

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of December 2, 2015

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

I. Complaints/Section 206 Proceedings



1	206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)	Nov 10	Settlement Judge Young issues report; settlement judge procedures continue
2	NEPGA Peak Energy Rent (PER) Complaint (EL15-25)	Nov 19	FERC denies rehearing of Jan 30 order
4	206 Investigation: FCM PI (Compliance Proceedings) (EL14-52; ER14-2419)	Nov 19	FERC denies rehearing of both its May 30, 2014 <i>PI Order</i> on the FCM PI Jump Ball Filing and its <i>October 2 Order</i> on the first Compliance filing in response to the <i>PI Order</i>
5	206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices Adopted in <i>Order 809</i> (EL14-23)	Nov 19	FERC accepts ISO-NE compliance filing

II. Rate, ICR, FCA, Cost Recovery Filings



* 6	ICR-Related Values and HQICCs - 2016/17 ARA3, 2017/18 ARA2, 2018/19 ARA1 (ER16-446)	Dec 1	ISO and NEPOOL jointly file ICR-Related Values and HQICCs for the 2016/17 ARA3, 2017/18 ARA2; and 2018/19 ARA1; comment date Dec 22
* 7	FCA10 Qualification Informational Filing (ER16-308)	Nov 10 Nov 12-25 Nov 25	ISO submits required informational filing for FCA10; NEPOOL, Dominion, Entergy, Eversource, Exelon, NESCOE, NRG, UI intervene Lotus Energy Group files limited protest
* 7	ICR, HQICCs and Related Values - 2019/20 Power Year (ER16-307)	Nov 10 Nov 12- Dec 1 Dec 1	ISO files ICR, HQICCs, and related values for the 2019/20 Capability Year; comment date Dec 1 Emera, Entergy, Eversource, Exelon, GDF Suez, National Grid intervene NEPOOL, NESCOE file comments; NEPGA, NRG, Dominion file protests
8	2016 NESCOE Budget (ER16-93)	Nov 6	Eversource intervenes
8	2016 ISO-NE Administrative Costs and Capital Budgets (ER16-92)	Nov 6	Eversource intervenes

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



10	NCPC Credit Revisions (ER16-250)	Nov 12-23	Dominion, Entergy, Eversource, Exelon, National Grid intervene
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10	CSO Terminations: GMP (ER16-226) Enerwise (ER16-225) Direct Energy (ER16-224) Twin Eagle (ER16-223) Brookfield White Pine Hydro (ER16-222)	Nov 13	NEPOOL intervenes in each of the proceedings
11	DR Changes (ER16-167)	Nov 3-19	NRG, NESCOE, ConEd, Dominion, Emera, Entergy, Eversource, Exelon, National Grid intervene
11	Reactive Capability Auditing Revisions (ER15-2628)	Nov 12	FERC accepts changes, eff. Dec 1
11	Jump Ball Filing: Winter Reliability Program (ER15-2208)	Nov 6 Nov 9 Nov 16	NEPOOL supports the ISO's Oct 26 compliance filing FERC issues tolling order affording it additional time to consider Entergy request for rehearing of Sep 11 order NEPOOL, NEPGA file comments supporting the ISO's Oct 26 filing
13	Jump Ball Filing: FCM Performance Incentives (ER14-1050)	Nov 19	FERC denies rehearing, and dismisses as moot requests for clarification, of <i>PI Order</i>
13	Capability Resource Ratings Rehearing Request (ER11-2216)	Nov 12	FERC denies MMWEC Feb 2011 rehearing request

IV. OATT Amendments / TOAs / Coordination Agreements

13	Retirement of RTO Mapping Document (Tariff Attachment C) (ER15-2717)	Nov 17	FERC accepts retirement of RTO Mapping Document
13	CTS Conforming Changes (ER15-2641)	Nov 9 Dec 1	FERC conditionally accepts changes, eff. Dec. 1, 2015 (subject to 2 weeks' prior notice), and subject to corrections to be filed with effective date notice ISO files notice of Dec 15, 2015 effective date and minor corrections directed by Nov 9 order
14	<i>Order 1000</i> Interregional Compliance Filings (ER13-1960; ER13-1957)	Nov 19	FERC accepts Second (and final) <i>Order 1000</i> Interregional Compliance Filing
14	<i>Order 1000</i> Regional Compliance Filings (ER13-193; ER13-196)	Nov 23	NEPOOL files comments supporting 4th Regional Compliance Filing (filed Nov 2)

V. Financial Assurance/Billing Policy Amendments

* 15	Estimation of Hourly Charges (ER16-286)	Nov 6 Nov 12-23	ISO and NEPOOL jointly file changes National Grid, Eversource intervene
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VI. Schedule 20/21/22/23 Changes

* 15	Schedules 20A-ES & 21-ES: Eversource Updates (ER16-348)	Nov 18	Eversource files to change title of Schedules 20A-NU and 21-NU to Schedule 20A-ES and 21-ES, respectively, and to replace all references to NU and Northeast Utilities to ES and Eversource
* 16	Schedule 21-EM: Corrections (ER16-273)	Nov 6	Emera Maine files corrections to Schedule 21-EM
16	Schedule 22: Granite Ridge LGIA (ER15-2747)	Nov 13	FERC accepts Granite Ridge LGIA

VII. NEPOOL Agreement/Participants Agreement Amendments

16	128th Agreement: GIS-Only Participant Status (ER16-214)	Nov 12	National Grid intervenes
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16	129th Agreement: Review Board Removal (ER16-159)	Nov 12,19	National Grid, Eversource intervene
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VIII. Regional Reports	
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17	Capital Projects Report - 2015 Q3 (ER16-94)	Nov 6 Nov 24	Eversource intervenes FERC accepts the Q3 Report
* 17	ISO-NE FERC Form 3Q (2015/Q3) (not docketed)	Nov 17	ISO submits quarterly financial report for 2015 Q3

IX. Membership Filings	
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* 17	December 2015 Membership Filing (ER16-428)	Nov 30	Memberships: Niagara Wind Power, Residents Energy, Utility Expense Reduction; Terminations: Barclays and Twin Cities Power; comment date Dec 20
18	October 2015 Membership Filing (ER16-1)	Nov 13	FERC accepts the memberships of: Antrim Wind Energy, Astral Energy, Beacon Falls Energy Park, Champlain VT, Concord Steam, Deepwater Wind Block Island, Invenergy Energy Management, MA Operating Holdings; the terminations of: HOP Energy, energy.me, Parkview AMC Energy, Denver Energy, Johnston Clean Power; and the name change of NRG Curtailment Solutions, Inc.

X. Misc. - ERO Rules, Filings; Reliability Standards	
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18	FFT Report: November 2015 (NP16-3)	Nov 30	NERC files report
18	Revised Reliability Standards: PRC-004-5; PRC-010-2 (RD15-5)	Nov 19	FERC approves Standards, eff. Nov 19
18	<i>Order 817</i> : Revised TOP and IRO Reliability Standards (RM15-16)	Nov 19	FERC approves Revised Standards, eff. Jan 26, 2016
19	<i>Order 818</i> : Revised Reliability Standards: Transition to "Remedial Action Scheme" (RM15-13)	Nov 19	FERC approves Revised Standards, eff. Jan 26, 2016
20	NOPR: New Reliability Standard: TPL-007-1 (RM15-11)	Nov 9-24	US Geological Survey, Southern Company, IEEE, SAC & AFS, J. Bardin submit reply comments
20	NOPR: New Reliability Standard: PRC-026-1 (RM15-8)	Nov 16-24	NERC, Luminant, EEI, Idaho Power, ITC, N. Amer. Generator Forum, and the Tri-State Generation and Transmission Assoc.
22	E. Morris v. NERC/SERC (EL15-93)	Dec 2	FERC dismisses complaint and petition for rulemaking

XI. Misc. - of Regional Interest	
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23	203 Application: Passadumkeag Wind Park (SunEdison/Quantum) (EC15-217)	Nov 17	FERC approves SunEdison acquisition of membership interests in Passadumkeag Wind Park
* 23	PURPA Complaint: Allco Renewable Energy v. CT Agencies (EL16-11 et al.)	Nov 9 Nov 19-23 Nov 30 Dec 2	Allco files petition for FERC enforcement of PURPA against CT Agencies Eversource, Exelon, National Grid, UI intervene CT Agencies protest complaint CT Agencies file notice of amended Federal Court decision in a case relied upon by Allco

* 24	LGIA – PSNH/Schiller Generating Station (ER16-391)	Nov 25	Eversource files two-party LGIA with Schiller Generating Station (a previously existing interconnection) to demonstrate compliance with REC Purchase Agreements; comment date Dec 16
* 24	PSNH/NHEC Design & Engineering Agreement Cancellation (ER16-357)	Nov 19	Eversource files cancellation notice for Agreement; comment date Dec 10
* 24	CPV Towantic EDPS Agreement Cancellation (ER16-356)	Nov 19	Eversource files cancellation notice for EDPS Agreement; comment date Dec 10
* 24	Wyman 4 Transmission Agreement (ER16-272)	Nov 5	CMP supplements Wyman 4 Transmission Agreement to (i) revise definition of Transmission Facilities; (ii) update identities of owners; and (iii) clarify references to ISO Tariff
* 27	FERC Audit of ISO-NE	Nov 24	FERC informs ISO-NE that it will conduct an audit of ISO-NE's Transmission Provider Obligations

