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. Comments on this NOPR are due on or before June 22, 2015.⁷⁹

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

On April 23, 2015, the FERC denied rehearing of *Order 802*.⁸⁰ As previously reported, the FERC approved, in *Order 802*, NERC's Physical Security Reliability Standard (CIP-014-1).⁸¹ 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

⁷⁵ *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*").

⁷⁶ *Disturbance Monitoring and Reporting Requirements Reliability Standard*, 151 FERC ¶ 61,042 (Apr. 16, 2015) ("*PRC-002 NOPR*").

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 The *PRC-002 NOPR* was published in the *Fed. Reg.* on Apr. 22, 2015 (Vol. 80, No. 77) pp. 22,441-22,444.

⁸⁰ *Physical Security Reliability Standard*, 151 FERC ¶ 61,066 (Apr. 23, 2015).

⁸¹ *Physical Security Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 (Nov. 20, 2014) ("*Order 802*"), *reh'g denied*, 151 FERC ¶ 61,066 (Apr. 23, 2015).

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,⁸² to remove the term “widespread” from the Standard or, alternatively, to propose modifications to the Reliability Standard that address the FERC’s concerns. In addition, the FERC directed NERC to submit, by June 1, 2017, an informational filing that addresses whether there is a need for consistent treatment of “High Impact” control centers for cyber security and physical security purposes through the development of Reliability Standards that afford physical protection to all “High Impact” control centers.⁸³ 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 (“RCs”), 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. As noted above, on April 23, the FERC denied the FRS rehearing request.

- **Order 808: Revised Reliability Standard: COM-001-2 and COM-002-4 (RM14-13)**

On April 16, the FERC approved changes to COM-1 (Communications) and COM-2 (Operating Personnel Communications Protocols) (together, “COM Changes”).⁸⁴ In addition, the FERC directed NERC to develop a modification to Reliability Standard COM-001-2 that addresses internal communications capabilities that could involve the issuance or receipt of Operating Instructions or other communications that could have an impact on reliability.⁸⁵ As previously reported, COM-001 establishes a clear set of requirements for what communications capabilities various functional entities must maintain for reliable communications. 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. The COM Changes will become effective as of July 1, 2016 (the first day of the first calendar quarter that is 12 months after the date that the COM Changes were approved by the FERC). Challenges, if any, to *Order 808* will be due on or before May 18, 2015.

- **Order 810: Revised Reliability Standard: BAL-001-2 (RM14-10)**

Also on April 16, the FERC approved changes to BAL-001-2 (Real Power Balancing Control Performance) (“BAL-001 Changes”).⁸⁶ In addition, the FERC required NERC (i) to submit an informational filing addressing the impact of the proposed Reliability Standard on inadvertent interchange and unscheduled power flows and (ii) to revise the definition of Reporting ACE.⁸⁷ 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.” The BAL-001 Changes will become effective June 1, 2016. Challenges, if any, to *Order 810* will be due on or before May 18, 2015.

⁸² *Order 802* was published in the *Fed. Reg.* on Nov. 25, 2014 (Vol. 79, No. 227) pp. 70,069-70,085.

⁸³ *Id.* at P 57.

⁸⁴ *Communications Rel. Standards*, Order No. 808, 151 FERC ¶ 61,039 (Apr. 16, 2015) (“*Order 808*”).

⁸⁵ *Id.* at P .

⁸⁶ *Real Power Balancing Control Performance Rel. Standard*, Order No. 810, 151 FERC ¶ 61,048 (“*Order 810*”).

⁸⁷ *Id.* at P 20.

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

The MOD-001-2 NOPR remains pending before the FERC. 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 Standards⁸⁸ to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2’s effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC seeks comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also seeks further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this NOPR were due August 25, 2014,⁸⁹ 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. As noted above, the MOD-001-2 NOPR remains pending before the FERC.

- **NOPR: BAL-002-1a Interpretation Remand (RM13-6)**

This May 16, 2013 NOPR, which proposes to remand NERC’s proposed interpretation of BAL-002 (Disturbance Control Performance Reliability Standard) filed February 12, 2013 (which would prevent Registered Entities from shedding load to avoid possible violations of BAL-002), remains pending.⁹⁰ NERC asserted that the proposed interpretation clarifies that BAL-002-1 is intended to be read as an integrated whole and relies in part on information in the Compliance section of the Reliability Standard. Specifically, the proposed interpretation would clarify that: (1) a Disturbance that exceeds the most severe single Contingency, regardless if it is a simultaneous Contingency or non-simultaneous multiple Contingency, would be a reportable event, but would be excluded from compliance evaluation; (2) a pre-acknowledged Reserve Sharing Group would be treated in the same manner as an individual Balancing Authority; however, in a dynamically allocated Reserve Sharing Group, exclusions are only provided on a Balancing Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,⁹¹ and were filed by NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. This NOPR remains pending before the FERC.

⁸⁸ 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.

⁸⁹ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

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

⁹¹ The *BAL-002-1a Interpretation Remand NOPR* was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 99) pp. 30,245-30,810.

