

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of June 24, 2015

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 4, 2015 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints

3	Base ROE Complaints (2012 & 2014) Consolidated (EL14-86 & EL13-33)	Jun 15	TOs, FERC Trial Staff, EMCOs, Complainant-Aligned Parties file pre-hearing briefs; Parties submit Joint Exhibit and Witness Lists; hearing set to begin Jun 25
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II. Rate, ICR, FCA, Cost Recovery Filings

7	FCA9 Results Filing (ER15-1137)	Jun 18	FERC accepts FCA9 Results Filing, effective Jun 27, 2015
8	FCA1 Results Remand Proceeding (ER08-633)	Jun 12	RESA intervenes

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

* 9	CSO Terminations: Enerwise Global Technologies (ER15-1994)	Jun 18	ISO files to terminate CSOs and portions of CSOs for Resources held by Enerwise Global Technologies; comment date Jul 9
* 9	Waiver Request: FCM Interconnection Deposit Qualification Deadline (Bellingham) (ER15-1934)	Jun 17 Jun 23	NEA requests waiver of FCM interconnection deposit qualification deadline in order to permit add'l capacity from Bellingham to be offered in FCA-10; comment date Jul 8 Entergy intervenes
* 9	CSO Terminations: Direct Energy Business (ER15-1867)	Jun 5 Jun 17	ISO files to terminate CSOs held by Direct Energy Business; comment date Jun 26 NEPOOL intervenes
* 10	CSO Termination: Efficiency Maine Trust (ER15-1866)	Jun 5 Jun 17	ISO files to terminate a portions of CSO for Resource 38057 held by Efficiency Maine Trust; comment date Jun 26 NEPOOL intervenes
10	IMM FCM Mitigation Package (ER15-1650)	Jun 5 Jun 8 Jun 22	ISO answers capacity suppliers' protests NEPOOL answers capacity suppliers' protests Champlain VT answers the ISO's Jun 5 answer
11	CLAIM 10/CLAIM 30 Generator Audit Revisions (ER15-1646)	Jun 19	FERC accepts revisions, effective Jun 1, 2015
11	Demand Curve Changes (ER14-1639)	Jun 23	NEPGA files motion requesting that the FERC initiate a Section 206 proceeding and order the ISO to file Zonal Curves for effect in FCA-10, amended to eliminate the ISO-proposed FCA clearing rule

IV. OATT Amendments / TOAs / Coordination Agreements

13	Eversource OATT Attachment F Revisions (ER15-1629)	Jun 15	FERC accepts changes to ISO OATT regional rate to make it consistent with the local rates under Schedule 21-NSTAR
14	Order 1000 Compliance Filing (ER13-193; ER13-196)	Jun 5 Jun 8 Jun 18	NEPOOL files supporting comments LS Power submits protest ISO answers LS Power protest

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

16	Schedule 21-NEP: BIPCO and Narragansett LSAs (ER15-1466)	Jun 22	FERC accepts LSAs
17	LGIA – NU/CPV Towantic (ER15-200)	Jun 9	ISO and Eversource file a Settlement Agreement and related materials to resolve all issues in this proceeding; comment date Jul 1

VII. NEPOOL Agreement/Participants Agreement Amendments*No Activity to Report***VIII. Regional Reports**

18	Future Winter Reliability Program Progress Reports (ER14-2407)	Jun 8	ISO files 4th progress report
* 18	IMM Quarterly Markets Reports - 2015 Q1 (ZZ15-4)	Jun 9	ISO files 2015 Q1 Report
19	ISO-NE FERC Form 714 (not docketed)	Jun 9	ISO submits revised Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2014

IX. Membership Filings

* 19	June 23, 2015 Membership Filing (ER15-1907)	Jun 22	Membership: New England Energy Connection; Name Change: Talen Energy Marketing; comment date Jul 13
19	May 2015 Membership Filing (ER15-1639)	Jun 19	FERC accepts Chester Municipal Electric Light Dept. membership; DR Power, NYSEG Solutions termination; Entrust Energy East, Dynegy Resources Management, Brown Bear II Hydro name changes

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

20	Revised Reliability Standard: CIP-014-2 (RD15-4)	Jun 15	Dominion intervenes
20	NOPR: Revised TOP and IRO Reliability Standards (RM15-16)	Jun 12 Jun 18	IESO submits comments FERC issues NOPR proposing to approve TOP/IRO Standards; comment date Aug 24
21	NOPR: Revised Reliability Standards: Transition to “Remedial Action Scheme”, PRC-010-1, EOP-011-1 (RM15-13, RM15-12; RM15-7)	Jun 18	FERC issues NOPR; comment date Aug 24
21	NOPR: Revised Reliability Standard: PRC-005-4 (RM15-9)	Jun 5-23	EEI, NERC, NRECA, Southern Company Services, TVA file comments
22	NOPR: Revised Reliability Standard: PRC-002-2 (RM15-4)	Jun 22	APPA, Bonneville, and NERC
22	<i>Order 810</i> : Revised Reliability Standard: BAL-001-2 (RM14-10)	Jun 12	FERC issues tolling order affording it additional time to consider Powerex requests clarification and/or rehearing of <i>Order 810</i>

XI. Misc. - of Regional Interest

24	Riggs v. RI PUC: Deepwater Wind FPA/PURPA/Supremacy Clause Complaint (EL15-61)	Jun 8 Jun 18	Riggs answers Narragansett answer FERC issues notice of intent not to act
24	LVA/PSNH IA Complaint (EL15-9)	Jun 15	LVA withdraws complaint
25	IAs – CMP/Brookfield/FPL Energy (ER15-1553 et al.)	Jun 5	FERC accepts IAs that replace a single Continuing Site/Interconnection Agreement (whose cancellation was also accepted)

26	CL&P Amended Wholesale Distribution Service Agreement with CMEEC (ER15-1525)	Jun 9	FERC accepts Agreement, effective Jun 16
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XII. Misc. - Administrative & Rulemaking Proceedings	▼
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* 29	AWEA Petition for LGIA/LGIP Rulemaking (RM15-21)	Jun 19	AWEA Petitions FERC for LGIA/LGIP Rulemaking
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XIII. Natural Gas Proceedings	▼
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32	<i>Order 809</i> : Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (RM14-2)	Jun 12	FERC issues tolling order affording it additional time to consider Desert Southwest Pipeline Stakeholders and AGA requests for reh'g of <i>Order 809</i>
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XIV. State Proceedings & Federal Legislative Proceedings	▼
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No Activity to Report

XV. Federal Courts	▼
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35	<i>Order 1000</i> Compliance Filings (15-1139**)	Jun 15	Parties file joint statement of issues and unopposed motion regarding briefing format
		Jun 18	Parties file Joint Statement of issues and docketing statement
35	Base ROE Complaint (2011) (15-1118)	Jun 5	Parties submit preliminary, non-binding statement of issues
36	2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consol.))	Jun 18	Oral argument scheduled for Sep 15, 2015

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: June 24, 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 June 24, 2015. If you have questions, please contact us.¹

I. Complaints

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

GenOn Energy Management filed, on April 6, 2015, 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. Doc-less interventions were filed by NEPOOL, Calpine, ConEd, Emera, Entergy, Exelon, and NESCOE. Supporting comments were filed by PSGE. The ISO answered the Complaint on May 6. On May 19, GenOn answered the ISO’s May 6 answer. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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; dttdoot@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 below), Environmental Advocates moved to lodge the US Solicitor General’s application for an extension of

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.

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 was the refund effective date.⁸ On October 16, the ISO submitted Tariff revisions in response to the Show Cause Order and 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". On December 15, 2014, the FERC conditionally accepted, subject to two additional compliance filings, the ISO's October 16 Tariff revisions.⁹ Each of the additional compliance filings have been filed and accepted.¹⁰ 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. Other than FERC action on the January Public Citizen rehearing request, this matter is concluded. If you have any questions concerning these matters, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC, in response to second (EL13-33¹¹) and third (EL14-86¹²) complaints regarding the TOs' 11.14% return on equity ("Base ROE"), issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and

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 (2014) ("*Imports Mitigation Order*"), *reh'g requested*.

¹⁰ The first compliance filing corrected an incorrect cross-reference in Section III.13.1.3.5.7 (Qualification Determination Notification for New Import Capacity Resources). The second compliance filing included tariff revisions "which allow importers to submit up to five price-quantity pairs, together with any necessary mitigation provisions to address the exercise of market power" for implementation in FCA-10.