XII. Misc. - Administrative & Rulemaking Proceedings

* 27	Price Formation in RTO/ISO Energy and Ancillary Services Markets (AD14-14)	Nov 20	FERC directs RTO/ISOs (including ISO-NE) to provide information regarding 5 price formation issues: (1) pricing of fast-start resources; (2) commitments to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency; RTO/ISO response date Feb 3, 2016
27	Enforcement Annual Report (AD07-13-009)	Nov 19	FERC Office of Enforcement issues 2015 Annual Report
* 27	NOPR: Reactive Power Requirements for Wind Generators (RM16-1)	Nov 19	FERC proposes to eliminate the exemptions for wind generators from the requirement to provide reactive power by changing the <i>pro forma</i> LGIA and SGIA; comment date Jan 25, 2016
28	NOPR: Price Formation Fixes - Settlement Intervals/Shortage Pricing (RM15-24)	Nov 30	Nearly 50 sets of comments were filed, including comments by NEPOOL, ISO-NE, Potomac Economics, APPA/NRECA, EEI, EPSA, Direct Energy, Dominion, Entergy, ESA, Exelon, IRC, NEI, Public Interest Organizations, PSEG
28	NOPR: Connected Entity Data Collection (RM15-23)	Nov 10 Nov 30 Dec 1	FERC grants request for technical conference (scheduled for Dec 8) and delay in comment submission (to Jan 22, 2016) FERC issues supplemental notice Dec 8 technical conference; Public Citizen files comments NEPOOL files comments
29	<i>Order 812</i> : Revisions to Public Utility Filing Requirements (RM15-3)	Nov 19	FERC grants clarification of <i>Order 812</i> requested by Dominion
29	<i>Order 819</i> : Third-Party Provision of Primary Frequency Response Service (RM15-2)	Nov 20	FERC issues <i>Order 819</i> , eff. Feb 25, 2016
30	<i>Order 816</i> : MBR Authorization Refinements (RM14-14)	Nov 13-16	EDF Renewables, EEI, EPSA, Invenergy, NextEra, Southern Company, TAPS, SoCal Edison, National Hydropower Assoc. file requests for clarification and/or rehearing of <i>Order 816</i>

XIII. Natural Gas Proceedings

34	<i>Opinion No. 538</i> : ANR Storage Company, Order on Initial Decision (RP12-479)	Nov 13-16	ANR and Joint Intervenor Group request rehearing of <i>Opinion No. 538</i>
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XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

37	Base ROE Complaints (2012 and 2014) (15-1212)	Nov 18	Parties file 1st 90-day status report
37	Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated)	Nov 6	Court issues order setting briefing schedule
37	Base ROE Complaint (2011) (15-1118, 15-1119, 15-1121**) (consolidated)	Dec 2	FERC files Supplement to the Certified Index of the Record
38	FCM Administrative Pricing Rules Complaint (15-1071**)	Nov 18	NEPGA files status report requesting Court continue to hold this case in abeyance
38	Demand Curve Changes (15-1070**)	Nov 20	FERC requests that the Court remand this case back to the Commission for further proceedings
		Dec 1	Court grants FERC's unopposed motion
39	FCA8 Results (14-1244, 14-1246 (consolidated))	Nov 18	EPSC/HQ US/NERG/NEPGA file Intervenor for Respondent Brief; Calpine files letter advising that it will not file a brief
		Dec 2	CT OCC/CT PURA/CT AG and Public Citizen file Petitioner Reply Briefs

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: December 2, 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 December 2, 2015. If you have questions, please contact us.¹

I. Complaints/Section 206 Proceedings
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- **206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)**

On August 12, 2015, the FERC issued an order accepting the TOs’ July 31, 2014 informational rate filing but, in response to a protest by “Public Representatives”,² instituted a Section 206 proceeding in Docket EL15-85 to examine whether the recovery by New Hampshire Transmission (“NHT”) of SeaLink project development costs through the RNS formula rate is just and reasonable.³ The FERC encouraged the parties to make every effort to settle their dispute before hearings are commenced, and will hold the hearings in abeyance pending the outcome of settlement judge procedures.⁴ Interventions were filed by ISO-NE, NEPOOL, CMP, CT OCC, CT PURA, Eversource, MA AG, MOPA, National Grid, NESCOE, RI PUC, UI, VT DPS, and VT Transco. The FERC-established refund effective date is August 19, 2015.⁵

Settlement Judge Proceedings. On August 19, Chief Judge Wager appointed Judge H. Peter Young as the Settlement Judge. A first settlement conference was held on September 15; a second settlement conference, October 29, 2015. On November 10, Judge Young issued a report stating “Substantive going-forward settlement principles seem to be reconcilable among the participants, but there remains a potentially unbridgeable gulf between them insofar as total going-forward financial responsibility is concerned.” For now, settlement judge procedures are continuing. If there are questions on these proceedings, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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 “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”).

³ *ISO New England Inc. Participating Transmission Owners Administrative Committee and New Hampshire Transmission, LLC*, 152 FERC ¶ 61,121 (Aug. 12, 2015).

⁴ *Id.* at P 20.

⁵ The notice of this proceeding was published in the *Fed. Reg.* on Aug. 19, 2015 (Vol. 80, No. 160) p. 50,271.

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

On November 19, the FERC denied NEPGA's and Entergy's requests for rehearing⁶ of the FERC's January 30 order⁷ denying NEPGA's PER Complaint. 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.⁸ 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 prejudge any future proceeding on the PER Adjustment issue by establishing a required evidentiary standard" in the *PER Complaint Order*. In its request, Entergy, adopting and incorporating NEPGA's request, provided additional bases to support its request for rehearing of the *PER Complaint Order*. Entergy challenged further the FERC's reliance on (i) the ISO's assessment of the PER adjustment's reliability impacts and, with respect to Capacity Commitment Periods 5-8, (ii) the stakeholder process considering changes to the PER rules. In the November 19 rehearing order, the FERC denied rehearing as to all issues raised by NEPGA and Entergy.⁹ Unless further challenged in the Federal Courts, this matter will be concluded. 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 Complaint¹⁰ remains pending. As previously reported, the *New Entry Pricing Rule Complaint Order* found that Exelon and Calpine had failed to show that the existing pricing rules governing lock-in capacity result in unjust, unreasonable or unduly discriminatory price suppression. In their rehearing request, Exelon and Calpine assert, among other things, that the *New Entry Pricing Rule Complaint Order* (i) did not provide a reasoned basis for finding that there is no artificial price suppression in post-entry FCAs; (ii) did not address Exelon/Calpine's arguments regarding artificial price suppression in the entry FCA; and (iii) ignored arguments regarding the undue discrimination that results from the current Market Rules. On April 1, 2015, the FERC issued a tolling order affording it additional time to consider Exelon's and Calpine's rehearing request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

NEPGA's November 14, 2014 complaint remains pending before the FERC. As previously reported, the complaint requests that (i) Demand Response ("DR") Capacity Resources be disqualified from FCA9 and

⁶ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 153 FERC ¶ 61,222 (Nov. 19, 2015) ("*PER Complaint Rehearing Order*").

⁷ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 150 FERC ¶ 61,053 (Jan. 30, 2015) ("*PER Complaint Order*"), *reh'g denied*, 153 FERC ¶ 61,222 (Nov. 19, 2015).

⁸ 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.

⁹ *PER Complaint Rehearing Order* at P 20.

¹⁰ 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*.

(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. Eversource 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,¹¹ Enerwise, Environmental Advocates,¹² NGrid, Public Systems, and the Sustainable FERC Project opposed the Complaint; EPSA and PSEG supported the Complaint; Genbright submitted comments. On December 15, CT PURA moved to lodge the December 15 DC Circuit Court order extending the stay of the mandate in *EPSA v. FERC*. On December 19, NEPGA answered the ISO response and the other pleadings submitted in response to its Complaint. On January 7, just as they had on December 23 in the FirstEnergy Complaint (see Section XI below), Environmental Advocates moved to lodge the US Solicitor General’s application for an extension of time in which to file a petition for writ of certiorari, the Supreme Court Clerk’s notice to the DC Circuit that the extension had been granted, and the DC Circuit’s order extending the stay of its mandate pending the Supreme Court’s final disposition of the writ of certiorari. As noted, this matter remains pending before the FERC. If you have any questions concerning these matters, please contact Dave Doot (860-275-0102; dt_doot@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 (EL13-33¹³) and third (EL14-86¹⁴) 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 established a 15-month refund period of December 27, 2012 through March 27, 2014;¹⁵ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,¹⁶ 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

¹¹ “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”).

¹² “Environmental Advocates” are the Sustainable FERC Project, Sierra Club, Environmental Defense Fund, and Acadia Center.

¹³ The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), 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%.

¹⁴ 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.

¹⁵ *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).

¹⁶ *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).

period.”¹⁷ The TOs requested rehearing of both orders. On May 14, the FERC denied rehearing of both orders.¹⁸ On July 13, the TOs appealed those order to the D Circuit Court of Appeals (see Section XIV below).

Hearings. The hearings in this mater began June 25, 2015 and were completed on July 2. Just prior to the commencement of the hearing, pursuant to an unopposed motion of the TOs, Judge Sterner adopted a proposed protective order to permit the exchange and use during hearing of certain confidential materials provided by Thomson Reuters. Joint Transcript Corrections and a Final Index of Exhibits were submitted on July 13, 2015. Judge Sterner adopted the transcript corrections on July 15. On July 23, the TOs filed a motion to lodge portion of testimony filed in the Southwestern Public Service Co. ROE proceeding (EL15-8) to show inconsistent positions of FERC Trial Staff. That motion to lodge was opposed by Complainant-Aligned Parties, EMCOS, and FERC Trial Staff on August 7 and denied by Trial Judge Sterner on August 13. On July 29, 2015, a Joint Procedural History was submitted, as were initial briefs by the Complainant-Aligned Parties, TOs, EMCOS and FERC Staff. On August 26, 2015, Reply Briefs were submitted by the Complainant-Aligned Parties, TOs, EMCOS and FERC Staff, as was a Joint List of Appearances. With all briefing completed, the parties await Judge Sterner’s initial decision, which is to be issued by December 30, 2015. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On November 19, the FERC denied rehearing of both its May 30, 2014 *PI Order*¹⁹ on the FCM PI Jump Ball Filing and its *October 2 Order*²⁰ on the first Compliance filing in response to the *PI Order*.²¹ As previously reported, the FERC instituted this proceeding, pursuant to Section 206 of the FPA, in its May 30 *PI Order* on the FCM Performance Incentives Jump Ball filing. In the *PI Order*, the FERC concluded that the ISO’s FCM payment design was “unjust and unreasonable, because it fails to provide adequate incentives for resource performance, thereby threatening reliable operation of the system and forcing consumers to pay for capacity without receiving commensurate reliability benefits.”²² The FERC directed the ISO to submit “Tariff revisions reflecting a modified version of its [PFP] proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL’s proposal.”²³ The FERC-established refund effective date was June 9, 2014.²⁴ Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL,

¹⁷ *Id.* at P 27 (for the refund period covered by EL13-33 (i.e., Dec. 27, 2012 through Mar. 27, 2014), the ROE for that particular 15-month refund period should be based on the last six months of that period; the refund period in EL14-86 and for the prospective period, on the most recent financial data in the record).