XI. Misc. - of Regional Interest

- **203 Application: CSC/AIA Energy (EC15-122)**

On April 15, CSC and AIA Energy North America LLC (“AIA Energy”) requested FERC authorization for a transaction whereby CSC will become an indirect, wholly-owned subsidiary of AIA Energy (and no longer a Related Person of Brookfield Energy Marketing). An order by June 3, 2015 approving the transaction was requested. Comments on this filing are due on or before May 6, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: Iberdrola/CMP/ Emera (EC15-103)**

On March 25, Iberdrola⁹² and UIL Holdings Corp (“UI”) requested FERC authorization for a transaction whereby UI will become an indirect, wholly-owned subsidiary of Iberdrola, S.A (and a Related Person of Central Maine Power Company, Iberdrola Renewables, LLC, and New York State Electric & Gas Corporation). Eversource filed a doc-les intervention; no comments 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).

- **Riggs v. RI PUC II: Deepwater Wind FPA/PURPA/Supremacy Clause Complaint (EL15-61)**

On April 21, Benjamin C. Riggs, Jr. (“Riggs”) filed a second complaint relating to the August 16, 2010 approval by the RI PUC of a 20-year Power Purchase Agreement (“PPA”) between Deepwater Wind Block Island, LLC (“Deepwater Wind”) and National Grid.⁹³ In the most recent April 21 complaint, Riggs seeks FERC declaratory and injunctive relief barring the implementation of the PPA on the grounds that the PPA violates the FPA, PURPA, and the Supremacy Clause of the US Constitution. Responses to, and comments on, this complaint are due on or before May 12, 2015. If there are questions on this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

The complaint filed by Lower Village Hydroelectric Associates (“LVA”) 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, remains pending. As previously reported, PSNH responded to the October 23, 2014 Complaint on December 11, 2014, 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).

- **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.

⁹² For purposes of this proceeding, “Iberdrola” is Iberdrola, S.A., Iberdrola USA, Inc., Iberdrola USA Networks, Inc., and Green Merger Sub.

⁹³ In the first complaint, filed Aug. 22, 2012 in Docket No. EL12-100 (“*Riggs I*”), Riggs asserted that the PPA violated the “avoided cost” provisions of PURPA and would produce rates that are not “just and reasonable” and “in the public interest”. On Oct. 18, the FERC issued a notice of intent not to act on *Riggs I*.

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 Advocates⁹⁴ 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).

- **IAs – CMP/Brookfield/FPL Energy (ER15-1553 et al.)**

On April 22, CMP filed four, non-conforming⁹⁵ interconnection agreements to replace a single "Continuing Site/Interconnection Agreement" ("CSIA") originally between CMP and NextEra Energy Maine, LLC. The filings segment currently operating facilities from the CSIA, put in place four new Agreements, between CMP and each of the corresponding owners of the facilities previously covered under the CSIA, and cancel the CSIA. CPM states that the new Agreements are modeled after, and are consistent with, the CSIA. The agreements and notice of cancellation were docketed as follows:

- ▶ **IA - CMP-Brookfield White Pine Hydro (ER15-1549)** covering Androscoggin Lower, Bar Mills Hydro, Bates Lower/Continental, Bates Upper, Bonny Eagle, Brunswick Hydro, Cataract Hydro/Factory Island, Lockwood Hydro, Harris Hydro, Hill Mill, Hiram, Monty Hydro, North Gorham Hydro, Shawmut Hydro, West Buxton Hydro, and Williams Hydro.
- ▶ **IA - CMP-Cape (ER15-1551)** covering the Cape Station generating facility located in South Portland, Maine.
- ▶ **IA - CMP-Wyman (ER15-1552)** covering Wyman Unit Nos. 1-3 located in Yarmouth, Maine.
- ▶ **IA - CMP-Wyman IV (ER15-1553)** covering Wyman Unit No. 4 also located in Yarmouth.
- ▶ **CMP CSIA Notice of Cancellation (ER15-1448).**

An April 14, 2015 effective date was requested for the notice of cancellation and each of the agreements, other than the Brookfield White Pine Hydro agreement (which is to have a March 23, 2015 effective date). Comments on this matter are due on or before May 13, 2015. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁹⁴ "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).

⁹⁵ Because the IAs continue existing interconnection arrangements, the submission of the IAs 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).

- **Termination of Braintree Participation in REMVEC II Agreement (ER15-1530)**

On April 17, National Grid made a filing to reflect Braintree's termination of its participation in the REMVEC II Agreement, effective as of April 30, 2015. As previously reported, the FERC accepted, in ER15-1040, a Local Control Center ("LCC") Services Agreement between NSTAR 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. Comments on this filing, if any, are due on or before May 8. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CL&P Amended Wholesale Distribution Service Agreement with CMEEC (ER15-1525)**

On April 17, NU, on behalf of The Connecticut Light and Power Company ("CL&P"), filed an amended Wholesale Distribution Service Agreement ("WDSA") between itself and CMEEC to eliminate certain delivery points and their associated rates for wholesale distribution service. The amendments are due to the fact that the Third Taxing District of the City of Norwalk, CT is now directly connected to PTF and takes RNS Service under the ISO-NE Tariff. A June 16, 2015 effective date was requested. Comments on this filing are due on or before May 8. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **EPC Agreement: Blue Sky West & Emera Maine (ER15-1459)**