¹¹ The 2012 Base ROE Complaint, filed 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"), challenged the TOs' 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

¹² The 2014 Base ROE Complaint, filed July 31, 2014 by 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"), seeks 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.

established a 15-month refund period of December 27, 2012 through March 27, 2014;¹³ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,¹⁴ and because of “common issues of law and fact”, consolidated the two proceedings for purposes of hearing and decision, with the FERC finding it “appropriate for the parties to litigate a separate ROE for each refund period.”¹⁵ The TOs requested rehearing of both orders. On May 14, the FERC denied rehearing of both orders.¹⁶

Hearings. Pursuant to Trial Judge Sterner’s most recent, revised procedural schedule, hearings are to begin June 25, 2015, with an initial decision to be issued by December 30, 2015. As previously reported, the active Participants filed a preliminary joint statement of issues on December 9 and a discovery plan on December 18, 2014. On December 19, the Complaint-Aligned Parties,¹⁷ 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 (later extended to May 29, the day the Update of Studies in Prior Testimony is due). 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. Rebuttal testimony was filed on May 18 by EMCOS and Complainant-Aligned Parties, a final joint statement of issues on May 22 (and corrected on May 26), and updated supplemental testimony on May 29 by the TOs, FERC Trial Staff, EMCOS, and Complainant-Aligned Parties.

Since the last Report, the TOs, FERC Trial Staff, EMCOS, and Complainant-Aligned Parties filed on June 15 pre-hearing briefs, as well as joint witness and exhibit lists. As noted above, hearings are set to begin June 25. 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*¹⁸ on the FCM PI Jump Ball Filing and its *October 2 Order*¹⁹ 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.”²⁰ The FERC directed the ISO to submit “Tariff

¹³ *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 denied*, 151 FERC ¶ 61,125 (May 14, 2015).

¹⁴ *Mass. Att’y Gen. et al. -v- Bangor Hydro et al.*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh’g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

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. and Mass. Att’y Gen. et al. -v- Bangor Hydro et al.*, 151 FERC ¶ 61,125 (May 14, 2015).

¹⁷ “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”).

¹⁸ *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (May 30, 2014) (“*PI Order*”), *clarif. and reh’g requested*.

¹⁹ *ISO New England Inc.*, 149 FERC ¶ 61,009 (Oct. 2, 2014) (“*October 2 Order*”), *reh’g requested*.

²⁰ *PI Order* at P 23.

revisions reflecting a modified version of its [PFP] proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL's proposal.²¹ The FERC-established refund effective date was June 9, 2014.²² Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island,²³ Dominion, MMWEC, Indicated Generators,²⁴ 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.²⁵ The FERC found that an exemption was not necessary for resources on the export side of an intra-zonal transmission constraint during a Capacity Scarcity Condition and directed the ISO to submit a further compliance filing (since filed and accepted) to revise Market Rule Section 13.7 by removing the language that reflected that aspect of the ISO's July 14 compliance proposal and restoring language in Sections III.13.7.2.2(a) and III.13.7.2.2(b) ISO-NE originally proposed by the ISO in its January 17 Filing. The Tariff sections accepted were accepted effective June 9, 2014, December 3, 2014, and June 1, 2018, as requested.²⁶ Connecticut/Rhode Island²⁷ and Public Systems²⁸ 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; dtroot@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).²⁹ 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):

²¹ *Id.* at P 1.

²² 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.

²³ "Connecticut and Rhode Island" are: the CT PURA, CT OCC, CT AG, CT DEEP, the United Illuminating Company ("UI") and the RI PUC.

²⁴ "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").

²⁵ *October 2 Order* at P 56.

²⁶ *October 2 Order* at P 1; Ordering Paragraph (A).

²⁷ "Connecticut/Rhode Island" are the CT PURA, CT AG, CT OCC, CT DEEP, and the RI PUC.

²⁸ "Public Systems" are CMEEC, MMWEC, NHEC, and VEC.

²⁹ *Cal. Indep. Sys. Op. Corp. et al.*, 146 FERC ¶ 61,202 (Mar. 20, 2014). The New England 206 proceeding was docketed as EL14-23.

(1) to make a filing that proposes tariff changes to adjust the time at which the results of its day-ahead energy market and reliability unit commitment process (or equivalent) are posted to a time that is sufficiently in advance of the Timely and Evening Nomination Cycles, respectively, to allow gas-fired generators to procure natural gas supply and pipeline transportation capacity to serve their obligations, or (2) to show cause why such changes are not necessary. In their responses, each ISO and RTO must explain how its proposed scheduling modifications are sufficient for gas-fired generators to secure natural gas pipeline capacity prior to the Timely and Evening Nomination Cycles.³⁰

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).

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 were due on or before May 13, 2015; none were filed. This matter is pending before the FERC.

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)**

As previously reported, the FERC accepted on May 29, without change or condition, and effective May 29, 2015, the ISO's April 6 filing identifying two potential new boundaries for Capacity Zones for the tenth

³⁰ *Id.* at P 19.

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).³¹ No changes were proposed to the West/Central MA or Connecticut zones. 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. In accepting the ISO’s filing, the FERC found that the ISO complied with its Tariff in providing for stakeholder input.³² However, the FERC encouraged the ISO “to consider concerns about the process and to identify any improvements that would provide additional time for stakeholder input”, in particular, “the possibility of providing information as to possible new zonal boundaries prior to the deadline for submitting Show of Interest forms.”³³ The FERC also found that the ISO followed its Tariff in identifying potential new boundaries, reasonably identifying potential zone configuration changes for FCA-10.³⁴ With specific regard to zonal demand curves, the FERC acknowledged the ISO’s plans not to propose sloped zonal demand curves for FCA-10, but indicated that that development was more appropriately addressed in the proceeding in which the ISO committed, and the FERC relied on, the ISO’s representation that it would submit the zonal demand curve changes in time for FCA-10.³⁵ Challenges, if any, to the *FCA-10 Boundaries Order*, will be due on or before June 29. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On June 18, the FERC accepted the results of the ninth FCA (“FCA9”), effective June 27, 2015, as requested.³⁶ As previously reported, the FCA9 results included 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

Unless the *FCA9 Results Order* is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 15, the FERC authorized³⁷ continued drawdowns under the ISO’s previously authorized \$20 million Revolving Credit Line and \$4 million line of credit supporting the Payment Default Shortfall Fund.³⁸

³¹ *ISO New England Inc.*, 151 FERC ¶ 61,183 (May 29, 2015) (“*FCA-10 Boundaries Order*”).

³² *Id.* at P 23.

³³ *Id.* at P 25.

³⁴ *Id.* at P 50.

³⁵ *Id.* at P 55.

³⁶ *ISO New England, Inc.*, 151 FERC ¶ 61,226 (Jun 18, 2015) (“*FCA9 Results Filing*”).

³⁷ *ISO New England Inc.*, 151 FERC ¶ 62,185 (June 15, 2015).

³⁸ *See ISO New England Inc.*, 139 FERC ¶ 62,248 (June 22, 2012) (“2012 Order”).

(ISO authorization under the 2012 Order would have otherwise terminated on June 30, 2015).³⁹ Comments on this filing were due on or before May 6; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

On April 28, 2015, "Public Representatives"⁴⁰ 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. Since the last Report, interventions were filed by CMP, Eversource, National Grid, and UI. NESCOE filed comments on May 8. On May 15, NHT answered Public Representatives' protest. This matter is pending before the FERC. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA1 Results Remand Proceeding (ER08-633)**

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order⁴¹ that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding⁴² for further consideration. In particular, the FERC was directed to (i) determine whether PSEG's position (that it should receive the full (unprorated) floor price for all its resources that it could not prorate) would be an appropriate way to interpret the then-existing Market Rules and, if not, (ii) respond to PSEG's objections that any contrary result would result in "undue discrimination" and would be "inconsistent with the fundamental policy goals" of FCM.

On June 2, 2015, in a long-awaited order, the FERC reversed its prior determination and found that, given that the ISO had prohibited resources needed for reliability from prorating quantity based on its interpretation of the Proration Rule, it was appropriate to consider resettlements to those resources that were not able to prorate quantity.⁴³ "[W]here resources needed for reliability were prohibited from prorating quantity under the Proration Rule, they should have received the full market clearing price for each megawatt offered."⁴⁴ Although the FERC found that the ISO reasonably interpreted the Proration Rule as allowing it to limit certain suppliers' ability to prorate quantity, in order to maintain reliability, and the FERC disagrees with PSEG's argument that it would be unduly discriminatory under the FPA to make unavailable to certain resources the option to choose quantity proration instead of price proration, the FERC found that resources prevented from prorating quantity must also receive "a just, reasonable, and not unduly discriminatory or preferential rate," (i.e. the full clearing price for each megawatt offered).