¹⁸ *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).

¹⁹ *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (May 30, 2014) (“*PI Order*”), *clarif. and reh’g requested*.

²⁰ *ISO New England Inc.*, 149 FERC ¶ 61,009 (Oct. 2, 2014) (“*October 2 Order*”), *reh’g requested*.

²¹ *ISO New England Inc. and New England Power Pool*, 153 FERC ¶ 61,223 (Nov. 19, 2015) (denying rehearing of the *PI Order*); *ISO New England Inc.*, 153 FERC ¶ 61,224 (Nov. 19, 2015) (denying rehearing of the *October 2 Order*) (together, the “*November 19 Orders*”).

²² *PI Order* at P 23.

²³ *Id.* at P 1.

²⁴ The June 3 notice of this proceeding was published in the *Fed. Reg.* on June 9, 2014 (Vol. 79, No. 110) pp. 32,937-89.

Connecticut and Rhode Island,²⁵ Dominion, MMWEC, Indicated Generators,²⁶ NEPGA, NextEra, Potomac Economics, and PSEG/NRG.

In its *October 2 Order*, the FERC accepted in part, subject to condition, and rejected in part, the ISO's July 14, 2014 Compliance filing ("Compliance Filing I") that, as previously reported, had been filed in response to directives in the *PI Order*. While accepting nearly all of the provisions proposed in Compliance Filing I, the *October 2 Order* rejected the ISO's Compliance proposal concerning improper price signals caused by binding intra-zonal transmission constraints.²⁷ Tariff sections removing that aspect of the ISO's July 14 Compliance proposal and restoring language originally proposed by the ISO in its January 17 Filing, were filed and accepted effective June 9, 2014, December 3, 2014, and June 1, 2018, as requested.²⁸ Connecticut/Rhode Island²⁹ and Public Systems³⁰ requested rehearing of the *October 2 Order* on November 3, 2014.

In the *November 19 Orders*, the FERC rejected all of the requests for rehearing and/or clarification filed in response to the *PI Order* and *October 2 Order*. Unless further challenged in the Federal Courts, this proceeding has been concluded. If you have any questions related to these proceedings, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices Adopted in Order 809 (EL14-23)**

On November 19, the FERC accepted the ISO's compliance in this proceeding.³¹ As previously reported, the FERC initiated this proceeding on March 20, 2014, 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 *Order 809* (see Section XIII below).³² 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 Order 809 (or, as discussed in Section XIII below, Thursday, July 23, 2015):

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

²⁵ "Connecticut and Rhode Island" are: the CT PURA, CT OCC, CT AG, CT DEEP, the United Illuminating Company ("UI") and the RI PUC.

²⁶ "Indicated Generators" are: Exelon Corp. ("Exelon"), EquiPower Resources Management, LLC ("EquiPower"), Essential Power, LLC ("Essential Power"), and Dynegy Marketing and Trade, LLC and Casco Bay Energy Company, LLC (together, "Dynegy").

²⁷ *October 2 Order* at P 56.

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

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

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

³¹ *ISO New England Inc.*, 153 FERC ¶ 61,211 (Nov. 19, 2015) at P 2.

³² *Cal. Indep. Sys. Op. Corp. et al.*, 146 FERC ¶ 61,202 (Mar. 20, 2014). The New England 206 proceeding was docketed as EL14-23.

proposed scheduling modifications are sufficient for gas-fired generators to secure natural gas pipeline capacity prior to the Timely and Evening Nomination Cycles.³³

ISO Response to Show Cause Order. On July 23, 2015, the ISO filed its response. In that filing, the ISO described why changes to the time at which the results of the Day-Ahead Energy Market and RAA process are posted were not necessary in response to *Order 809*. In its November 19 order, the FERC found that the ISO had “shown cause why its existing scheduling practices need not be changed and [accepted] ISO-NE’s compliance filing.”³⁴ In response to concerns raised by NRG, the FERC “recognize[d] the benefits that could accrue from faster solve times and encourage[d] ISO-NE to continue work with its stakeholders, in an effort to improve market efficiency, to develop means to reduce its solve time further and allow market participants to submit bids reflecting increased fuel price certainty.”³⁵ Unless the November 19 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Joe Fagan (202-218-3901; jfagan@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On November 2, the TOs submitted a refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*³⁶ and *531-B*.³⁷ As previously reported, following the issuance of *Opinion 531-B*, which denied rehearing of *Opinion 531*³⁸ and *Opinion 531-A*, the TOs requested an extension of time to permit the following deadlines in connection with refunds resulting from *Opinion No. 531-B*: August 31, 2015, for regional refunds; October 31, 2015, for the regional refund report; October 31, 2015, for local refunds; and December 31, 2015, for the final local refund report. The TOs state that they intend to submit additional local refund reports by December 31, 2015. Other than the filing of the local refund reports, and absent a successful challenge in the federal courts (see Section XV below), these proceedings are concluded. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- **ICR-Related Values and HQICCs - 2016/17 ARA3, 2017/18 ARA2, 2018/19 ARA1 (ER16-446)**

On December 1, 2015, the ISO and NEPOOL jointly filed materials that identify the Installed Capacity Requirement (“ICR”), Local Sourcing Requirements (“LSR”), Maximum Capacity Limits (“MCL”) (collectively, the “ICR-Related Values”) and Hydro Quebec Interconnection Capability Credits (“HQICCs”) for the System-Wide Demand Curve for the third annual reconfiguration auction (“ARA”) for the 2016/17 Capability Year to be held March 1, 2016, the second ARA for the 2017/18 Capability Year to be held August 1, 2016, and the first ARA for the 2018/19 Capability Year to be held June 1, 2016. The ICR-Related Values and HQICCs were supported by the Participants Committee at its November 6, 2015 meeting. A January 30, 2016 effective date was requested. Comments on this filing are due December 22, 2015. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

³³ *Id.* at P 19.

³⁴ *ISO New England Inc.*, 153 FERC ¶ 61,211 (Nov. 19, 2015) at P 2.

³⁵ *Id.* at P 21.

³⁶ *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

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

³⁸ *Martha Coakley, Mass. Att’y Gen. et al.*, 147 FERC ¶ 61,234 (June 19, 2014) (“*Opinion 531*”), order on paper hearing, 149 FERC ¶ 61,032 (2014), *reh’g denied*, 150 FERC ¶ 61,165 (Mar. 3, 2015).

- **FCA10 Qualification Informational Filing (ER16-308)**

On November 10, 2015, the ISO submitted its informational filing (the “FCA10 Informational Filing”) for qualification in FCA10. The ISO is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by the ISO for the upcoming Forward Capacity Auction (“FCA”) at least 90 days prior to each auction. FCA10 is scheduled to begin February 8, 2016. The Informational Filing contained the ISO’s determinations that two Capacity Zones, Southeastern New England (“SENE”) and Rest of Pool, will be modeled for FCA10. SENE will be modeled as import-constrained Capacity Zones; no export-constrained Capacity Zones will be modeled (and, accordingly, no Maximum Capacity Limits (“MCLs”) were established). The Informational Filing reported that there will be 33,411 MW of existing capacity in FCA9 competing with 6,720 MW of new capacity under a procurement limit of 34,151 MW (ICR minus HQICCs). The ISO reported also that there were a total of 1,382 MW of Static De-list bids, 97 MW of which were later converted into Non-Price Retirement Requests. A summary of the De-list bids accepted and those rejected for reliability purposes was included in a privileged Attachment E.

Comments on the FCA10 Informational Filing were due November 25, 2015. Lotus Energy Group submitted a limited protest, requesting that the ISO be directed to revise the New Resource Offer Floor Price for its projects, by reflecting what it asserts is the correct cost of equity for the projects. No other comments or protests were filed. Interventions were filed by NEPOOL, Dominion, Entergy, Eversource, Exelon, NESCOE, NRG, and UI. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ICR-Related Values and HQICCs - 2019/20 Power Year (ER16-307)**

Also on November 10, 2015, the ISO filed ICRs, Hydro Quebec Interconnection Capability Credits (“HQICCs”) and related Local Sourcing Requirements (“LSR”) values for the 2019/2020 Capability Year. The values will be used in FCA10 to be held in February 2016. With a 2019/20 ICR of 35,151 MW (reflecting tie benefits of 1,990 MW) and HQICCs of 975 MW/mo., the net amount of capacity to be purchased in FCA9 to meet the ICR will be 34,151 MW. The LSR for the SENE Capacity Zone is 10,028. The 1-in-5 Loss of Load Expectation (“LOLE”) and 1-in-87 LOLE capacity requirement values for the Demand Curve are 33,076 MW and 37,053 MW, respectively. The Participants Committee considered, but did not support the ICR, HQICCs and related values at its October 2, 2015 meeting. Comments on this filing were due December 1 and were filed by NEPOOL and NESCOE. Protests were filed by NEPGA, Dominion, and NRG (each addressing the incorporation of the load forecast for behind-the-meter photovoltaic resources and other technologies). Interventions were filed by Emera, Entergy, Eversource, Exelon, GDF Suez, and National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Eversource CCRP Cost Treatment Proposal (ER16-116)**