On April 7, Emera Maine filed an executed Engineering, Procurement, and Construction Agreement ("EPC Agreement") Agreement with Blue Sky West, LLC ("Blue Sky West") to facilitate the interconnection of the Blue Sky West's 191 MW wind farm in Bingham, Mayfield Township and Kingsbury Plantation, Maine. While the Blue Sky West facility will be located in CMP's service territory, upgrades and modifications at Orrington Substation, in part owned by Emera Maine, are required and will be covered under the EPC Agreement. A March 6, 2015 effective date was requested. SunEdison filed a doc-less intervention. No comments on the EPC Agreement filing were submitted before the April 28 comment date. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Emera MPD OATT Changes (ER15-1429)**

On April 1, Emera Maine filed changes to the Open Access Transmission Tariff ("OATT") for Maine Public District ("MPD OATT"), including to the rates, terms, and conditions set forth in MPD OATT Attachment J. Emera Maine, as successor to Maine Public Service Company ("Maine Public"), provides open access to Emera Maine's transmission facilities in northern Maine (the "MPD Transmission System") pursuant to the MPD OATT. The changes to the MPD OATT are needed to ensure that, in light of the filing by Emera of consolidated FERC Form 1 data (data comprising both the former Bangor Hydro and Maine Public systems), charges for service under the MPD OATT reflect only the costs of service over the MPD Transmission System. Emera Maine also proposed additional, limited changes to the MPD OATT. A June 1, 2015 effective date was requested. On April 9, the "Maine Customer Group"⁹⁶ filed a motion to reject ("Motion to Reject") the April 1 Filing, asserting the April 1 Filing was deficient because, rather than actual rates, it included proxy rates that MPD said would be replaced with 2014 Form 1 numbers when MPD's 2014 Form 1 was available. On April 22, the Maine PUC and the Maine Customer Group protested the filing. The MPUC challenged three aspects of the filing: (i) the proposed increase of ROE from 9.75% to 10.20% based on anomalous economic conditions; (ii) the change from a measured loss factor calculation to a fixed loss factor; and (iii) the use of end-of-year account balances, rather than average 13-month account balances, for determination of facilities that are included in rate base. In addition to those aspects, the Maine Customer Group further challenged: (iv) inclusion of an out-of-period adjustment to rate base for forecasted

⁹⁶ The "Maine Customer Group" is comprised of: the Maine Office of the Public Advocate ("MOPA"), Houlton Water Company ("Houlton"), Van Buren Light and Power District ("Van Buren"), and Eastern Maine Electric Cooperative, Inc. ("EMEC").

transmission; (v) the proposed capital structure, which they assert is artificially distorted to accommodate a requirement resulting from the merger of Emera Maine's predecessor companies; and (vi) the proposed new cost allocation scheme. On April 29, Emera Maine answered the Maine PUC and Customer Group protests. This matter is pending before the FERC.

- **Emera Maine MPD OATT Order 676-H Compliance Filing (ER15-1419)**

On March 31, Emera Maine submitted an Order 676-H compliance filing, and requested waiver of certain standards not applicable to, the Maine Public District OATT. A May 15, 2015 effective date was requested. Comments on this filing were due on or before April 21, 2015; none were filed. On April 28, Emera Maine amended its filing to withdraw its request for waiver of NAESB business practice standard WEQ-012. This matter is pending before the FERC.

- **NSTAR/HQ US CMEEC Use Rights Transfer Agreement (ER15-1383)**

On March 26, NSTAR filed an agreement by which it will transfer CMEEC's use rights over the Phase I/II HVDC facilities to HQUS (CMEEC itself does not have a mechanism to effectuate the transfer). A May 26, 2015 effective date was requested. Comments on this filing were due on or before April 16, 2015. On April 16, CMEEC filed comments requesting that the Agreement be accepted as of March 26, 2015, the date the Agreement was filed, rather than on May 16. CMEEC indicated that the earlier effective date would better effectuate the intent of CMEEC in entering into the Transfer Agreement with NSTAR in the first instance. CMEEC further indicated that NSTAR and HQUS did not object to the earlier effective date. This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@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. On March 17, as supplemented on March 18, Eversource filed a complete copy of the Revised Agreement as requested by FERC Staff. Final comments were due on or before April 8; none were filed. 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).

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

On April 16, the FERC *rejected* changes proposed by New England Power's ("National Grid") to the formula rates for integrated facilities service ("IFA Amendments") under Schedule III-B of National Grid's Tariff No. 1.⁹⁷ The FERC found the IFA Amendments "inconsistent with the Commission's policy on the capping of incentive ROE adders and the Commission's directive in Opinion No. 531-A, on which the related ROE changes in the ISO-NE OATT will be based."⁹⁸ It found the proposed tariff language would allow National Grid to average the equity returns of various transmission assets in its portfolio for purposes of applying the 11.74 percent cap on its incentive ROE adders" and thereby "earn an equity return on certain assets, for which incentive ROE adders have been granted, at a level that exceeds the zone of reasonableness produced by the discounted cash flow methodology." The interpretation of "total ROE" used by National Grid was used and rejected in *Opinion 531-B*.⁹⁹ National Grid must submit another tariff filing to conform the ROE components of Schedule III-B of Tariff No. 1 to the ISO-NE OATT, using 2013 data for its Period 1

⁹⁷ *New England Power Co.*, 151 FERC ¶ 61,028 (Apr. 16, 2015).