³⁹ See *ISO New England Inc.*, 147 FERC ¶ 62,091 (May 6, 2014).

⁴⁰ "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").

⁴¹ *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

⁴² *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008); *reh'g denied*, 130 FERC ¶ 61,235 (2010), *remanded*, *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

⁴³ *ISO New England Inc.*, 151 FERC ¶ 61,196 (June 2, 2015) ("*FCA1 Remand Order*").

⁴⁴ *Id.* at P 14.

Accordingly, the FERC established a briefing schedule to permit the parties to address issues relating to the amounts of such resettlements (i.e., the difference between a resource's actual payment and what the payment would have been had proration of the resource not been rejected for reliability reasons), and the parties to which those payments should be charged and to whom they should be paid (taking into consideration any possible changes in ownership, retirements, or similar new circumstances of the resources in question). The ISO was directed to submit, and interested parties permitted to file, an initial brief on or before July 14, 2015 and reply briefs on or before August 13, 2015. Initial briefs are to answer the following questions:

- the identities of the Connecticut resources that were unable to prorate quantity in FCA1, and the number of MWs for which each resource received a CSO;
- any resettlements due to each such entity, based on the difference between (1) the prorated price that the resources did receive, and (2) the un-prorated capacity clearing price that the resources would have received absent price proration, plus interest;
- the parties to whom the resettlements should be charged -- Regional Network Load within the affected Reliability Region, consistent with the current version of the Proration Rule, ISO-NE's current tariff section III.13.2.7.3(b)(iv), which provides that (emphasis added) "[w]here proration is rejected for reliability reasons, the resource's payment shall not be prorated as described in subsection (ii) above, and the difference between its actual payment based on the Capacity Clearing Price and what its payment would have been had prorationing not been rejected for reliability reasons shall be allocated to Regional Network Load within the affected Reliability Region";
- the mechanism by which the ISO would make such resettlements; and
- any considerations that would render the resettlements inappropriate or difficult.

Since the last Report, the Retail Energy Supply Association ("RESA") intervened. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

- **CSO Terminations: Enerwise Global Technologies (ER15-1944)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on June 18 to terminate in whole and in part CSOs for Resources held by Project Sponsor Enerwise Global Technologies ("Enerwise"). The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the applicable amount of financial assurance provided by Enerwise with respect to the CSOs and portions of the CSOs being terminated. Comments on this filing are due on or before July 9, 2015. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request: FCM Interconnection Deposit Qualification Deadline (Bellingham) (ER15-1934)**

On June 17, Northeast Energy Associates ("NEA") requested a waiver of the FCM interconnection deposit qualification deadline in order to permit capacity from the Bellingham Energy Center Station that is being developed by Hawkes Meadow to be offered in FCA-10. NEA reported that the \$50,000 interconnection deposit associated with NEA's efforts to increase Bellingham's qualified capacity by approximately 25 MW was received just before 9am the morning after FCA-10's March 3 deadline; as a result, the ISO has indicated that it is not able under its Tariff to qualify NEA's increased capacity for participation in FCA-10. Comments on this waiver request are due on or before July 8, 2015. Thus far, doc-less interventions have been filed by NEPOOL and Entergy. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Terminations: Direct Energy Business (ER15-1867)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on June 5 to terminate the CSOs for Resource Nos. 37933, 37929 and 37932 held by Project Sponsor Direct Energy Business. The ISO indicated that, upon FERC

acceptance of the filing, the ISO will draw down the applicable amount of financial assurance provided by Direct Energy with respect to the CSOs being terminated. A doc-less intervention was filed by NEPOOL. Comments on this filing are due on or before June 26. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Termination: Efficiency Maine Trust (ER15-1866)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on June 5 to terminate a portion of the CSO for Resource No. 38057 held by Project Sponsor Efficiency Maine Trust. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the applicable amount of financial assurance provided by Efficiency Maine Trust with respect to the portion of the CSO to be terminated. A doc-less intervention was filed by NEPOOL. Comments on this filing are due on or before June 26. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **eTariff Corrections (ER15-1768)**

On May 22, the ISO submitted a filing to correct Section III.10 in its eTariff. The ISO reported that the e-version filed and accepted as part of the February 6 Forward Reserve Obligation Charge Changes (ER15-1009) was incomplete. The correction filed in this proceeding completes Section III.10. Comments, if any, on this filing were due on or before June 12; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **IMM FCM Mitigation Package (ER15-1650)**

On May 1, the ISO and NEPOOL jointly submitted revisions to the market power mitigation provisions in the FCM Market Rules (“IMM FCM Mitigation Package”). Specifically, the Package will (i) establish a revised Pivotal Supplier Test (permitting the IMM to take into account both existing internal resources and import resources when assessing the competitiveness of supply and to conduct the Pivotal Supplier Test closer to the start of an FCA); (ii) increase, beginning with FCA-10, the value below which existing resources that have chosen to be price takers in an FCA can opt to leave the auction (Dynamic De-List Bid Threshold), from \$3.94/kW-mo. to \$5.50/kW-mo. (with the value to be recalculated and reviewed with Participants not less than once every three years); and (iii) remove some of the flexibility in the auctions that is currently afforded to Market Participants submitting Static De-List Bids. These changes were supported by the Participants Committee at its May 1, 2015 meeting.

Interventions were filed by Calpine, ConEd, Dominion, Emera, EPSA, Eversource, Exelon, and GDF Suez. **Supporting comments** were filed by NEPOOL and NESCOE. **Protests** were filed by Brookfield (seeking rejection of the changes to the Pivotal Supplier Test, the Dynamic De-List Bid Threshold, and to the ability of Existing Capacity Resources and Import Capacity Resources to make changes to their De-List Bids and offers in the FCA below the offer limit as established by the IMM for that resource in its mitigation review), Champlain VT (requesting a competitive entry exemption from buyer-side mitigation, particularly for imports associated with an Elective Transmission Upgrade), Entergy (requesting that the FERC approve the \$5.50/kW-month Dynamic De-List threshold but direct the ISO to modify certain aspects of the filing consistent with NEPGA’s protest), NEPGA (requesting that the ISO be directed to: (i) file Tariff changes no later than November 27, 2015, modifying the Pivotal Supplier Test to count competitive New Capacity Resource offers into the FCA as supply, for effect in FCA-10; (ii) file Tariff changes for effect in FCA 10 consistent with the NextEra/NRG/PSEG request; and (iii) postpone the Existing Capacity Qualification Deadline until two weeks following the FERC’s initial order in this proceeding), and jointly by NextEra/NRG/PSEG (requesting that (i) Existing Capacity Resources be allowed to withdraw or reduce its Static De-List Bid to any price below the upper bid limit established by the IMM for that resource in its mitigation review, (ii) the IMM be directed to revise its proposal for the Pivotal Supplier Test to include the addition of qualified and committed new capacity resources as part of the available supply; and (iii) the ISO be directed to accept Static De-List submittals (or withdrawals of bids submitted by the existing June 1 deadline) up to three weeks after the issuance of an order in this proceeding).

On June 5, the ISO answered the protests by the Capacity Suppliers and Champlain VT.⁴⁵ NEPOOL answered the Capacity Suppliers and Champlain VT protests on June 8. On June 22, Champlain VT filed an answer challenging the ISO's position that its request for a competitive entry exemption is beyond the scope of this proceeding. 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).

- **CLAIM 10/CLAIM 30 Generator Audit Revisions (ER15-1646)**

On June 19, the FERC accepted generator performance auditing revisions to Sections III.1.5.2 and III.9.5.3.1-2 of Market Rule 1 ("CLAIM10/30 Revisions") jointly filed by the ISO and NEPOOL. As previously reported, the CLAIM10/30 Revisions (1) exclude certain Resource startups from the CLAIM10 or CLAIM30 value calculations; (2) limit the number of CLAIM10 or CLAIM30 audits that a Market Participant may request for the same Resource in the same week; and (3) delete obsolete language related to dual-fuel capability audits. The CLAIM 10/30 Revisions were accepted effective as of June 1, 2015, as requested. Unless the June 19 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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. Interventions were filed by Dominion, Entergy, Eversource, Exelon, and NESCOE. Comments were filed by RENEW and SunEdison (each generally supporting the changes, but addressing particular implementation and timing issues). On May 28, the ISO answered the RENEW and SunEdison comments. 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).