On October 19, Eversource submitted a proposal, including changes to OATT Attachment F and the Attachment F Implementation Rule, to treat \$15.7 million incurred in connection with the Central Connecticut Reliability Project (“CCRP”) as capital costs of the New England East-West Solution (“NEEWS”) transmission project. As part of its proposal, Eversource proposes to forgo the two ROE incentive adders that the FERC granted to the NEEWS Project (i.e., the 125 basis points for new transmission under *Order 679* and 50 basis points for participation in an RTO), given this component was redesigned and subsumed into a successor transmission project that does not have transmission incentives under *Order 679*. Eversource requested an April 16, 2015 effective date (the date on which ISO-NE approved the Greater Hartford and Central Connecticut Project and Eversource withdrew its original CCRP PPAs from consideration in the RSP. Eversource states that its proposal will have a rate reduction effect. Comments on this filing are due on or before November 9, 2015. Thus far, doc-less interventions have been filed by NESCOE, MA AG, and National Grid. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **2016 NESCOE Budget (ER16-93)**

This proceeding was initiated by the ISO's October 16 filing of the budget for funding NESCOE's 2016 operations. The 2016 Operating Expense Budget for NESCOE is \$2,200,259. The amount to be recovered reflects true-ups for actual costs and collections in prior years that cumulatively amount to approximately \$1.5 million. Accordingly, if accepted, the NESCOE budget will result in a charge of \$0.00296 per kilowatt of Monthly Network Load. The 2016 NESCOE budget was supported by the Participants Committee at its October 2, 2015 meeting. On November 4, NEPOOL filed comments supporting the filing. All other comments and any interventions were due on or before November 6; no others were filed. Eversource filed a doc-less motion to intervene. This matter remains pending before the FERC. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2016 ISO-NE Administrative Costs and Capital Budgets (ER16-92)**

Also on October 16, the ISO filed for recovery of its 2016 administrative costs (the "2016 Revenue Requirement") and submitted its capital budget and supporting materials for calendar year 2016 ("2016 Capital Budget", and together with the 2016 Revenue Requirement, the "2016 ISO Budgets"). The 2016 ISO Budgets were filed together pursuant to the Settlement Agreement entered into to resolve challenges to the 2013 ISO Budgets. In the October 16 filing, the ISO reported that the 2016 Revenue Requirement (allowing the ISO to maintain the status quo and to fund established initiatives), after true-up for 2014, is \$184.5 million. Of that total, the ISO's administrative costs (i.e., the 2015 Core Operating Budget) comprise \$152.2 million; depreciation and amortization of regulatory assets, \$33 million; and 2014 true-up, \$600,000.

The ISO further reported that the 2016 Capital Budget is \$27 million and is comprised of the following (with 2016 projected costs and target completion dates, if available, in parentheses):

▶ Wind Integration Phase II / Do Not Exceed Dispatch (May 2016)	(\$2.47 million)	▶ Asset Characteristics Database & User Interface Redesign (Q3 2016)	(\$700,000)
▶ FCA10 (May 2016)	(\$590,000)	▶ Energy Management Platform Customs Elimination (Q4 2017)	(\$600,000)
▶ Divisional Accounting (2016)	(\$496,800)	▶ Operations Document Management System ("ODMS") (Q4 2016)	(\$600,000)
▶ Zonal Load Forecast (Mar 2016)	(\$225,000)	▶ Transmart Rewrite (Q4 2016)	(\$500,000)
▶ Power System Modelling Management (Aug 2017)	(\$145,000)	▶ Web Enhancements (2016)	(\$500,000)
▶ NX9/NX12D – Generator Voltage Data (Feb 2016)	(\$50,000)	▶ Asset Registration Automation (Q4 2016)	(\$500,000)
▶ FCA11 (Feb 2017)	(\$3 million)	▶ Dynamic Interface Adjustment Tool (Q4 2016)	(\$300,000)
▶ Sub-Hourly Settlements (Q4 2016)	(\$2.5 million)	▶ Oracle 12c Upgrade (Q2 2016)	(\$100,000)
▶ Fast-Start Pricing (Q1 2017)	(\$2.5 million)	▶ Case Snapshot Enhancements for Market Operator Interface PRD (Q4 2016)	(\$100,000)
▶ Submission of FTR for Clearing (Q4 2016)	(\$1.8 million)	▶ Price Responsive Demand (Q3 2018)	(\$100,000)
▶ 2016 Issues Resolution Project (Q4 2016)	(\$1.5 million)	▶ Non-Project Capital Expenditures	(\$3.7 million)
▶ Expand Energy Offers for Pumps (Q4 2016)	\$900,000	▶ Other Emerging Work	(\$1.81 million)

- Quarterly Release Projects 2016 (\$800,000) ▸ Capitalized Interest (\$500,000)
(Quarterly)

The 2016 ISO Budgets were supported by the Participants Committee at its October 2, 2015 meeting. Doc-less interventions were filed by NEPOOL, NESCOE, CT PURA, Eversource, and National Grid. NEPOOL filed comments on November 5 supporting the filing. This matter remains pending before the FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com) Jennifer Galiette (860-275-0338; jgaliette@daypitney.com).

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

Rehearing of the FERC's June 18, 2015 order accepting the results of FCA9, effective June 27, 2015,³⁹ remains pending. As previously reported, the Utility Workers Union of America Local 464 and Robert Clark ("UWUA") requested rehearing of the *FCA9 Results Order* on July 20, 2015. On August 19, 2015, the FERC issued a tolling order affording it additional time to consider the UWUA request for clarification, which, as noted above, remains pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order⁴⁰ that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding⁴¹ 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.⁴² "[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."⁴³ 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).

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

³⁹ *ISO New England Inc.*, 151 FERC ¶ 61,226 (June 18, 2015) ("*FCA9 Results Filing*").

⁴⁰ *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).

⁴¹ *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).

⁴² *ISO New England Inc.*, 151 FERC ¶ 61,196 (June 2, 2015) ("*FCA1 Remand Order*").

⁴³ *Id.* at P 14.

consideration any possible changes in ownership, retirements, or similar new circumstances of the resources in question).

In its initial brief filed on July 17, the ISO identified:

- the Connecticut resources that were unable to prorate quantity in FCA1, and the number of MWs for which each resource received a CSO;
- the resettlements due to each such entity, based on the difference between (1) the prorated price that the resources did receive (4.254/kW-mo.), and (2) the un-prorated capacity clearing price that the resources would have received absent price proration (4.50/kW-mo.), plus interest (total refunds with interest will total approximately \$20.4 million);
- the parties to whom the resettlements would be charged (those with Regional Network Load within Connecticut during that time) and paid (the resource's Lead Market Participant during each month of FCA1); and
- the mechanism by which the ISO would make such resettlements.

The ISO did not identify any considerations that would render the resettlements inappropriate or difficult. For purposes of its brief, the ISO assumed a December 14, 2015 resettlement date. Initial briefs were also submitted by Bridgeport Energy, Dominion, and Bridgeport Energy. A reply brief was submitted on August 17 by Bridgeport Energy (requesting that payments be paid to the legal entity that owned the resource at the time of the FCA 1 Commitment Period or, if that legal entity no longer exists, to the successor in interest to ownership of the subject resource). On September 2, the ISO answered Bridgeport Energy's reply brief, advocating for resettlement payments to the Lead Market Participant during the first Capacity Commitment Period. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

- **NCPC Credit Revisions (ER16-250)**

On November 3, the ISO and NEPOOL jointly filed changes to Market Rule 1 Appendix F to implement two revisions to the Net Commitment Period Compensation ("NCPC") credit rules (the "NCPC Credit Revisions"). Specifically, the NCPC Credit Revisions modify the NCPC rules to eliminate: (i) NCPC payments to cover commitment costs in the Real-Time Energy Market when a non-fast start resource is operating pursuant to a schedule it received in the Day-Ahead Energy Market; and (ii) the potential for a Market Participant with a resource that is self-scheduled in the Day-Ahead Energy Market to receive an NCPC credit when the Day-Ahead Energy Market clears at prices less than the Energy Offer Floor of \$-150/MWh. The NCPC Credit Revisions were supported by the Participants Committee at its October 2, 2015 meeting (Consent Agenda Item # 5). A February 1, 2016 effective date was requested. Comments on this filing were due on or before November 24; none were filed. Interventions were filed by Dominion, Entergy, Eversource, Exelon, and National Grid. 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).

- **CSO Terminations: GMP (ER16-226); Enerwise (ER16-225); Direct Energy (ER16-224); Twin Eagle (ER16-223); and Brookfield White Pine Hydro (ER16-222)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on October 30 to terminate, in whole or in part, as noted below, CSOs for the following Project Sponsors' resources:

- ◆ Brookfield White Pine Hydro: partial withdrawal of Resource No. 328
- ◆ Direct Energy Business Marketing, LLC: Resource Nos. 37928, 37933, 37934, 37938, and 37939
- ◆ Enerwise Global Technologies, Inc.: Resource Nos. 37927, 37093, and 37095
- ◆ Green Mountain Power Corporation ("GMP"): partial withdrawal of Resource No. 35728
- ◆ Twin Eagle Resource Management: partial withdrawal of Resource Nos. 1376, 1377, 1378, 1379, and 1380

The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the applicable amount of financial assurance provided by the Project Sponsors with respect to the CSOs or portions of the CSOs being terminated. Comments on these terminations are due on or before November 20. NEPOOL filed an intervention in each of the proceedings on November 13. These matters are pending before the FERC. If you have any questions concerning these proceedings, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **DR Changes (ER16-167)**

As previously reported, the ISO and NEPOOL jointly filed on October 30 three sets of Tariff changes governing the participation of demand response resources (“DR”) in the New England Markets (“DR Changes”). Specifically, the DR Changes (i) delay the full integration of DR into the New England Markets by one year (the “DR Delay Changes”); (ii) revise the methodology used to derive Demand Response Baselines (the “DR Baseline Changes”); and (iii) modify the simultaneous auditing requirements of Real-Time Demand Response and Real-Time Emergency Generation Resources (the “DR Simultaneous Auditing Changes”). The DR Delay Changes were supported by the Participants Committee at its September 11, 2015 meeting (Consent Agenda Item # 6); the DR Baseline and Simultaneous Auditing Changes, at the October 2, 2015 meeting (Consent Agenda Item #s 3 & 4). A December 31, 2015 effective date was requested for the DR Delay and Baseline Changes; a June 1, 2016 effective date for the DR Simultaneous Auditing Changes. Comments on this filing were due on or before November 20; none were filed. Doc-less interventions were filed by ConEd, Dominion, Emera, Entergy, Eversource, Exelon, National Grid, NESCOE, and NRG/GenOn. 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).