⁹⁸ *Id.* at P 12.

⁹⁹ *Id.* at P 13.

requirements. 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”,¹⁰⁰ 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: City Power Marketing and Tsingas (IN15-5)**

On March 6, 2015, the FERC issued an order directing City Power Marketing, LLC (“City Power”) and K. Stephen Tsingas (“Tsingas”, and together with City Power, the “City Power 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 be jointly and severally required to disgorge unjust profits of **\$1,278,358** and to be jointly and severally assessed **\$15 million** in civil penalties (City Power (\$14 million) and Tsingas (\$1 million)).¹⁰¹ As previously reported, Enforcement Staff alleges that (i) City Power and 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. On April 7, City Power Respondents responded to the Show Cause Order and invoked their statutory rights to prompt assessment of a penalty and a *de novo* review of that penalty in federal district court. On April 20, Office of Enforcement Litigation Staff (“Enforcement”) filed a motion to revise the briefing schedule set in the *City Power Mktg Show Cause Order*. On April 21, the FERC denied that motion.

On April 1, as it did in the Powhatan proceeding, PJM submitted comments requesting FERC guidance with respect to certain matters should disgorgement be ordered in this proceeding. (See IN15-3 below for details.) City Power Respondents responded to PJM’s comments on April 23. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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

¹⁰⁰ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

¹⁰¹ *City Power Mkt’g, LLC and K. Stephen Tsingas*, 150 FERC ¶ 61,176 (Mar. 6, 2015) (“*City Power Mktg Show Cause Order*”).

Kyle Mitton (collectively, “Maxim Respondents”)¹⁰² 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**).¹⁰³ As previously reported, Enforcement Staff alleges that Maxim engaged in three schemes in New England that violated the FERC’s Anti-Manipulation Rule. In the first, during 2012-13, Maxim received millions of dollars of inflated make-whole payments from the ISO by gaming Market Rules intended to mitigate the market power of generators needed for reliability; in the second, July-August 2010, staff alleges that Maxim told the ISO it needed to offer based on high oil prices because of supposed gas supply problems, and collected make-whole payments based on those high prices, but in fact burned much less expensive gas. In many cases Maxim had already purchased gas when it submitted Day-Ahead offers based on oil prices because of supposed gas supply issues; in the third, 2010-2013, Maxim obtained inflated capacity payments by artificially raising the reported output of three of its plants by employing extraordinary measures during capacity tests that it did not use, and did not intend to use, 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, Enforcement Staff 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*. On March 23, Enforcement Litigation Staff replied to the Maxim Respondents’ March 4 answers. The Maxim Respondents replied to the Staff’s reply on April 6. Since the last Report, Maxim Respondents supplemented, on April 14, their April 6 reply. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FERC Enforcement Action: Powhatan Energy, HEEP Fund, CU Fund, and 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 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).¹⁰⁴ As previously reported, Enforcement 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

¹⁰² 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).

¹⁰³ *Maxim Power Corp. et al.*, 150 FERC ¶ 61,068 (Feb. 2, 2015) (“*Maxim Show Cause Order*”).

¹⁰⁴ *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*”).

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. 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. Enforcement Staff 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 post-order *ex parte* concerns. On March 3, Enforcement replied to the answers provided by Powhatan Respondents.

On March 18, Chen replied to OE's March 3 materials. On April 1, PJM submitted comments requesting FERC guidance with respect to certain matters should disgorgement be ordered in this proceeding. Specifically, PJM requested that the FERC:

- ▶ direct Staff be to provide PJM with a breakdown of the amount to be disgorged on an hourly basis, per Operating Day at issue
- ▶ provide guidance regarding what PJM should do with refunds owed to entities that are no longer PJM Members
- ▶ suspend any refund requirement, or direct or allow PJM to hold the disgorgement monies in escrow, until such time as a final order has been received from a court of competent jurisdiction if appealed
- ▶ indicate the date from which interest should be calculated on the disgorgement, or provide PJM with a specific breakdown of the total amount due including interest, on an hourly basis from each of the Respondents.
- ▶ specify in its order that any portion of the disgorged funds can be applied to reduce the amount of any outstanding default
- ▶ indicate whether the other entities referred to Enforcement in the same referral are entitled to receive the portion of the disgorged funds or whether they should be excluded from any such refunds.

Since the last report, Powhatan Respondents responded to PJM's April 1 comments on April 14. In addition, on April 23, Powhatan Respondents submitted a pleading highlighting portions of the *ONEOK* decision (see Section XV below) that they asserted were relevant to their arguments in this proceeding. These matters remain pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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, 2014.¹⁰⁵ A Commissioner-led National Overview technical conference was held February 19. Three staff-led regional technical conferences, focused on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure, were also held.¹⁰⁶ Since the last Report, NERC submitted a chapter from its April 21 report entitled “Potential Reliability Impacts of EPA’s Proposed Clean Power Plan – Phase 1”. Additional comments were also submitted by AEP and Southern Company.