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

As previously reported, the FERC denied rehearing of the *Demand Curve Order*,⁴⁶ 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).⁴⁷ 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. That compliance filing was submitted on March 2, accepted on May 1, and became effective on May 2.⁴⁸ The petition for DC Circuit Court of Appeals review of the FERC's Demand Curve orders, filed by NextEra, NRG and PSEG, remains pending before that Court (*see* Section XV below).

Informational Progress Report: On May 18, the ISO submitted a report to update the FERC on New England's progress toward developing FCM zonal demand curves. Importantly, the ISO reported that improvements to the current FCM demand curve structure cannot be completed before FCA-10, noting that from its perspective and despite efforts to date, the changes have "not yet achieved a design that reasonably satisfies reliability, market efficiency and pricing objectives with reasonable market power protections." The ISO stated

⁴⁵ "Capacity Suppliers" are NextEra, NRG, PSEG, NEPGA, Brookfield, and Entergy.

⁴⁶ *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).

⁴⁷ *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*").

⁴⁸ The changes become effective with FCA-10, and will not apply to the resources in FCA9, totaling 12.96 MW, that utilize both the renewable resource exemption and the price lock-in election.

that it needs “additional time to address the complexities associated with the demand curve structure ... and commits to filing a further progress report no later than October 31, 2015.” In the remainder of the report, the ISO identifies the three fundamental reasons that it believe make it imprudent to immediately adopt a new sloped zonal demand curve design without further analysis and stakeholder review, identifies the four key factors for Demand Curve design, and notes the reliability, price volatility, robustness, and market power concerns. The ISO concludes that “the best approach at this time is to maintain the current demand curve structure for the FCA 10 auction cycle and continue to analyze and discuss with stakeholders the development of robust zonal demand curve improvements that can be put in place in the future.”

In response to the Informational Report and the announcement that the ISO does not intend to file sloped zonal demand curves, NEPGA filed on June 23 a request that the FERC “initiate a Section 206 proceeding on the ISO-NE Tariff and order ISO-NE to file the sloped zonal demand curves developed by ISO-NE and NEPOOL stakeholders, and proposed by ISO-NE as recently as April 2015 (“Zonal Curves”), for effect in FCA 10, amended to eliminate an FCA clearing rule ISO-NE had proposed as part of its Zonal Curves design.” NEPGA asked that the ISO be compelled to make that filing within 30 days of that FERC order. NEPGA’s motion is pending.

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.⁴⁹ The FERC concluded that the existing Tariff, specifically the current FCM payment design, “is unjust and unreasonable, because it fails to provide adequate incentives for resource performance, thereby threatening reliable operation of the system and forcing consumers to pay for capacity without receiving commensurate reliability benefits” and instituted a proceeding under Section 206 of the FPA (*see* EL14-52 in Section I above). Concluding that neither the ISO-NE Proposal nor the NEPOOL Proposal, standing alone, had been shown to be just and reasonable, the FERC, drawing features from each Proposal, went on to direct the ISO to submit by July 14, 2014 Tariff revisions reflecting a modified version of the ISO-NE Proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL’s Proposal. Specifically, the compliance filing was to include (1) changes to implement ISO-NE’s proposed two-settlement capacity market design with certain modifications, and (2) changes to increase the RCPF values for Thirty-Minute Operating Reserves to \$1,000/MWh and for Ten-Minute Non-Spinning Operating Reserves to \$1,500/MWh. The FERC established a June 9, 2014 refund effective date. Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island, Dominion, MMWEC, Indicated Generators, NEPGA, NextEra, Potomac Economics, and PSEG/NRG. On July 28, 2014, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@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).

⁴⁹ *See PI Order.*

IV. OATT Amendments / TOAs / Coordination Agreements

- **Eversource OATT Attachment F Revisions (ER15-1629)**

On June 15, the FERC accepted changes filed by Eversource to the regional rate in the ISO OATT to be consistent with the local rates under Schedule 21-NSTAR. The changes respond to a FERC Division of Audits and Accounting (“DAA”) directive, in a March 24, 2015 Audit Report which addressed NSTAR’s transmission formula rates, to include provisions related to the inclusion in investment base of Intangible Plant, General Plant Amortization Reserve and Intangible Plant Amortization Reserve, and the recovery of General Plant Amortization Expense and Intangible Plant Amortization Expense. The changes were accepted effective as of June 1, 2015, as requested. Unless the June 15 order is challenged, this proceeding will be concluded. 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 FERC conditionally accepted the ISO’s *Order 676-H* compliance filing, effective May 15, 2015,⁵⁰ but denied the ISO’s request for continued waiver of Version 003 NAESB Standards and of the standards relating to Network Integration Transmission Service (“NITS”) or Service Across Multiple Transmission Systems (“SAMTS”).⁵¹ The *ISO Order 676-H Compliance Order* was not challenged and is final and unappealable. A compliance filing, incorporating by reference all of the Version 003 NAESB standards, and excluding no standard, must be submitted on or before July 20, 2015. The FERC indicated that the ISO may file an attachment describing the services it does not offer. 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 May 19, 2015, the FERC conditionally accepted the *Order 676-H* compliance filing submitted by 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, the “Filing Parties”).⁵² The May 19 order denied requested waivers of certain transmission provider standards, dismissed requested waivers of reliability coordinator and balancing authority standards as unnecessary. In denying the Filing Parties’ requests for waiver of WEQ-000, WEQ-001, WEQ-002, WEQ-003, WEQ-004, WEQ-008, WEQ-011-1.2, WEQ-011-1.3, and WEQ-011-1.6, the FERC stated that the “Filing Parties are transmission providers, so the standards apply to them, and they are required to implement the standards once they perform the relevant business practices (even if they currently do not perform those practices).”⁵³ The May 19 order was not challenged and is final and unappealable. A compliance filing, consistent with the direction in the May 19 order, must be submitted on or before July 20, 2015. 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)**

As previously reported, the FERC conditionally accepted, subject to compliance filings due July 14, revisions to the ISO Tariff to comply with the interregional coordination and cost allocation requirements of *Orders 1000* and *1000-A* and (ii) an Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol (“Protocol”).⁵⁴ The *Order 1000 Interregional Compliance Changes* included (i) revisions to Attachment

⁵⁰ *ISO New England Inc.*, 151 FERC ¶ 61,155 (May 19, 2015) (“*ISO Order 676-H Compliance Order*”).

⁵¹ If, however, the ISO continues to believe that renewed waiver of specific standards is warranted, it may file a subsequent request for a waiver detailing the circumstances that it believes warrant a waiver. *Id.* at n. 20.

⁵² *Participating Transmission Owners Admin. Comm.*, 151 FERC ¶ 61,154 (May 19, 2015).

⁵³ *Id.* at P 32.

⁵⁴ *ISO New England Inc.*, 151 FERC ¶ 61,133 (May 14, 2015) (“*Order 1000 Interregional Compliance Filing Order*”).

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 Participants Committee will be asked at its June 25 meeting to vote on revisions to the ISO-NE Tariff and to the Protocol proposed in response to the *Order 1000 Interregional Compliance Filing Order*. As noted above, those revisions will be filed on or before July 14. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

As previously notified, the FERC issued, on March 19, 2015, its long-awaited Order on Rehearing and Compliance⁵⁵ of the region's *Order 1000* compliance filing.⁵⁶ 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.

⁵⁵ *ISO New England Inc.*, 150 FERC ¶ 61,209 (Mar. 19, 2015) ("*Order 1000 Compliance Rehearing Order*"), *clarif. and/or reh'g requested*.

⁵⁶ *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).

- 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.
- 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, will be considered at the June 5 Participants Committee meeting.

ISO Request for Clarification and/or Rehearing. 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. On May 4, the TOs submitted comments supporting the ISO’s request. On May 15, the FERC issued a tolling order affording it additional time to consider the ISO’s request for rehearing, which remains pending before the FERC.