- **Reactive Capability Auditing Revisions (ER15-2628)**

On November 12, the FERC accepted changes jointly filed by the ISO and NEPOOL to (1) add a new section III.1.5.3 to Market Rule 1 addressing reactive capability audits (in part in response to the proposed 2016 retirement of NPCC Directory #10); (2) add additional generation resource unit types to the provisions for real power audits; and (3) change the effective date for real power audits (from seven to one business day following notification of audit results). The revisions were accepted as of December 1, 2015, as requested. Unless the November 12 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).

- **Jump Ball Filing: Winter Reliability Program (ER15-2208)**

As previously reported, the FERC conditionally accepted, on September 11, NEPOOL’s Winter Reliability Program Proposal as “just and reasonable and preferable . . . subject to ISO-NE submitting revised Tariff records in a compliance filing” due on or before October 26, 2015.⁴⁴ In that compliance filing, the ISO was directed to revise the Tariff to include the formula used to calculate the annual rate, rather than simply post that formula on the ISO website,⁴⁵ and to make certain corrections to NEPOOL’s proposed Tariff revisions.⁴⁶ The ISO submitted its compliance filing, as directed, on October 26, 2015. On November 6, the Participants Committee voted unanimously to support the ISO’s compliance filing (Consent Agenda Item #5). Comments supporting the compliance filing were filed on the November 16 comment date by NEPOOL and NEPGA. The compliance filing is now pending before the FERC.

As previously reported, the ISO and NEPOOL submitted, on July 17, two alternative versions of Market Rule changes intended to establish a winter reliability program for winters 2015/16, 2016/17 and 2017/18 -- the “NEPOOL Proposal” and the “ISO-NE Proposal”. Both Proposals were intended to address reliability challenges created by the region’s increased reliance on natural gas-fueled generation and to be stop-gap measures until revised incentives for capacity resources (PFP) become fully effective in 2018. The NEPOOL Proposal was

⁴⁴ *ISO New England Inc. and New England Power Pool Participants Comm.*, 152 FERC ¶ 61,190 (Sep. 11, 2015) at P 44.

⁴⁵ *Id.* at P 51.

⁴⁶ *Id.* at P 52.

based on the design of the 2014/15 program, with three main components: (1) compensation for certain oil inventory that remains in New England following the end of each winter period; (2) compensation for unused liquefied natural gas (“LNG”) contract volumes; and (3) a supplemental demand response (“DR”) program. The ISO Proposal also included the first two components of the NEPOOL Proposal, but eliminated the DR component, and provided compensation not only for fuel oil and LNG, but also for nuclear, hydro, biomass and coal-fired resources. In accepting the NEPOOL Proposal, the FERC noted that the NEPOOL Proposal was “widely supported in the region by a substantial majority of stakeholders representing all six NEPOOL stakeholder sectors.”⁴⁷ The FERC disagreed with those that argued that NEPOOL’s proposal was unduly discriminatory or represented a collateral attack on the FERC’s prior orders, and disagreed with arguments that DR was incompatible with the Winter Program’s objectives. The FERC also found that the 10-day inventory compensation cap is sufficient to incent participation in the program even if the additional resource types are not included. On October 13, Entergy challenged the September 11 order, asserting that the FERC should reverse itself and adopt the ISO-NE Proposal. On November 9, the FERC issued a tolling order affording it additional time to consider the Entergy request for rehearing, which remains pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Joe Fagan (202-218-3901; jfagan@daypitney.com), or 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*,⁴⁸ 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).⁴⁹ 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 2.⁵⁰ 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).

NEPGA 206 Request. In response to the ISO’s May 18, 2015 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. The ISO answered and opposed NEPGA’s request on July 2. Comments supporting the NEPGA request were filed by EPSA on July 7. NEPOOL submitted comments on July 8 (taking no position on whether an order to implement sloped zonal demand curves generally is appropriate or justified, or whether implementation can be achieved in time for FCA10, but if such an order were to be issued, urging that any Market Rule changes be fully discussed, and voted by NEPOOL pursuant to a schedule that allows the NEPOOL stakeholder process to proceed to completion and account for the many interrelated issues associated with such Market Rule changes. NEPOOL urged the FERC to reject the NEPGA request that the FERC order a specific solution that NEPOOL voted and did not support). NEPGA’s motion remains pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁴⁷ *Id.* at P 46.

⁴⁸ *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).

⁴⁹ *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*”).

⁵⁰ The changes become effective with FCA10, 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.

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

As noted in Section I above, the FERC, on November 19, denied rehearing, and dismissed as moot the requests for rehearing, of the *FCM PI Order*.⁵¹ Requests for clarification and/or rehearing of the *PI Order* had been filed by NEPOOL, Connecticut and Rhode Island, Dominion, MMWEC, Indicated Generators, NEPGA, NextEra, Potomac Economics, and PSEG/NERG. Unless further challenged in the Federal Courts, this proceeding has been concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtodot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Capability Resource Ratings Rehearing Request (ER11-2216)**

On November 12, the FERC denied a long pending MMWEC request for rehearing of the January 28, 2011 *Capability Clarifications Order*.⁵² As reported previously, MMWEC requested rehearing of the *Capability Clarifications Order* on February 24, 2011, asserting that the FERC erred in rejecting its request for hearing and settlement procedures to establish the appropriate CNR rating for its Stony Brook facility. but requested the FERC defer action on the merits of the rehearing request until completion of the process under which the CNR rating for Stony Brook was being reviewed. MMWEC stated that if it was able to secure adequate relief, it would so inform the FERC and withdraw the rehearing request; if not, it would ask the FERC to address the merits of its rehearing request. The FERC issued on March 24, 2011 a tolling order affording it additional time to consider the MMWEC rehearing request. Since that time, MMWEC neither withdrew its request for rehearing nor requested a ruling on the merits. Given the passage of time, and with the request remaining pending without apparent resolution, the FERC addressed the issues raised in the 2011 request, denying MMWEC's request.⁵³ If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Retirement of RTO Mapping Document (Tariff Attachment C) (ER15-2717)**

On November 17, the FERC accepted the changes that retire the RTO Mapping Document (Attachment C) from the Tariff. The RTO Mapping Document was created during the 2005 transition to the RTO arrangements as a guide for identifying where pre-RTO documents/provisions could be found under the RTO arrangements. The Mapping Document will remain available as a research aid on the ISO website (<http://www.iso-ne.com/participate/governing-agreements/historicaldocuments>). Unless the November 17 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).

- **CTS Conforming Changes (ER15-2641)**

On November 9, the FERC conditionally accepted the conforming changes to the ISO Tariff and the ISO-NE/NYISO Coordination Agreement, jointly filed by the ISO, NEPOOL, and PTO AC, to support the implementation of Coordinated Transaction Scheduling between New England and New York over the New York Northern AC interface ("CTS"), a project to be completed in December 2015.⁵⁴ As previously reported, the CTS Conforming Changes were supported by the Participants Committee at its August 7, 2015 meeting. The

⁵¹ *ISO New England Inc. and New England Power Pool*, 153 FERC ¶ 61,223 (Nov. 19, 2015).

⁵² *ISO New England Inc. and the Participating Trans. Owners Admin. Comm.*, 134 FERC ¶ 61,057 (Jan. 28, 2011) ("*Capability Clarifications Order*"), *reh'g denied*, 153 FERC ¶ 61,163 (Nov. 12, 2015). The revisions to the Tariff accepted by the FERC were described as clarifying the controlling order/hierarchy of documents relied upon by the ISO to establish the energy and capacity output levels for certain Existing Generating Capacity Resources ("*Capability Clarifications*").

⁵³ *ISO New England Inc. and the Participating Trans. Owners Admin. Comm.*, 153 FERC ¶ 61,163 (Nov. 12, 2015).

⁵⁴ *ISO New England Inc., New England Power Pool Participants Comm., and the Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,159 (Nov. 9, 2015).

conforming changes were accepted with an effective date on or after December 1, 2015, subject to two weeks prior notice to be filed identifying the actual effective date. In accepting the changes, the FERC identified 3 corrections to be made to the Tariff provisions, which it directed be filed with the effective date notice. Challenges, if any, to the November 9 order must be filed on or before December 9.

Notice of December 15, 2015 Effective Date and Tariff Corrections. On December 1, the ISO filed notice that CTS will become effective **December 15, 2015**. It also filed the minor corrections directed by the November 9 order. Comments, if any, on the notice and corrections are due on or before December 22. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 1000 Interregional Compliance Filings (ER13-1960; ER13-1957)**

As previously reported, the FERC conditionally accepted, subject to Compliance filings made July 13, 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”).⁵⁵ The First *Order 1000 Interregional Compliance Changes* included (i) revisions to Attachment K to add provisions describing the interregional coordination provisions included in the Amended Protocol, as well as adding other provisions facilitating the consideration of interregional solutions to regional needs; (ii) a new Schedule 15 reflecting the methodology for allocation among ISO-NE and NYISO of the costs of approved interregional transmission projects; (iii) revisions to Schedule 12 describing the regional cost allocation within New England of the costs of approved interregional transmission projects; and (iv) conforming changes to Tariff Section I.