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

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

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

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

Oct 28 Workshop. The FERC held its second workshop on October 28, 2014. The October 28 workshop focused on the technical, operational, and market issues related to offer price mitigation and offer price caps, and scarcity and shortage pricing in energy and ancillary services markets operated by RTOs/ISOs. In advance of the workshop, FERC staff posted on October 21 two reports, one on shortage pricing in RTO/ISO markets (<http://www.ferc.gov/legal/staff-reports/2014/AD14-14-pricingrto-iso-markets.pdf>), the other on energy offer mitigation in RTO/ISO markets (<http://www.ferc.gov/legal/staff-reports/2014/AD14-14-mitigation-rto-iso-markets.pdf>).

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

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

¹⁰⁵ *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, Notice of Proposed Rulemaking, 79 Fed. Reg. 34,830 (June 18, 2014).

¹⁰⁶ The Mar. 11 Eastern Region (New England, Northern Maine ISA, New York, PJM, SERTP, SCRTP, and the FRCC) conference included discussion of: (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. Speaker materials and post-conference comments are posted on the FERC’s eLibrary.

On February 9, the FERC extended the deadline to submit comments to and including March 6, 2015. Since the last Report, nearly 40 sets of comments were submitted, including by: ISO-NE, APPA, Brookfield, Calpine, Direct Energy, EEI, EPSA, Exelon, and PSEG.

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.¹⁰⁷ 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.”¹⁰⁸ 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 trigger, increased frequency of fuel surveys, and improvements to the ETU process. Comments on the RTO/ISO reports were due on or before March 20 and were filed by over 15 parties, including by: EPSA, Eversource, Exelon, NESCOE, NHPUC, and UCS. On April 21, the Organization of MISO States submitted comments to add additional detail on the activities related to fuel assurance that take place within regulatory commissions in the MISO footprint.

- **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 service¹⁰⁹ 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*¹¹⁰ 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

¹⁰⁷ *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.”

¹⁰⁸ *Id.* at P 19.

¹⁰⁹ 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.

¹¹⁰ *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 were due on or before April 27, 2015¹¹¹ and were filed by nearly 20 parties.

- **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.¹¹² 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, 2014.¹¹³ Over 25 parties filed comments and Berkshire Hathaway, Barrick Mines, and EPSA filed reply comments. This NOPR is pending before the FERC.

- **Order 807: Open Access and Priority Rights on ICIF (RM14-11)**

On March 19, the FERC issued *Order 807*,¹¹⁴ which waives 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”),¹¹⁵ in whole or in part, and sells electric energy from its Generating Facility. *Order 807* also finds that those seeking interconnection and transmission service over ICIF that are subject to the blanket waiver adopted in *Order 807* may follow procedures applicable to requests for interconnection and transmission service under sections 210, 211, and 212 of the FPA, which also allows the contractual flexibility for entities to reach mutually agreeable access solutions. *Order 807* establishes a modified rebuttable presumption for a 5-year safe harbor period to reduce risks to ICIF owners eligible for the blanket waiver during the critical early years of their projects. Finally, *Order 807* modifies several elements of the NOPR, including the entities eligible for the OATT waiver, the date on which the safe harbor begins, the rebuttable presumption that the ICIF owner should not be required to expand its facilities during the safe harbor, and the facilities covered by *Order 807*. *Order 807* will become effective June 30, 2015.¹¹⁶ Requests for rehearing and/or clarification of *Order 807* were filed on April 20 by APPA/TAPS and NRECA. The requests for rehearing are pending before the FERC, with FERC action required on or before May 20, 2015, or the requests will be deemed denied.

¹¹¹ The NOPR was published in the *Fed. Reg.* on Feb. 26, 2015 (Vol. 80, No. 38) pp. 10,426-10,432.

¹¹² *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*”).

¹¹³ The *MBR NOPR* was published in the *Fed. Reg.* on July 25, 2014 (Vol. 79, No. 143) pp. 43,536-43,572.

¹¹⁴ *Open Access and Priority Rights on Interconnection Customer’s Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211 (Mar. 19, 2015) (“*Order 807*”), *reh’g requested*.

¹¹⁵ ICIF is the term used by the FERC in the NOPR to refer to “generator tie lines”.

¹¹⁶ *Order 807* was published in the *Fed. Reg.* on Apr. 1, 2015 (Vol. 80, No. 62) pp. 17,654-17,682.