3rd Regional Order 1000 Compliance Filing. On May 18, the ISO and PTO AC jointly submitted revisions to Sections I and II of the ISO Tariff (-005) and to the TOA (-004) to comply with the Mar 19 order on the 2nd Regional *Order 1000* compliance filing. The compliance materials, which were not ready in time for NEPOOL consideration before the May 18 filing deadline, were considered and unanimously supported at the June 5 Participants Committee meeting. On June 5, the Participants Committee filed comments supporting the filing. On June 8, LS Power filed a protest, requesting that the FERC require the ISO to revise Attachment K Section 4.3(k) and the definition of Backstop Transmission Solution as described in its protest. The ISO answered the LS Power protest on June 18. This matter is pending before the FERC.

If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 21 NEP: Mass Elec/Paxton Facilities Coord. & Backup Service Agreement (ER15-1838)**

On June 2, National Grid, on behalf of Massachusetts Electric Company (“MECO”), filed an amended Facilities Coordination and Backup Service Agreement between MECO and Paxton Municipal Light Department (“PMLD”). The Agreement sets forth the terms under which MECO and PMLD maintain mutual backup distribution service for their interconnected distribution facilities. National Grid will provide this service over distribution facilities owned by its affiliate MECO in the event that service to either of the existing primary service delivery points is interrupted. An April 1, 2015 effective date was requested. Comments on this filing were due on or before June 23; 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 21-UI: Pootatuck Project Non-Pool Supported Cost Recovery (ER15-1808)**

On May 29, United Illuminating filed revisions to Section III.2 of Schedule 21-UI to include the Pootatuck Project in UI’s list of transmission projects that include Localized Facilities. The revisions will permit UI to recover the portion of the costs of the Pootatuck Project that the ISO determined are not Pool-Supported PTF Costs under Schedule 12C of the ISO OATT. Comments on this filing were due on or before June 19; none were filed. A doc-less intervention was filed by Eversource. 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 21-NEP: BIPCO and Narragansett LSAs (ER15-1466)**

On June 22, the FERC accepted 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. The LSAs were accepted as of June 7, 2015, as requested. Unless the June 22 order is challenged, this matter will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Opinion 531-A Compliance Filing: 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 remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 9, the ISO and Eversource filed a Settlement Agreement and related materials to resolve all issues related to the proposed operation, maintenance, and capital cost reimbursement charges, of the unexecuted LGIA (LGIA-ISONE/NU-14-02) between CPV Towantic, CL&P and the ISO. The LGIA governs the interconnection of CPV Towantic's 795 MW natural gas-fired plant located in Oxford, Connecticut.⁵⁷ Comments on the Settlement Agreement are due on or before July 1, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 1, 2015, pursuant to Section 4 of Schedule 21-GMP, GMP submitted its annual informational filing containing the true-up recalculation of its costs for the January 1, 2014 through December 31, 2014 time period. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)**

On June 1, 2015, NSTAR submitted an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period January 1, 2014 through December 31, 2014. NSTAR stated that the filing complies with the requirements of Section 4 and Attachment D of Schedule 21-NSTAR, as well as the Settlement Agreement approved previously by the FERC.⁵⁸ The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Capital Projects Report - 2015 Q1 (ER15-1710)**

As previously reported, the ISO filed on May 12 its Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2015 (the "Report"). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Highlights include the following new projects: (i) Business Continuity Plan (BCP) Infrastructure Enhancements Phase III – Markets Infrastructure (\$2.52 million); (ii) Lawson Financial Platform Upgrade (\$495,200); and (iii) NERC Reliability Standard MOD-25 Generator Dynamics Data Management (\$309,700). Projects reported to have had a significant change are: (i) Generation Control Application (GCA) Production Part 1 (\$1.84 million increase); Voltage Stability (\$917,200 increase -- additional requirements and scope; implementation delayed to December 2015); CTS (\$1.516 million decrease – implementation delay permitted work to be shifted to internal ISO-NE resources); GCA Production Part 2 (\$1.5 million decrease – implementation deferred beyond 2015, funds returned to Emerging Work Fund); 3d Party FTR Administration (\$1.455 decrease – regulatory and jurisdictional delays pushing majority of work into 2016); and Divisional Accounting (\$496,800 decrease -- implementation delayed to 2016). On May 28, NEPOOL filed comments supporting the filing. No other comments were filed. This matter is pending before the FERC. If you have any questions concerning this

⁵⁷ *ISO New England Inc. and Northeast Utilities Service Co.*, 149 FERC ¶ 61,274 (Dec. 24, 2014).

⁵⁸ *See NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) or Kristin Sullivan (617-345-4657; kmsullivan@daypitney.com).

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

As directed in the *Winter 2014/15 Reliability Program Order*, the ISO submitted on June 8, 2014, its 4th 60-day progress report on efforts to address reliability concerns for the 2015-2016 winter and future winters, as necessary. In its 4th report, the ISO reported that it hopes to make a winter program filing in the first half of July. The ISO indicated that, if the results on the proposals voted at the June Markets Committee meeting are replicated at the June 25 Participants Committee meeting, both proposals will be filed with the FERC as a “jump ball.” The ISO requested that, because the stakeholder process will have concluded at that point, the 4th report be the last of its required informational filings. This report will not be noticed for public comment. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **IMM Quarterly Markets Reports - 2015 Q1 (ZZ15-4)**

On June 9, 2015, the Internal Market Monitor (“IMM”) filed with the FERC its report for the first quarter of 2015 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC.

- **2014 IMM Annual Markets Report (ZZ15-4)**

On May 20, the ISO’s IMM filed its 2014 Annual Markets Report, which covers the period from January 1, 2014 to December 31, 2014.⁵⁹ The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for several years in a row, that the New England Market operated competitively in 2014, with market concentration low, and energy prices at levels consistent with the short-run marginal cost of production. The IMM reported that, despite milder weather in 2014, energy prices increased from 2013 to 2014, driven primarily by significant increases in fuel prices in the first quarter of 2014. Other highlights included:

- ▶ Total costs increased 12% The increase in costs resulted from an increases in natural gas prices, operating reserve requirements, NCPC (particularly during Q1), and regulation service payments.
- ▶ Reductions in generation availability associated with the availability of natural gas declined in 2014.
- ▶ Increased reliability during 2014 and lower energy prices following Q1 2014 attributed to a combination of market fundamentals (e.g. increased LNG supply in late 2014, lower oil prices, a mild summer) and market rule changes.
- ▶ Real-Time Operating Reserve payments declined to \$38.6 million in 2014 from \$54.0 million in 2013.
- ▶ Payments to resources providing regulation service totaled \$28.8 million in 2014, a 41% increase from 2013. Order 755-related changes to the methodology for calculating regulation service payments, and increased natural gas prices, contributed to the increased cost of regulation service.
- ▶ The IMM conclusion that the 1.75 ratio (of a generator’s higher-priced to lower-price fuel index), used to determine when dual-fuel generators should be exempt from the requirement to justify and verify the use of the higher-priced fuel, continues to be a reasonable and appropriate indicator of oil and natural gas price convergence and consequently should remain as the exemption threshold.

The IMM renewed its recommendation that the Market Rules should be revised so that Real-Time NCPC charges do not prevent virtual transactions from improving the liquidity in the Day-Ahead Energy

⁵⁹ Please note that the filings of Annual Markets Reports are not noticed for public comment by the FERC. The IMM plans to review highlights from this report at the Aug. 7, 2015 Participants Committee meeting.

Market. This recommendation and other report highlights will be discussed in more detail at the Participants Committee's August meeting.

- **ISO-NE FERC Form 714 (not docketed)**

On June 9, the ISO submitted a revised Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2014. Through its Form 714 filing, the ISO reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. These filings are not noticed for comment.

IX. Membership Filings

- **June 23, 2015 Membership Filing (ER15-1907)**

On June 22, NEPOOL requested that the FERC accept the membership of New England Energy Connection (Provisional Member; Wallingford Energy Related Person) and the name change of Talen Energy Marketing (f/k/a PPL EnergyPlus). Comments on this filing are due on or before July 13.

- **June 2015 Membership Filing (ER15-1807)**

On May 29, NEPOOL requested that the FERC accept the termination of the Participant status of New England ITC (Provisional Member). Comments on this filing are due on or before June 19; none were filed. This matter is pending before the FERC.