Second Order 1000 Interregional Compliance Changes. On November 19, the FERC accepted the revisions to the ISO-NE Tariff and to the Protocol filed July 13 by the ISO in response to the *Order 1000 Interregional Compliance Filing Order* (“Second Order 1000 Interregional Compliance Changes”). Unless the November 19 order is challenged, the *Order 1000 Interregional Compliance* proceedings will be concluded. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 1000 Regional Compliance Filings (ER13-193; ER13-196)**

Since the last Report, the FERC issued an October 2, 2015 order granting the ISO’s pending request for rehearing and clarification of the March 19 *Order 1000 Compliance Rehearing Order* and conditionally accepting the 3rd Regional Order 1000 Compliance filing, subject to a further compliance filing (which was submitted on November 2).⁵⁶

ISO Request for Clarification and/or Rehearing. As previously reported, the ISO requested clarification and/or re-hearing of the FERC’s March 19, 2015 *Order 1000 Compliance Rehearing Order*.⁵⁷ 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. In the *October 2 Order*, the FERC granted clarification with respect to (i) and granted rehearing with respect to (ii). In light of its granting of clarification with respect to (i), the FERC found moot and directed

⁵⁵ *ISO New England Inc.*, 151 FERC ¶ 61,133 (May 14, 2015) (“*Order 1000 Interregional Compliance Filing Order*”).

⁵⁶ *ISO New England Inc.*, 153 FERC ¶ 61,012 (Oct. 2, 2015) (“*October 2 Order*”).

⁵⁷ *ISO New England Inc.*, 150 FERC ¶ 61,209 (Mar. 19, 2015) (“*Order 1000 Compliance Rehearing Order*”), *clarif. and reh’g granted*, 153 FERC ¶ 61,012 (Oct. 2, 2015). A memo summarizing the 200-page Mar. 19 order in more detail was circulated by NEPOOL Counsel on Mar. 23 and posted on the NEPOOL website Litigation Report Updates page.

the ISO to remove the proposals in the 3rd Regional Order 1000 Compliance Filing to modify the definition of a Non-Incumbent Transmission Developer and establish when a PTO be deemed a Qualified Transmission Project Sponsor.⁵⁸ With respect to (ii), the FERC found “upon further review that Filing Parties’ proposal sufficiently identifies the extent to which they will assume the cost consequences that a regional transmission project has on a neighboring region’s transmission system.”⁵⁹

3rd Regional Order 1000 Compliance Filing. The FERC found that the May 18 3rd Regional Order 1000 Compliance Filing partially complied with the March 19 order.⁶⁰ In particular, the FERC found consistent with its directives the removal of language allowing the ISO to require a PTO to continue development of the Backstop Transmission Solution beyond the point of a Qualified Sponsor’s acceptance of responsibility for a selected transmission project. However, the FERC also found that certain revisions retained from the Second Compliance Filing were not directed by the FERC, and directed the ISO to remove these revisions.⁶¹ The FERC found it “unnecessary to require Filing Parties to make LS Power’s proposed revisions to the definition of Backstop Transmission Solution to make it clear that such a solution is only a Phase One or Phase Two submittal until such time as the more efficient or cost-effective transmission project is replaced by the Backstop Transmission Solution.”⁶²

4th Regional Order 1000 Compliance Filing. On November 2, the ISO and PTOs submitted a 4th compliance filing in response to the directives and requirements in the *October 2 Order*.⁶³ The 4th Regional Compliance Filing was supported by the Participants Committee at its November 6 meeting. Comments supporting the 4th Compliance Filing were submitted by NEPOOL on November 23, 2015; no other comments were filed. The 4th Regional Compliance Filing is pending before the FERC.

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

V. Financial Assurance/Billing Policy Amendments

- **Estimation of Hourly Charges (ER16-286)**

On November 6, the ISO and NEPOOL jointly filed changes to modify how the collateral requirements related to a Market Participant’s Hourly Charges are estimated. These changes were supported by the Participants Committee at its meeting earlier that day. An effective date of January 8, 2016 was requested. Comments on this filing were due on or before November 27; none were filed. Doc-less interventions were filed by Eversource and National Grid. 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).

VI. Schedule 20/21/22/23 Changes

- **Schedules 20A-ES & 21-ES: Eversource Updates (ER16-348)**

On November 18, Eversource filed changes to change the title of Schedules 20A-NU and 21-NU to Schedule 20A-ES and 21-ES, respectively, and to replace all references to NU and Northeast Utilities therein to ES and Eversource. A January 18, 2016 effective date was requested. Comments on this filing are due on or

⁵⁸ *October 2 Order* at P 28.

⁵⁹ *Id.* at P 50.

⁶⁰ *Id.* at P 12.

⁶¹ *Id.* at P 43.

⁶² *Id.* at P 45.

⁶³ *Id.* at P 12.

before December 9. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-EM: Corrections (ER16-273)**

On November 6, Emera Maine filed corrections to Schedule 21-EM. Emera reported that the correction, in Attachment P-EM, revises the definition of “Other Transmission-Related Regulatory Assets/Liabilities” to include liabilities associated with post-retirement benefits as recorded in Account No. 228.3, ultimately resulting in a lower transmission revenue requirement. A June 1, 2015 effective date was requested. Comments on the corrections were due November 21; 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 22: Granite Ridge LGIA (ER15-2747)**

On November 13, the FERC accepted a non-conforming, 4-party LGIA between the ISO, Granite Ridge as Interconnection Customer, and both National Grid and Eversource (on behalf of PSNH) as Interconnecting Transmission Owners. The LGIA is non-conforming in that it contains certain deviations from Schedule 22’s *pro forma* LGIA necessary to accommodate two Interconnecting TOs. The LGIA governs the interconnection of Granite Ridge’s Londonderry, NH facility, unique in that, while the facility operates in a single combined cycle configuration such that the individual units comprising the facility cannot be separated, the facility’s combustion and steam turbines were interconnected at two different points on the System. The need for a new LGIA was initiated by a proposed increase in the output of the facility. The LGIA was accepted effective as of August 31, 2015, as requested. Unless the November 13 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).

VII. NEPOOL Agreement/Participants Agreement Amendments
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- **128th Agreement: GIS-Only Participant Status (ER16-214)**

On October 30, NEPOOL filed amendments to the NEPOOL Agreement to incorporate a “GIS-Only Participant” status into the governance arrangements. A “GIS-Only Participant” is a Participant that meets four criteria: (1) owns or controls one or more GIS certificates; (2) does not participate directly in the New England Markets; (3) is not eligible to join or designate a voting member of a Sector (other than the End User Sector); and (4) elects to be treated as a GIS-Only Participant. A GIS-Only Participant will be treated like any other Participant for all purposes, other than with respect to a limitation on such a Participant’s ability to make motions and vote (which will be limited to GIS matters only). These changes were approved by the Participants Committee by way of the 128th Agreement Amending the NEPOOL Agreement. Comments on this filing were due on or before November 20, 2015; none were filed. A doc-less intervention was filed by National Grid. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **129th Agreement: Review Board Removal (ER16-159)**

On October 29, NEPOOL and the ISO jointly filed amendments to the NEPOOL Agreement and Participants Agreement to remove from those documents the requirement that NEPOOL continue to maintain the NEPOOL Review Board. These changes were approved by the Participants Committee by way of the 129th Agreement Amending the NEPOOL Agreement and Amendment No. 9 to the Participants Agreement. Comments on this filing were due on or before November 19, 2015; none were filed. Doc-less interventions were filed by Eversource and National Grid. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VIII. Regional Reports

- **Capital Projects Report - 2015 Q3 (ER16-94)**

On November 24, the FERC accepted the ISO's Capital Projects Report and Unamortized Cost Schedule covering the third quarter ("Q3") of calendar year 2015 (the "Report"). As previously reported, Q3 Report highlights included the following new projects: (i) Power System Modeling Management Initiatives (\$420,000); (ii) NX9/NX12D – Generator Voltage Data (\$355,000); and (iii) Visitor Management (\$260,000). The Report noted that \$300,000 assigned for the PRD project in 2015 will not be allocated given the uncertainty around *Order 745* and \$100,000 has been allocated in the 2016 Budget for PRD work. Comments supporting the Q3 Report were filed by NEPOOL. A doc-less motion to intervene was filed by Eversource. Unless the November 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

On October 30, the ISO reported that, since its last progress report on May 18, it has been evaluating approaches to developing zonal demand curves for the capacity market, and as a result, has a conceptual proposal to use the ISO's full-scale reliability planning simulation system ("GE MARS") to develop zonal demand curves for each FCA on an annual basis. Under this approach, the annual simulation process would be conducted according to a consistent set of design principles reflecting reliability, sustainability and cost-effectiveness. The ISO presented this approach at the October 8, 2015 Markets Committee meeting. The ISO stated that its current tentative schedule calls for Participants Committee consideration of its zonal demand curve proposal at the NPC's April 2016 meeting, with a FERC filing shortly thereafter. This informational report has not been noticed for public comment.

- **Opinion 531-A Refund Report: FG&E (EL11-66)**

On June 29, 2015, FG&E filed its refund report for its customers taking local service during the refund period in accordance with *Opinion 531-A*. Comments, if any, on this filing were due on or before July 20; none were filed and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **ISO-NE FERC Form 3Q (2015/Q3) (not docketed)**

On November 17, the ISO submitted its 2015/Q3 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

IX. Membership Filings

- **December 2015 Membership Filing (ER16-428)**

On November 30, NEPOOL requested that the FERC accept (i) the membership of Niagara Wind Power (Related Person of First Wind/SunEdison, AR Sector); Residents Energy (Related Person of IDT Energy, Supplier Sector); and Utility Expense Reduction (Supplier Sector); and (ii) termination of the Participant status of Barclays Bank (Supplier Sector) and Twin Cities Power (Related Person of Town Square Energy, Supplier Sector). Comments on this filing are due on or before December 20, 2015.

- **November 2015 Membership Filing (ER16-192)**

On October 30, NEPOOL requested that the FERC accept (i) the membership of Commonwealth Resource Management Corporation (AR Small RG Group Member); Everyday Energy, LLC (Related Person of Viridian Energy, Supplier Sector); Shipley Choice, LLC d/b/a Shipley Energy (Supplier Sector); SRECTrade, Inc. (GIS-Only Participant); and Lotus Danbury LMS100 One and Lotus Danbury LMS100 Two (Provisional Group Member); (ii) INVOLUNTARY termination of the Participant status of Demansys (AR Small LR Group

Member); and (iii) voluntary termination of the Participant status of MoArk and Turner Energy (End User Sector). This matter is pending before the FERC.