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

On June 26, 2013, WIRES¹¹⁷ petitioned the FERC to institute an expedited generic proceeding and to provide such policy and clarifications as necessary to provide “greater stability and predictability regarding regulated rates of return on equity for existing and future investments in high voltage electric transmission infrastructure.” Specifically, WIRES recommended a new policy that (1) standardizes selection of proxy groups; (2) denies complainants a hearing on rates of return for existing facilities unless it is shown that existing returns are at the extremes of the zone of reasonableness; (3) allows consideration of competing infrastructure investments of other industries; (4) permits use of other rate of return methodologies; and (5) supports use of more forward-looking data and modeling. In addition, WIRES urged the FERC to support consideration of a project’s actual and anticipated benefits when a complaint is filed against the ROE for an existing project. Although the WIRES petition has not been noticed for public comments, more than 16 sets of comments have been filed. On October 3, 2013, WIRES submitted a summary of the comments and analysis filed to that point in the proceeding. On October 16, the Organization of PJM States noted its position that the WIRES petition did not present a compelling reason for the FERC to initiate a generic rulemaking proceeding or abandon its Discounted Cash Flow methodology. On November 5, 2013, a letter from US Senator Angus King, urging the FERC to establish a more certain regulatory environment that provide investors the level of confidence necessary to support and encourage needed infrastructure investments, was posted in eLibrary. This matter is pending before the FERC.

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

Rehearing of portions of *Order 771* has been requested and remains pending. As previously reported, *Order 771*,¹¹⁸ 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, 2013.¹¹⁹ 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*.¹²⁰ *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*.¹²¹ The FERC noted that it would issue an additional

¹¹⁷ WIRES, the Working group for Investment in Reliable and Economic Electric Systems, describes itself as a national non-profit association of investor-, member-, and publicly-owned entities dedicated to promoting investment in a strong, well-planned, and environmentally beneficial high voltage electric transmission grid. Information about its principles and members is available on its website www.wiresgroup.com.

¹¹⁸ *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).

¹¹⁹ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹²⁰ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

¹²¹ *Order 771-A* clarified that: (1) Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of *Order 771*; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the FERC in the CC field; (3) the requirement for the FERC to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the FERC will deem all e-Tag information made available to the FERC pursuant to *Order 771* as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the FERC is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement

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

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

On April 16, 2015, the FERC granted clarification in part, but otherwise denied the EEI and NYISO requests for rehearing and/or clarification of *Order 676-H*.¹²² As previously reported, the FERC issued *Order 676-H* on September 18, 2014.¹²³ *Order 676-H* amended 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* became effective October 24, 2014.¹²⁴ Requests for rehearing of *Order 676-H* were filed by EEI and the NYISO on October 20, 2014. As noted above, on April 16, 2015, the FERC granted clarification, in part,¹²⁵ but otherwise deny requests for rehearing and/or clarification by EEI and the NYISO.

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.

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.

¹²² *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 151 FERC ¶ 61,046 (Apr. 16, 2015) (“*Order 676-h Clarification Order*”).

¹²³ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, Order No. 676-H, 148 FERC ¶ 61,205 (Sep. 18, 2014) (“*Order 676-H*”), *reh’g denied, clarification granted in part*, 151 FERC ¶ 61,046 (Apr. 16, 2015).

¹²⁴ *Order 676-H* was published in the *Fed. Reg.* on Sep. 24, 2014 (Vol. 79, No. 185) pp. 56,939-56,955.

¹²⁵ The FERC clarified that, “whenever a standard specifically states on its face that it only applies to certain types of entities, there is no need for other entities outside of that grouping (i.e., those to whom the requirement is not applicable) to obtain a waiver of that standard to be excused from compliance, as those standards clearly do not apply to them. This being the case, we shall hereafter dismiss as unnecessary any requests for waivers of standards that by their terms specifically apply only to entity groups (e.g., balancing authorities or western utilities or RTOs/ISOs) that the potential waiver requestor does not belong to during the time those standards are effective). *Order 676-H Clarification Order* at p 19.

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.

- **Order 809: Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (RM14-2)**

On April 16, the FERC issued *Order 809*,¹²⁶ which changes the nationwide Timely Nomination Cycle nomination deadline for scheduling natural gas transportation from 11:30 a.m. Central Clock Time (CCT) to 1:00 p.m. CCT and revises the intraday nomination timeline, to include adding an additional intraday scheduling opportunity during the gas operating day (Gas Day). *Order 809* also modifies the scheduling practices used by interstate pipelines to schedule natural gas transportation service and provides additional contracting flexibility to firm natural gas transportation customers through the use of multi-party transportation contracts. *Order 809* DOES NOT change the start time of the nationwide natural Gas Day (which remains 9:00 a.m. CCT), as had been proposed in the underlying NOPR.¹²⁷ In response to *Order 809*, ISO-NE is required to propose tariff revisions to coordinate the Day-Ahead Energy Market with the *Order 809* changes or show cause why its existing scheduling practices need not be changed on or before Thursday, July 23, 2015¹²⁸ (to be filed, presumably, in EL14-23; *see* Section I above).

- **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.¹²⁹ 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.¹³⁰ 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

¹²⁶ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 809, 150 FERC ¶ 61,049 (Apr. 16, 2015) ("*Order 809*").

¹²⁷ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

¹²⁸ *Order 809* was published in the *Fed. Reg.* on Apr. 24, 2015 (Vol. 80, No. 79) pp. 23,198-23,227.

¹²⁹ *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

¹³⁰ *Id.* at P 6.