- **May 2015 Membership Filing (ER15-1639)**

On June 19, the FERC accepted (i) the membership of Chester Municipal Electric Light Department (Publicly Owned Entity Sector); (ii) the termination of the Participant status of DR Power (Supplier Sector) and NYSEG Solutions (Related Person to Energy America, Supplier Sector); and (iii) the name changes of Entrust Energy East, Inc. (f/k/a North Eastern States, Inc.), Dynegy Resources Management, LLC (f/k/a EquiPower Resources Management, LLC), and Brown Bear II Hydro, Inc. (f/k/a Miller Hydro Group).

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: May 2015 (NP15-29)**

NERC submitted on May 28, 2015 its Find, Fix, Track and Report ("FFT") informational filing for the month of May 2015. The May FFT resolves 26 possible violations of 12 Reliability Standards that posed a risk minimal risk to bulk power system ("BPS") reliability, but which have since been remediated.⁶⁰ FFT filings are for information only and are not be noticed for public comment by the FERC.

⁶⁰ Only possible violations that pose a minimal risk to Bulk-Power System reliability are eligible for FFT treatment. See *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (Mar. 15, 2012) at PP 46-56.

- **Revised Reliability Standard: CIP-014-2 (RD15-4)**

As previously reported, NERC filed for approval on May 15, 2015 CIP-014-2 (Physical Security) which, consistent with Order 802,⁶¹ removes the term “widespread” from Requirement R1. Aside from removing the term “widespread,” NERC did not change any other aspect of Requirement R1. In order to limit the time CIP-014-1 would be effective, NERC requested that CIP-014-2 become effective on the later of the first day following the effective date of CIP-014-1 or the first day after the effective date of the FERC’s order approving CIP-014-2. Comments on filing are due on or before June 15, 2015; none were filed. A doc-less intervention was filed by Dominion. This matter is pending before the FERC.

- **NOPR: Revised TOP and IRO Reliability Standards (RM15-16)**

On June 18, 2015, FERC issued a NOPR proposing to approve changes reflected in the following Transmission Operations (“TOP”) and Interconnection Reliability Operations and Coordination (“IRO”) Reliability Standards:⁶²

- ▶ TOP-001-3 (Transmission Operations);
- ▶ 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. On May 12, NERC supplemented its March 18 filing by removing Load Serving Entities (“LSEs”) from the applicability of proposed Reliability Standard TOP-001-3 in light of the FERC’s order on NERC’s Risk-Based Registration (“RBR”) initiative.⁶³ Comments on this NOPR are due on or before August 24, 2015.⁶⁴

- **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

⁶¹ *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).

⁶² *Transmission Operations Reliability Standards and Interconnection Reliability Operations and Coordination Reliability Standards*, 151 FERC ¶ 61,236 (May 14, 2015) (“*TOP/IRO NOPR*”).

⁶³ *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,213 (2015) (“*RBR Order*”).

⁶⁴ The *TPL/IRO NOPR* was published in the *Fed. Reg.* on June 24, 2015 (Vol. 80, No. 121) pp. 36,280-36,293.

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”, PRC-010-1, EOP-011-1 (RM15-13, RM15-12; RM15-7)**

On June 18, the FERC issued a NOPR⁶⁵ proposing to approve three related NERC petitions that revise (i) the definition of “Remedial Action Scheme” and 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”) (RM15-13); (ii) PRC-010-1 (Undervoltage Load Shedding), a definition of “Undervoltage Load Shedding Program (UVLS Program)”, and associated VRFs and VSLs (together, the “UVLS Changes”) (RM15-12); and (iii) EOP-011-1 (Emergency Operations), a revised definition of “Energy Emergency”, and associated VRFs and VSLs (together, the “Emergency Operations Changes”) (RM15-7). Comments on this NOPR are due on or before August 24, 2015.⁶⁶

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

On May 14, 2015, FERC issued a NOPR proposing to approve 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”).⁶⁷ In addition, the FERC proposes to direct NERC (i) to develop modifications to the benchmark GMD event definition set forth in TPL-007-1 Attachment 1 so that the definition is not based solely on spatially-averaged data and (ii) to submit a work plan, and subsequently one or more informational filings, that address specific GMD-related research areas. As previously reported, 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.⁶⁸ NERC requested the FERC approve a five-year phased implementation plan for compliance with TPL-007-1. Comments on this NOPR are due on or before July 27, 2015.⁶⁹ Thus far, one set of colorful comments, which leads with a citation from Shakespeare’s *Macbeth*, has been filed.

- **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”).⁷⁰ 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

⁶⁵ Revisions to Emergency Operations Reliability Standards; Revisions to Undervoltage Load Shedding Reliability Standards; Revisions to the Definition of “Remedial Action Scheme” and Related Reliability Standards, 151 FERC ¶ 61,230 (June 18, 2015).

⁶⁶ The NOPR was published in the *Fed. Reg.* on June 24, 2015 (Vol. 80, No. 121) pp. 36,293-36,301.

⁶⁷ *Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

⁶⁸ *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (“*Order 779*”).

⁶⁹ The *TPL-007 NOPR* was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

⁷⁰ *Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance Reliability Standard*, 151 FERC ¶ 61,026 (Apr. 16, 2015) (“*Protection System NOPR*”).

capacity.⁷¹ 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 were due on or before June 22, 2015⁷² and were filed by: EEI, NERC, NRECA, Southern Company Services, and TVA. This matter is pending before the FERC.

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

On December 31, 2014, NERC filed for approval a new Standard, PRC-026-1 (Relay Performance During Stable Power Swings) and associated VRFs and VSLs (the “PRC-026 Standard”) in response to the FERC’s directive in *Order 733*⁷³ 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.

- **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”).⁷⁴ As previously reported, NERC stated that the PRC-002 Changes address FERC concerns expressed in *Order 693*⁷⁵ with the “fill in the blank” aspects in PRC-002-1 and PRC-018-1.⁷⁶ 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 were due on or before June 22, 2015⁷⁷ and were filed by APPA, Bonneville, and NERC. This matter is pending before the FERC.

- **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”).⁷⁸ 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.⁷⁹ As previously reported, the BAL-001 Changes add a frequency component to the measurement of a Balancing Authority’s Area Control Error (“ACE”) and

⁷¹ *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).

⁷² The *Protection System* NOPR was published in the *Fed. Reg.* on Apr. 22, 2015 (Vol. 80, No. 77) pp. 22,444-22,449.

⁷³ *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*”).

⁷⁴ *Disturbance Monitoring and Reporting Requirements Reliability Standard*, 151 FERC ¶ 61,042 (Apr. 16, 2015) (“*PRC-002 NOPR*”).

⁷⁵ *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*”).

⁷⁶ *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).

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

⁷⁸ *Real Power Balancing Control Performance Rel. Standard*, Order No. 810, 151 FERC ¶ 61,048 (“*Order 810*”), *clarification and/or reh’g requested*.

⁷⁹ *Id.* at P 20.

allow for the formation of “Regulation Reserve Sharing Groups.” The BAL-001 Changes will become effective June 1, 2016. On May 18, Powerex requested clarification or, in the alternative, rehearing of *Order 810*, requesting that the FERC (i) direct all Balancing Authorities in the Western Interconnection to disclose and publish their clock-minute ACE data no later than 30 days after the end of each month; and (ii) clarify that the informational filing should detail the extent to which unscheduled flows associated with BAA imbalances required curtailment of transmission schedules or other mitigation measures. On June 12, the FERC issued a tolling order affording it additional time to consider the Powerex request, which remains pending before the FERC.

- **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 Standards⁸⁰ 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, 2014,⁸¹ 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.⁸² 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.

⁸⁰ 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.

⁸¹ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁸² *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) (“BAL-002-1a Interpretation Remand NOPR”).

Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,⁸³ 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.

XI. Misc. - of Regional Interest

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

On June 1, the FERC authorized a transaction whereby Cross-Sound Cable (“CSC”) will become an indirect, wholly-owned subsidiary of AIA Energy North America LLC (“AIA Energy”) (and no longer a Related Person of Brookfield Energy Marketing).⁸⁴ CSC and AIA Energy must notify the FERC within 10 days of the date that the disposition of jurisdictional facilities has been consummated. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 2, the FERC authorized a transaction whereby UIL Holdings Corp (“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).⁸⁵ Iberdrola and UI must notify the FERC within 10 days of the date that the disposition of jurisdictional facilities has been consummated. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 18, the FERC issued a notice of its intent not to act⁸⁶ on 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 filed by Benjamin C. Riggs, Jr. (“Riggs”).⁸⁷ In the April 21 complaint, Riggs sought 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. The FERC’s decision not to initiate an enforcement action means that Mr. Riggs may himself bring an enforcement action against the RI PUC in the appropriate court. If there are questions on this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 15, Lower Village Hydroelectric Associates (“LVA”) withdrew its complaint against PSNH. As previously reported, LVA had requested that the FERC direct PSNH to recognize the existing LVA IA, rescind its demand for LVA facility modifications, and close the air break switch so LVA could complete relay testing and resume generating/ selling electricity. In its motion to withdraw, LVA reported that it and PSNH had reached an amicable resolution to the complaint. 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

⁸³ 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.