- **October 2015 Membership Filing (ER16-1)**

On November 13, the FERC accepted (i) the membership of Antrim Wind Energy (Provisional Group Member), Astral Energy (Supplier Sector), Beacon Falls Energy Park (Related Person to Kleen Energy – Generation Sector), Champlain VT (Provisional Group Member), Concord Steam Corporation, (Provisional Group Member), Deepwater Wind Block Island (AR Sector, Large AR Group Seat), Invenergy Energy Management (Provisional Group Member), and MA Operating Holdings (Related Person to SunEdison– AR Sector, RG Sub-Sector); (ii) termination of the Participant status of HOP Energy (Supplier Sector), energy.me (Supplier Sector), Parkview AMC Energy (MPEU), Denver Energy (Related Person to Peninsula Power - Supplier Sector), and Johnston Clean Power (Provisional Group Member); and (iii) the name change of NRG Curtailment Solutions, Inc. (f/k/a Energy Curtailment Specialists).

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

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

- **FFT Report: November 2015 (NP16-3)**

NERC submitted on November 30, 2015 its Find, Fix, Track and Report (“FFT”) informational filing for the month of November 2015. As it did for the October FFT, NERC provided no public information regarding the number of possible violations resolved or the number of Reliability Standards implicated.⁶⁴ Given the lack of information provided in the public version of FFT filings, the FFT Reports will no longer be included in the Litigation Report.

- **Revised Reliability Standards: IRO-006-EAST-2; IRO-009-2 (RD15-7)**

On September 16, 2015, NERC filed for approval changes to IRO-006-EAST-2 (Transmission Loading Relief Procedure for the Eastern Interconnection) and IRO-009-2 (Reliability Coordinator Actions to Operate within IROs). NERC states that IRO-006-EAST-2 removes redundant requirements based on Paragraph 819 criteria, revises existing language to clearly delineate applicable entities and the specific actions required, and relocates information in bullet points and subparts to the Requirements. IRO-009-2 combines two existing requirements, revises existing language to clearly delineate applicable entities and the specific actions required, and removes unnecessary language. NERC adds that both Standards implement language revisions and format improvements for consistency with recent Board-approved Reliability Standards. Comments on this filing were due on or before October 19, 2015; none were filed. This matter is pending before the FERC.

- **Revised Reliability Standards: PRC-004-5; PRC-010-2 (RD15-5)**

On November 19, the FERC approved changes to PRC-004-5 (Protection System Misoperation Identification and Correction) and PRC-010-2 (Under Voltage Load Shedding). The Reliability Standards address misoperation of undervoltage load shedding (“UVLS”) equipment and were developed as Phase 2 of NERC’s pending proposal to consolidate UVLS Program Reliability Standards. PRC-004-5 and PRC-010-2 became effective on November 19, 2015.

- **Order 817: Revised TOP and IRO Reliability Standards (RM15-16)**

On November 19, the FERC approved changes reflected in the following Transmission Operations (“TOP”) and Interconnection Reliability Operations and Coordination (“IRO”) Reliability Standards:⁶⁵

⁶⁴ 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.

⁶⁵ *Transmission Operations Reliability Standards and Interconnection Reliability Operations and Coordination Reliability Standards*, Order No. 817, 153 FERC ¶ 61,178 (Nov. 19, 2015) (“*Order 817*”).

- ▶ 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).

In approving *Order 817*, the FERC required NERC to make three modifications to the Standards within 18 months of the effective date of the final rule. *Order 817* will become effective on January 26, 2016.⁶⁶

- **NOPR: 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 July 16, 2015, the FERC issued a NOPR proposing to approve changes to seven CIP (“Critical Infrastructure Protection”) Reliability Standards to improve the cyber security protections required by the CIP Standards and address four directives from *Order 791* (the “Supply Chain Cyber Controls Changes”).⁶⁷ NERC stated that the Supply Chain Cyber Controls Changes (i) remove the “identify, assess, and correct” language from the 17 requirements in the CIP Version 5 Standards that included such language; (ii) require responsible entities to implement cyber security plans for assets containing low impact BES Cyber Systems; (iii) include specific requirements applicable to transient devices to further mitigate the security risks associated with such devices; and (iv) require entities to implement security controls for non-programmable components of communication networks at Control Centers with high or medium impact BES Cyber Systems. NERC requested that the Supply Chain Cyber Controls be approved, effective on **April 1, 2016**. Comments on the *Revised CIPs NOPR* were due on or before September 21, 2015,⁶⁸ and were filed by over 40 parties, including NERC, ISO-NE, NextEra, and APPA/EEI/EP SA/ELCON/NRECA et al. On October 28, the FERC issued a notice of technical conference to be held on January 28, 2016. The technical conference will facilitate dialogue on supply chain risk management issues identified by the FERC in the NOPR. Technical Conference panelists may be asked to address: (1) the NOPR proposal to direct that NERC develop a Reliability Standard to address supply chain risk management; (2) the anticipated features of, and requirements that should be included in, such a standard; and (3) a reasonable timeframe for development of a standard. Those wishing to participate in the panel discussions should submit nominations by November 20.

- ***Order 818*: Revised Reliability Standards: Transition to “Remedial Action Scheme”, PRC-010-1, EOP-011-1 (RM15-13, RM15-12; RM15-7)**

On November 19, the FERC issued *Order 818*⁶⁹ approving 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-

⁶⁶ *Order 817* was published in the *Fed. Reg.* on Nov. 27, 2015 (Vol. 80, No. 228) pp. 73,977-73,991.

⁶⁷ *Revised Critical Infrastructure Protection Reliability Standards*, 152 FERC ¶ 61,054 (July 16, 2015) (“*Revised CIPs NOPR*”).

⁶⁸ The *Revised CIPs NOPR* was published in the *Fed. Reg.* on July 22, 2015 (Vol. 80, No. 140) pp. 43,354-43,367.

⁶⁹ *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*, Order No. 818, 153 FERC ¶ 61,228 (Nov. 19, 2015) (“*Order 818*”).

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). *Order 818* will become effective on January 26, 2016.⁷⁰

- **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”).⁷¹ 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.⁷² NERC requested the FERC approve a five-year phased implementation plan for Compliance with TPL-007-1. Comments on this NOPR were due on or before July 27, 2015⁷³ and were filed by over 20 parties, including ISO-NE/NYIOS/PJM/MISO/IESO, EEI, Exelon, and NERC. On August 17, NERC filed a notice that the appeal panel appointed under NERC’s process for Standards appeals had concluded NERC appeal proceedings by using a final decision finding that the objections of appellant Foundation for Resilient Societies, Inc. were afforded fair and equitable treatment during the TPL-007-1 development process. Comments on that panel’s decision were due and filed by September 10. On October 2, the FERC issued a notice that comments on Foundation for Resilient Societies’ filing of a September 2015 technical paper prepared by the Los Alamos National Laboratory entitled “Review of the GMD Benchmark Event in TPL-007-1” as well as on NERC’s September 10 comments should be filed on or before October 22. Comments were filed by 8 parties. In addition, On November 2, D. Bardin requested official notice of National Space Weather Strategy and NSW Action Plan. On November 4, EEI, APPA, ECRC, and NRECA filed additional comments. Since the last Report, additional and reply comments were submitted by D. Bardin, U.S. Geological Survey, Southern Company, IEEE PES Transformers Committee, and Storm Analysis Consultants & Advanced Fusion Systems. This matter remains pending before the FERC.

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

On September 17, 2015, the FERC issued a NOPR proposing to approve PRC-026-1 (Relay Performance During Stable Power Swings) and associated VRFs and VSLs (the “PRC-026 Standard”). As previously reported, the PRC-026 Standard was filed in response to the FERC’s directive to NERC in *Order 733*⁷⁴ 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. Comments on this NOPR were due on or before November 23, 2015⁷⁵ and were submitted by NERC, Luminant, EEI, Idaho Power, ITC, North American Generator Forum, and the Tri-State Generation and Transmission Association. This matter is pending before the FERC.

⁷⁰ *Order 818* was published in the *Fed. Reg.* on Nov. 27, 2015 (Vol. 80, No. 228) pp. 73,647-73,658.

⁷¹ *Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

⁷² *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (“*Order 779*”).

⁷³ The *TPL-007 NOPR* was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

⁷⁴ *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*”).

⁷⁵ The *PRC-026 NOPR* was published in the *Fed. Reg.* on Sep. 24, 2015 (Vol. 80, No. 185) pp. 57,549-57,553.

- **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 Standards⁷⁶ 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, 2014,⁷⁷ and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, 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. Since the last Report, NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. 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.⁷⁸ NERC asserted that the proposed interpretation clarifies that BAL-002-1 is intended to be read as an integrated whole and relies in part on information in the Compliance section of the Reliability Standard. Specifically, the proposed interpretation would clarify that: (1) a Disturbance that exceeds the most severe single Contingency, regardless if it is a simultaneous Contingency or non-simultaneous multiple Contingency, would be a reportable event, but would be excluded from Compliance evaluation; (2) a pre-acknowledged Reserve Sharing Group would be treated in the same manner as an individual Balancing Authority; however, in a dynamically allocated Reserve Sharing Group, exclusions are only provided on a Balancing Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,⁷⁹ 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.

⁷⁶ 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.

⁷⁷ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁷⁸ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) (“*BAL-002-1a Interpretation Remand NOPR*”).

⁷⁹ 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.

- **Compliance Filing: BES Exclusions for Local Network Configurations (RM12-6)**

On July 1, 2015, NERC submitted, pursuant to *Order 773*, a Compliance filing identifying in detail the types of local network configurations that may be excluded from the bulk electric system (“BES”) following the implementation of the revised definition of the BES under Exclusion E3 of that definition. As of the date of this Report, the FERC has not noticed the Compliance filing or otherwise invited public comment.