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.¹³¹ Of the 157 filings, 64 pipelines revised their respective tariffs to provide for the posting of offers to purchase released capacity in a manner that complies with section 284.8(d), and 23 pipelines demonstrated that their tariffs already comply with that section. The FERC found that, and identified in its omnibus order on the compliance filings the, 69 compliance filings that did not appear to be in full compliance with that section, and directed further compliance filings from those companies as described in the omnibus order.

- **Natural Gas-Related Enforcement Actions**

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

<u>Company</u>	<u>Alleged Violation(s)</u>	<u>Civil Penalty/Disgorgement</u>
BP America Inc. BP Corp. N. Amer. BP Amer. Production BP Energy Co. (together, "BP") (IN13-15)	The FERC established a hearing to determine whether BP violated section 4A of the Natural Gas Act and the FERC's Anti-Manipulation Rule as alleged by Enforcement Staff. Enforcement 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, Enforcement staff alleged, BP suppressed the HSC Gas Daily index with the goal of increasing the value of BP's financial position at HSC. The activity occurred from mid-September 2008 through November 2008.	Show Cause Order ¹³² \$28 million (civil penalty) \$800,000 (disgorgement)

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

- **New England Pipeline Proceedings**

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

- **Algonquin Incremental Market Project (AIM Project) (CPI4-96)**
 - ▶ 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.

¹³¹ See *BR Pipeline Co. et al.*, 149 FERC ¶ 61,031 (Oct. 16, 2014).

¹³² *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

- ▶ 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).¹³³
- ▶ 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 2015/16.
 - ▶ 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 second-quarter 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.

¹³³ Order Issuing Certificate and Approving Abandonment, *Algonquin Gas Transmission LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015), *reh'g requested*.

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).

- **FCM Administrative Pricing Rules Complaint (15-1071**)**
Underlying FERC Proceedings: EL14-7¹³⁴
Appellants: NEPGA

On March 31, 2015, NEPGA filed a petition for review of the FERC’s orders on NEPGA’s FCM Administrative Pricing Rules Complaint. A Docketing Statement Form, Statement of Issues to be Raised, and Petitioners’ Appearances were filed on April 23, 2015. Also on April 23, 2015, NEPGA requested that the case be held in abeyance pending the FERC’s issuance of an order on rehearing of its initial order in Exelon Corporation v. ISO New England Inc. (EL15-23). Motions for leave to intervene have been filed by NEPOOL, CT PURA, CT OCC, and PSEG.

- **Demand Curve Changes (15-1070**)**
Underlying FERC Proceedings: ER14-1639¹³⁵
Appellants: NextEra, NRG and PSEG

On March 30, 2015, NextEra, NRG and PSEG filed a petition for review of the FERC’s orders in the Demand Curve Changes proceedings. A Docketing Statement Form, Statement of Issues to be Raised, and Appearances must be filed by Petitioners by April 30, 2015. Motions for leave to intervene have been filed by NEPOOL, the ISO, CT PURA, and NESCOE.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
Underlying FERC Proceedings: ER14-1409¹³⁶
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, Connecticut¹³⁷ and Public Citizen opposed the FERC’s motion to dismiss. On February 5, the FERC replied to the Public Citizen and CT AG responses. On April 7, the Court ordered that the motion to dismiss be referred to the merits panel and parties were directed to address in their briefs the issues presented in the motion to dismiss rather than incorporate those arguments by reference. On April 9, the FERC filed an

¹³⁴ 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

¹³⁵ 150 FERC ¶ 61,065 (Jan. 30, 2015); delegated letter order (Nov. 13, 2014); 147 FERC ¶ 61,173 (May 30, 2014).

¹³⁶ 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).

¹³⁷ For purposes of this proceeding, “Connecticut” means the CT AG, CT PURA and CT OCC.

unopposed motion for a schedule setting a minimum 60-day briefing interval for the FERC. On April 10, the Court ordered that parties submit proposed formats for the briefing of the consolidated cases by May 11.

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**
Underlying FERC Proceedings: ER13-1851¹³⁸ and ER13-2266¹³⁹
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. Briefs for Respondent and Respondent-Intervenors were filed February 13 and March 2, respectively. Petitioners' Joint Reply Brief was filed on March 25; the Deferred Appendix, April 1, 2015. Since the last Report, Final Briefs were filed on April 15, 2015.

- **Orders 773 and 773-A (2nd Cir., 13-2316)**
Underlying FERC Proceedings: RM12-6 and RM12-7¹⁴⁰
Appellants: NY PSC and People of the State of New York

On April 22, the 2nd Circuit denied the petitions for review of the FERC's orders on *Orders 773 and 773-A* (Revised "Bulk Electric System" Definition and Procedures) requested by the NY PSC and the People of the State of New York, concluding this proceeding.

- **New England's Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹⁴¹
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 and 14-841)**
Underlying FERC Proceedings: RM10-17-000¹⁴²
Appellants: FERC and EnerNOC

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.¹⁴³ Respondents brief in opposition to that writ, pursuant to an order of the Court extending the time for

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

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

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

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

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

¹⁴³ *EPSA v. FERC*, 753 F.3d 216 (May 23, 2014).

responses, was filed on March 19. Petitioner's reply was filed on April 7. The FERC's petition and EPSA et al.'s response thereto went to conference on April 24, 2015, and are scheduled to go to conference again on May 1, 2015.