⁸⁴ *Cross-Sound Cable Co., LLC and AIA Energy North America, LLC*, 151 FERC ¶ 62,145 (June 1, 2015).

⁸⁵ *Iberdrola, S.A. et al.*, 151 FERC ¶ 62,148 (June 2, 2015).

⁸⁶ *Benjamin Riggs v. RI Pub. Utils. Commission*, 151 FERC ¶ 61,222 (June 18, 2015).

⁸⁷ 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*.

the PJM Tariff allowing or requiring PJM to include demand response as suppliers to PJM's capacity markets." FirstEnergy also requested that the results of the PJM capacity auction due to be released that same day, to the extent it included and cleared demand response resources, be considered void and legally invalid. PJM's response, and all comments and interventions were initially due on or before June 12, 2014. However, on June 11, the FERC extended that date to 30 days after the submission by FirstEnergy of an amended complaint. FirstEnergy filed its amended complaint on September 22, 2014.

Comments on the FirstEnergy Complaint were due October 22, 2014. More than 40 parties filed comments or responses to the FirstEnergy amended complaint. Many parties filed comments supporting the complaint (including Calpine, PSEG and PPL), while others opposed the complaint in its entirety (including Direct Energy and Enerwise). PJM's response argued that the complaint failed to justify the market disruption that would result from recalculating past capacity auction results, PJM was instead more focused on minimizing "litigation risk." A number of parties filed supporting comments in favor of removing demand response resources from the PJM tariff moving forward, but opposed to recalculating the results of past capacity auctions (including Exelon, the PJM IMM and NRG). Comments were also filed by National Grid and NYISO. A number of New England parties intervened, including NEPOOL (stressing that the FERC should not apply any ruling in this docket to the New England Market), Dominion, Duke Energy, Dynege, 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 Advocates⁸⁸ 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 June 5, the FERC accepted four, non-conforming⁸⁹ interconnection agreements filed by CMP 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 stated that the new Agreements are modeled after, and are consistent with, the CSIA. The agreements and notice of cancellation were docketed and accepted 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.

⁸⁸ "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).

⁸⁹ 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).

▶ *CMP CSIA Notice of Cancellation (ER15-1448).*

The notice of cancellation and each of the agreements, other than the Brookfield White Pine Hydro agreement (which had a March 23, 2015 effective date), were accepted as of April 14, 2014, as requested. Unless the orders are challenged, these proceedings will be concluded. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 9, the FERC accepted an amended Wholesale Distribution Service Agreement (“WDSA”) between CL&P and CMEEC that eliminates certain delivery points and their associated rates for wholesale distribution service. The amendments reflect 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. The amended WDSA was accepted effective as of June 16, 2015, as requested. Unless the order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, Emera Maine filed on April 7 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 remains 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”⁹⁰ 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 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 24, Emera Maine answered the Maine Customer Group’s Motion to Reject. On April 29, the Maine Customer Group answered Emera Maine’s April 24 answer. On May 1, Emera Maine

⁹⁰ The “Maine Customer Group (“MCG”) 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”).

filed an amendment and errata to its April 1 filing, in part reflecting 2014 FERC Form 1 data rather than estimated data. On May 7, Emera Maine answered the April 22 Maine PUC and MCG protests and the MCG's April 29 answer. On May 8, MCG moved to compel revision to Emera's May 1 filing, asserting that it was not filed in accordance with Emera's OATT, and specifically the Protocols for Implementing and Reviewing Charges Established by the Attachment J Rate Formulas (the "Protocols"). MCG also protested the May 1 filing on May 22. On May 26, Emera Maine answered MCG's May 8 Motion to Compel, which MCG answered the next day. This matter remains pending before the FERC.

- **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",⁹¹ 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)).⁹² 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 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. 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 May 5, Enforcement replied to City Power's April 7 response. On June 7, FERC Staff answered City Power's April 7 response. 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).

⁹¹ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) ("MISO Initial Decision") at P 923.

⁹² *City Power Mkt'g, LLC and K. Stephen Tsingas*, 150 FERC ¶ 61,176 (Mar. 6, 2015) ("City Power Mktg Show Cause Order").

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, 2014.⁹³ 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.⁹⁴ Comments were submitted by APPA, EPSA, the National Climate Coalition, and the Utility Workers Union of America.

• 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.

⁹³ *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, Notice of Proposed Rulemaking, 79 Fed. Reg. 34,830 (June 18, 2014).

⁹⁴ 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.

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. On February 9, the FERC extended the deadline to submit comments to and including March 6, 2015. More than 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>.

- **AWEA Petition for LGIA/LGIP Rulemaking (RM15-21)**

On June 19, the American Wind Energy Association (“AWEA”) petitioned the FERC to conduct a rulemaking to revise provisions of the FERC’s *pro forma* Large Generator Interconnection Procedures (“LGIP”) and *pro forma* Large Generator Interconnection Agreement (“LGIA”). AWEA states that various aspects of the LGIP and LGIA are out of date in comparison to current market conditions and do not ensure that the generation interconnection process is just, reasonable, and not unduly discriminatory or preferential. AWEA indicated that the rulemaking would address reforms to improve (i) certainty in the study and restudy process, (ii) transparency in the interconnection process, (iii) certainty of network upgrade costs, and accountability in the interconnection process. Thus far, this petition has not been noticed for public comment.

- **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 service⁹⁵ 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*⁹⁶ 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 maintain a minimum frequency response obligation. Comments on this NOPR were due on or before April 27, 2015⁹⁷ and were filed by nearly 20 parties. Since the last Report, reply comments were filed by the Steel Producers Alliance.

- **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.⁹⁸ 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

⁹⁵ 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.

⁹⁶ *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*”).

⁹⁷ The NOPR was published in the *Fed. Reg.* on Feb. 26, 2015 (Vol. 80, No. 38) pp. 10,426-10,432.

⁹⁸ *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*”).

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, 2014.⁹⁹ 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*,¹⁰⁰ 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”),¹⁰¹ 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, 2015.¹⁰² Requests for rehearing and/or clarification of *Order 807* were filed on April 20 by APPA/TAPS and NRECA. On May 15, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending before the FERC.

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

On June 26, 2013, WIRES¹⁰³ 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

⁹⁹ The *MBR NOPR* was published in the *Fed. Reg.* on July 25, 2014 (Vol. 79, No. 143) pp. 43,536-43,572.

¹⁰⁰ *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*.

¹⁰¹ ICIF is the term used by the FERC in the NOPR to refer to “generator tie lines”.

¹⁰² *Order 807* was published in the *Fed. Reg.* on Apr. 1, 2015 (Vol. 80, No. 62) pp. 17,654-17,682.

¹⁰³ 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.

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*,¹⁰⁴ 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, 2013.¹⁰⁵ 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*.¹⁰⁶ *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*.¹⁰⁷ The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

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.

¹⁰⁴ *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).

¹⁰⁵ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹⁰⁶ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

¹⁰⁷ *Order 771-A* clarified that: (1) Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of *Order 771*; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the FERC in the CC field; (3) the requirement for the FERC to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the FERC will deem all e-Tag information made available to the FERC pursuant to *Order 771* as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the FERC is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure FERC access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

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*,¹⁰⁸ 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.¹⁰⁹ 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, 2015¹¹⁰ (to be filed, presumably, in EL14-23; see Section I above). Requests for rehearing and/or clarification of *Order 809* were filed by Desert Southwest Pipeline Stakeholders and the American Gas Association. On June 12, 2015, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. In addition, on May 19, the Natural Gas Council asked the FERC to defer NAESB consideration of confirmation process improvements until “after the two industries have had sufficient time to implement and operate reliably under both the new gas scheduling timeline and changes to RTO/ISO dispatch schedules to conform with the newly-approved gas scheduling timeline.”