As previously reported, the DC Circuit vacated *Order 745*¹⁴⁴ 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. As previously reported, the DC Circuit directed its clerk to withhold the Court's 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, LLC, et al.) filed a response on February 11. Petitioner CPV Maryland, LLC replied on February 24. On March 23, the Court invited the Solicitor General to file a brief in the case expressing the views of the United States. 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 Maryland¹⁴⁵ 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

¹⁴⁴ *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.

¹⁴⁵ *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.

Constitution and cannot be enforced.¹⁴⁶ In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field¹⁴⁷ and conflict pre-empted.¹⁴⁸

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.”¹⁴⁹ 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”),¹⁵⁰ 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.”¹⁵¹ 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.”¹⁵² 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.”¹⁵³

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”.¹⁵⁴ 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.’”¹⁵⁵ “Maryland’s initiative disrupts [the PJM scheme] by substituting the state’s preferred incentive structure for that approved by FERC.”¹⁵⁶ “Maryland has sought to achieve through the

¹⁴⁶ *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467; 2014 U.S. App. LEXIS 10155.

¹⁴⁷ “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.

¹⁴⁸ “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.”

¹⁴⁹ Slip op. at p. 14.

¹⁵⁰ *Id.* at p. 10.

¹⁵¹ *Id.* at p. 16.

¹⁵² *Id.* at pp. 18-19.

¹⁵³ *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.

¹⁵⁴ *Id.* at p. 27.

¹⁵⁵ *Id.* at p. 23.

¹⁵⁶ *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.”)

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.”¹⁵⁷

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. On March 23, the Court invited the Solicitor General to file a brief in the case expressing the views of the United States.

As previously reported, on September 11, 2014, the 3rd Circuit Court of Appeals affirmed¹⁵⁸ 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”).¹⁵⁹ 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.¹⁶⁰

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.

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

Entergy¹⁶¹ 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”)¹⁶² is preempted by the FPA and invalid under the dormant

¹⁵⁷ *Id.* at p. 25.

¹⁵⁸ *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, (“*NJ Order*”).

¹⁵⁹ *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

¹⁶⁰ *Id.* slip op. at 31.

¹⁶¹ Plaintiffs are Entergy Nuclear FitzPatrick, LLC (“FitzPatrick”); Entergy Nuclear Power Marketing, LLC (“ENPM”); and Entergy Nuclear Operations, Inc. (“ENOI”).

¹⁶² 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.

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.

- **ONEOK, Inc. v. Learjet, Inc. (Supreme Court, 13-271)**

On April 21, the Supreme Court ruled in favor of natural gas customers, and against both gas sellers and the federal government in holding that the Natural Gas Act (“NGA”) did not field pre-empt state law antitrust lawsuits filed against the interstate gas sellers.¹⁶³ More specifically, the Court held that Congress did not, when it passed the NGA, intend to be so comprehensive in that legislation as to occupy an entire field of regulation, leaving no room for the States to have any law or regulation in that same field. The Court’s decision in *ONEOK* allows purchasers who bought natural gas directly from the gas sellers at retail to maintain their state antitrust suits that claim that the latter manipulated gas indices used to help set natural gas retail prices, even though those same indices were also used to set FERC-regulated wholesale prices.

It is unclear how sweeping the Court’s holding is, since the *ONEOK* decision relates solely to “field” pre-emption, and not a narrower form of pre-emption known as “conflict” pre-emption. Under conflict pre-emption, a cause of action, such as the state antitrust claims at issue here, may be subject to pre-emption arguments if it conflicts with the federal rate-setting process. The Court held that such questions, which were not addressed by the parties in the *ONEOK* case, were best left “for the lower courts to resolve in the first instance.”

Undoubtedly, some will seek to interpret this case to signal how the Court will decide on pending cert petitions concerning other energy jurisdiction and preemption cases: the D.C. Circuit’s decision in *EPSA v. FERC*, in which the FERC was found to lack statutory authority to regulate demand response on the basis that it is a matter of state, not federal, jurisdiction; and the dual PPL cases involving the field preemption of New Jersey and Maryland state laws promoting generation development. There were two justices dissenting in the *ONEOK* decision, and the Court in addressing the dissent, emphasized that the enumeration in the NGA of the FERC’s powers is circumscribed by the limitations enumerated in that statute, particularly those that address the powers that are reserved to the States, explaining that the NGA “*was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way.*” (Emphasis added). The *EPSA* case is a jurisdiction case, not one of federal preemption *per se*, and the PPL Cases are based on both field and conflict preemption and involve the Federal Power Act, not the NGA, which is a very similar, but different statute. Determinations with respect to the *EPSA* and PPL cases, and not simply the *ONEOK* decision, will be needed to provide the greater certainty sought by the electric industry.

¹⁶³ *ONEOK, Inc. v. Learjet, Inc.*, 575 U. S. ____ (2015) (“*ONEOK*”).

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