- **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.¹¹¹ 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.¹¹² The FERC also requested that NAESB develop business practice and communication standards specifying: (1) the information required for requests to acquire capacity; (2) the methods by which such information is to be exchanged; and (3) the location of the information on a pipeline’s website. The Show Cause Order required each pipeline to explain in its compliance filing how it will fully comply with section 284.8(d) until NAESB develops, and the FERC implements, the requested standards, including how the pipeline will provide shippers the ability to post offers to purchase capacity on the Informational Posting section of its Internet website.

In total, the FERC received, and addressed in one omnibus order, 157 compliance filings.¹¹³ 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,

¹⁰⁸ *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*”).

¹⁰⁹ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

¹¹⁰ *Order 809* was published in the *Fed. Reg.* on Apr. 24, 2015 (Vol. 80, No. 79) pp. 23,198-23,227.

¹¹¹ *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

¹¹² *Id.* at P 6.

¹¹³ See *BR Pipeline Co. et al.*, 149 FERC ¶ 61,031 (Oct. 16, 2014).

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 ¹¹⁴ \$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.
- ▶ 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).¹¹⁵
- ▶ In-service: Nov 2016 (anticipated).

¹¹⁴ *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

¹¹⁵ Order Issuing Certificate and Approving Abandonment, *Algonquin Gas Transmission LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015), *reh'g requested*.

- **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.
 - ▶ Certificate granted May 14, 2015 (must be constructed and in service within two years).¹¹⁶
 - ▶ In-Service: Nov 2015 (anticipated).

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report.

XV. Federal Courts

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

¹¹⁶ Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

- **Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated)**
Underlying FERC Proceedings: ER13-193; ER13-196¹¹⁷
Appellants: New England Transmission Owners (NETOs); NESCOE/CT DEEP/CT PURA, et al.

On May 15, 2015, NETOs¹¹⁸ and NESCOE, *et al.*, filed a petition for review of the FERC's orders in the *Order 1000* Compliance Filing proceeding. On June 15, the parties filed a joint statement of issues and unopposed motion regarding briefing format. On June 18, a Joint Statement of issues and docketing statement was filed.

- **Base ROE Complaint (2011) (15-1118, 15-1119, 15-1121**) (consolidated)**
Underlying FERC Proceedings: EL11-66¹¹⁹
Appellants: NETOs

On April 30, 2015, NETOs filed a petition for review of the FERC's orders in the 2011 Base ROE Complaint Proceeding. Motions for leave to intervene have been filed by NEPOOL, EMCOS,¹²⁰ NJ Division of Rate Counsel, NHEC, MMWEC, CT PURA, CT OCC, CT AG, NJ BPU, Delaware PSC, and Coalition of MISO Transmission Customers.

- **FCM Administrative Pricing Rules Complaint (15-1071**) (consolidated)**
Underlying FERC Proceedings: EL14-7¹²¹
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, NESCOE, NECPUC, NHEC, and PSEG. On May 22, the Court granted all motions to intervene and NEPGA's motion to hold the case in abeyance pending a decision in EL15-23. Motions to govern future proceedings are due 30 days from the completion of the FERC proceedings in EL15-23. NEPGA was directed to file an abeyance status report on or before August 20, 2015.

- **Demand Curve Changes (15-1070**) (consolidated)**
Underlying FERC Proceedings: ER14-1639¹²²
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. Motions for leave to intervene have been filed by NEPOOL, the ISO, CT PURA, NHEC, CPV, Entergy, and NESCOE. A Docketing Statement Form, Statement of Issues to be Raised, and Appearances were filed by Petitioners on April 30, 2015. The Petitioners' Non-Binding Statement of Issues laid out various challenges to the renewables exemption that was approved as part of the FERC's Demand Curve Orders. On May 28, the Court granted all filed motions to intervene and ordered intervenors to show by June 29 cause why they should not be limited to one joint brief in support of the FERC.

¹¹⁷ 150 FERC ¶ 61,209 (Mar. 19, 2015); 143 FERC ¶ 61,150 (May 17, 2013).

¹¹⁸ "NETOs" are Emera Maine; Central Maine Power Co., National Grid; New Hampshire Transmission ("NHT"), Eversource (on behalf of its electric utility company affiliates CL&P, WMECO, PSNH, and NSTAR), UI, and Vermont Transco .

¹¹⁹ 150 FERC ¶ 61,165 (Mar. 3, 2015); 149 FERC ¶ 61,032 (Oct. 16, 2014); 147 FERC ¶ 61,234 (June 19, 2014).

¹²⁰ "EMCOS" are Taunton, Reading, Hingham, and Braintree.

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

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

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
Underlying FERC Proceedings: ER14-1409¹²³
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, Connecticut¹²⁴ 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 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. The parties filed a joint proposed briefing schedule on May 11. Parties are currently awaiting the issuance of the briefing schedule.

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**
Underlying FERC Proceedings: ER13-1851¹²⁵ and ER13-2266¹²⁶
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, 2014, 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, 2014, 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. Final Briefs were filed on April 15, 2015. Since the last Report, oral argument before a merits panel to be named 30-days ahead of the oral argument, was scheduled for September 15, 2015.

- **New England's Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹²⁷
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.

¹²³ 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).

¹²⁴ For purposes of this proceeding, "Connecticut" means the CT AG, CT PURA and CT OCC.

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

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

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

- **Orders 745 and 745-A (FERC v. EPSA, Supreme Court, 14-840 and 14-841)**
Underlying FERC Proceedings: RM10-17-000¹²⁸
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.¹²⁹ Respondents brief in opposition to that writ, pursuant to an order of the Court extending the time for responses, was filed on March 19. Petitioner's reply was filed on April 7. The Supreme Court granted certiorari on May 4, 2015. On May 27, the Supreme Court granted extensions to file petitioners' briefs to July 9, 2015 and respondents' brief to August 31, 2015.

As previously reported, the DC Circuit vacated *Order 745*¹³⁰ 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.

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

¹²⁹ *EPSA v. FERC*, 753 F.3d 216 (May 23, 2014).

¹³⁰ *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.

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 Maryland¹³¹ which found that a Maryland Public Service Commission (“MD PSC”) order directing three Maryland distribution utilities to enter into a ‘contract for differences’ for capacity and energy in the PJM control area (the “CfD”) with a gas-fired merchant generator selected by the MD PSC (the “MD PSC Order”) violated the Supremacy Clause of the United States Constitution and cannot be enforced.¹³² In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field¹³³ and conflict pre-empted.¹³⁴

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.”¹³⁵ 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”),¹³⁶ 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.”¹³⁷ 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.”¹³⁸ 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.”¹³⁹

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”.¹⁴⁰ 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

¹³¹ *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.

¹³² *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467; 2014 U.S. App. LEXIS 10155.

¹³³ “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.

¹³⁴ “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.”

¹³⁵ Slip op. at p. 14.

¹³⁶ *Id.* at p. 10.

¹³⁷ *Id.* at p. 16.

¹³⁸ *Id.* at pp. 18-19.

¹³⁹ *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.

¹⁴⁰ *Id.* at p. 27.

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.'¹⁴¹ "Maryland's initiative disrupts [the PJM scheme] by substituting the state's preferred incentive structure for that approved by FERC."¹⁴² "Maryland has sought to achieve through the backdoor of its own regulatory process what it could not achieve through the front door of FERC proceedings. Circumventing and displacing federal rules in this fashion is not permissible."¹⁴³

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 affirmed¹⁴⁴ 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").¹⁴⁵ 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.¹⁴⁶

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)**

Entergy¹⁴⁷ 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 NY PSC Commissioners' order ("Order") approving an agreement to keep NRG's 435 MW Dunkirk facility in the NYISO market, "repowered" as a natural gas-fired

¹⁴¹ *Id.* at p. 23.

¹⁴² *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.")

¹⁴³ *Id.* at p. 25.

¹⁴⁴ *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, ("NJ Order").

¹⁴⁵ *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

¹⁴⁶ *Id.* slip op. at 31.

¹⁴⁷ Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

(rather than coal-fired) plant (the “Term Sheet”)¹⁴⁸ is preempted by the FPA and invalid under the dormant Commerce Clause of the U.S. Constitution. Entergy also seeks a permanent injunction requiring the NYPSC Commissioners to withdraw its Order and/or preventing the NYPSC Commissioners from continuing to treat the Order as valid and binding. This case is noteworthy given the relationship of the issues raised to the Maryland and New Jersey CfD cases summarized above.

¹⁴⁸ 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.

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