- **Revised Regional Delegation Agreements (RR15-12)**

On November 2, the FERC conditionally accepted a revised *pro forma* and individual Regional Delegation Agreements with each of the eight Regional Entities, including NPCC (the “RDAs”), filed by NERC to be effective January 1, 2016.⁸⁰ In accepting the RDAs, the FERC required that NERC submit changes on or before March 1, 2016 (i) to revise section 8(f) of the RDA as directed to ensure that the RDA accounts for the required NERC audits of Regional Entities in accordance with the NERC Rules of Procedure and provides NERC the flexibility to perform reviews it deems necessary on a reasonable periodicity; (ii) to revise section 8(g) as directed in order to grant the FERC full access to the non-public material resulting from these activities; (iii) to modify the RDAs so that they are subject to FERC re-evaluation and re-approval following the initial term, scheduled to end on December 31, 2020; (iv) to remove the proposed automatic renewal provisions and re-insert audit provisions in section 12(b) that had been proposed to be removed; (v) to revise section 3(b) of the RDAs to include a provision requiring NERC to maintain on its public website the currently effective versions of all of the Regional Entities’ bylaws and regional standard development procedures; (vi) to clarify the meaning of other “guidance that NERC may from time to time develop,” and that its guidance on reporting to the FERC instances of noncompliance of Reliability Standards and their disposition must be filed with the FERC for approval before it becomes effective; and (vii) to include language in RDA section 15 stating that Section 1500 of the NERC Rules of Procedure controls when a conflict between it and the RDAs may arise.

- **E. Morris v. NERC/SERC (EL15-93)**

On December 2, 2015, the FERC dismissed the complaint and petition for rulemaking filed by Eric S. Morris (“Morris”) against NERC and SERC Reliability Corporation (“SERC”) (collectively, “Respondents”).⁸¹ As previously reported, Morris alleged that Respondents violated NERC’s Rules of Procedure Appendix 4B Sanction Guidelines in assessing a penalty on Entergy (*see* NP15-31, filed July 30, 2015) and failed to follow the Sanction Guidelines by failing to clearly identify that an alternative frequency or duration was used in determining the penalty and providing no supporting rationale. Morris asked that the Notice of Penalty be withdrawn or denied, and resubmitted with either the clear identification of the alternative frequency and duration with rationale or with a settlement base amount “re-adjusted into the multi-million dollar range.” In dismissing the complaint and rulemaking petition, the FERC found (i) that Respondents were not subject to a complaint pursuant to section 306 of the Federal Power Act (“FPA”); and (ii) that Morris had “not shown that there is a sufficient problem to merit a generic solution through a rulemaking.”⁸² Unless the December 2 order is challenged in Federal Court, this matter will be concluded.

XI. Misc. - of Regional Interest

- **203 Application: Calpine/Granite Ridge (EC16-19)**

On October 27, 2015, Calpine Granite Holdings, LLC (“Calpine”) and Granite Ridge Energy, LLC (“Granite Ridge”) requested FERC authorization for the acquisition by Calpine of 100% of the membership interests of Granite Ridge. Comments on this filing are due on or before November 17, 2015; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁸⁰ *N. Amer. Elec. Rel. Corp.*, 153 FERC ¶ 61,135 (Nov. 2, 2015).

⁸¹ *Eric S. Morris v. N. Amer. Elec. Rel. Corp and SERC Rel. Corp.*, 153 FERC ¶ 61,266 (Dec. 2, 2015).

⁸² *Id.* at P 2.

- **203 Application: Passadumkeag Wind Park (SunEdison/ Quantum) (EC15-217)**

On November 17, 2015, the FERC authorized a transaction whereby the membership interests in the owner of Passadumkeag Wind Park will be acquired by SunEdison. Quantum and SunEdison 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).⁸³ 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).

- **PURPA Complaint: Allco Renewable Energy v. CT Agencies (EL16-11 et al.)**

On November 9, 2015, Allco Renewable Energy Limited (“Allco”) petitioned the FERC to pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) against the Connecticut Department of Energy and Environmental Protection (“DEEP”) and the Connecticut Public Utilities Regulatory Authority (“PURA”) (collectively, the “CT Agencies”).⁸⁴ Allco seeks a FERC order that would remedy the CT Agencies’ “improper implementation of PURPA” (with respect to a July 2013 solicitation and a procurement under newly enacted Section 1(c) of Connecticut Public Act 15-107). On November 30, CT Agencies filed their protest to the Complaint. Doc-less interventions were filed by Eversource, Exelon, National Grid and UI. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

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

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

⁸³ *Iberdrola, S.A. et al.*, 151 FERC ¶ 62,148 (June 2, 2015).

⁸⁴ Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC’s PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

Complaint. Environmental Advocates⁸⁵ 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).

- **LGIA – PSNH/Schiller Generating Station (ER16-391)**

On November 25, Eversource (PSNH) filed a two-party LGIA with Schiller Generating Station (a previously existing interconnection) to demonstrate compliance with REC Purchase Agreements and to formalize the existing LGIA. PSNH is the owner and operator of Schiller Station, located in Portsmouth, New Hampshire, a 180 MW, four-unit power plant, consisting of two coal-fired steam units, one wood-fired steam unit and one combustion turbine. A January 1, 2016 effective date was requested. Comments, if any, on the LGIA are due on or before December 16, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **PSNH/NHEC Design & Engineering Agreement Cancellation (ER16-357)**

On November 19, Eversource (PSNH) filed a notice of cancellation of a Design and Engineering Agreement with New Hampshire Electric Cooperative ("NHEC"). The Agreement documented understandings related to the co-location of certain distribution level (12.47 kV) facilities onto distribution structures to be owned, operated and maintained by PSNH in Deerfield, New Hampshire. Eversource indicated that the Agreement expired in accordance with its terms on June 1, 2015. Accordingly, an June 1, 2015 effective date was requested. Comments, if any, on the cancellation are due on or before December 10, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CPV Towantic EDPS Agreement Cancellation (ER16-356)**

Also on November 19, Eversource filed a notice of cancellation of an Engineering, Design, Permitting, and Siting Services Agreement ("EDPS Agreement") between Eversource (CL&P) and CPV Towantic. Eversource indicated that the Agreement expired in accordance with its terms on April 13, 2015. Accordingly, an April 13, 2015 effective date was requested. Comments, if any, on the cancellation are due on or before December 10, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Wyman 4 Transmission Agreement (ER16-272)**

On November 5, CMP filed a third supplement to the Wyman Transmission Agreement. The Wyman Transmission Agreement sets forth the terms and conditions associated with the charges for transmission services by assigning cost responsibility to the joint owners of William F. Wyman Unit No. 4. for certain relocated 115kV facilities and for one 345kV circuit, including terminal facilities and associated interconnection equipment. The changes filed by CMP (i) revise definition of Transmission Facilities (the revisions resulting from certain modifications to the transmission system due in part to CMP's recent construction of the Maine Power Reliability Program Project.); (ii) update identities of owners; and (iii) clarify references to the ISO Tariff. A January 5, 2016 effective date was requested. Comments on this filing were due November 26; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁸⁵ "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).

- **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”⁸⁶ 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 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”,⁸⁷ 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.

⁸⁶ 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”).

⁸⁷ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

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: Order of Non-Public, Formal Investigation (IN15-10)**

MISO Zone 4 Planning Resource Auction Offsets. On October 1, 2015, the FERC issued an order authorizing Enforcement to conduct a non-public, formal investigation, with subpoena authority, regarding violations of FERC's regulations, including its prohibition against electric energy market manipulation, that may have occurred in connection with, or related to, MISO's April 2015 Planning Resource Auction for the 2015/16 power year.

Unlike a staff notice of alleged violation, a FERC order converting an informal, non-public investigation to a formal, non-public investigation does not indicate that the FERC has determined that any entity has engaged in market manipulation or otherwise violated any FERC order, rule, or regulation. It does, however, give OE's Director, and employees designated by the Director, the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and responses to interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records.

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

Berkshire Power Company/Powerplant Management Services. On October 23, 2015, the FERC issued a notice that Staff of the Office of Enforcement ("OE") has preliminarily determined that Berkshire Power Company and Powerplant Management Services violated the FERC's Anti-Manipulation Rule by engaging in a manipulative scheme to conceal maintenance work and associated outages beginning at least as early as January 2008 and continuing through March 2011. In addition Staff alleges that Berkshire violated FERC-approved Reliability Standards (by failing to provide outage information to its Transmission Operator and failing to inform its Transmission Operator and Host Balancing Authority of all generation resources available for use) and FERC's Market Behavior Rules (by failing to comply with various provisions of the ISO Tariff and by making false and misleading statements to the ISO regarding its maintenance work and associated outages).

Coaltrain Energy/Co-Owners/Traders/Analyst. On September 11, 2015, the FERC issued a notice that OE has preliminarily determined that Coaltrain Energy L.P. ("Coaltrain"); its co-owners Peter Jones and Shawn Sheehan; traders Robert Jones, Jeff Miller, and Jack Wells; and analyst Adam Hughes violated the FERC's Anti-Manipulation Rule by executing a scheme involving manipulative PJM Up-To Congestion trading between June and September 2010. Specifically, Staff alleges that the individuals (on behalf of Coaltrain) planned and executed large volumes of PJM Up-To Congestion transactions designed to falsely appear to be spread trades but that were in fact a vehicle to collect "Marginal Loss Surplus Allocation" payments from PJM. Staff further alleges that Jones, Sheehan, and their agents (on behalf of Coaltrain) violated the FERC's Market Behavior Rules by making false statements and omitting material information in responding to deposition questions and data requests during the investigation.

Etracom/M. Rosenberg. On July 27, 2015, the FERC issued a notice that OE has preliminarily determined that Etracom LLC ("Etracom") and Michael Rosenberg violated the FERC's Anti-Manipulation Rule by engaging in manipulative virtual trading at the New Melones Intertie in the CAISO footprint during May 2011. Enforcement has preliminarily determined that Etracom's trades were intended to artificially lower the day-ahead LMP to benefit Etracom's congestion revenue rights positions sourced at the same location. During the period in question, Rosenberg was Etracom's principal trader and majority owner.

Recall that Notices of Alleged Violations ("NoVs") are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff's conclusions regarding the subject's conduct.⁸⁸ NoVs are designed to increase the transparency of Staff's

⁸⁸ See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), order on requests for reh'g and clarification, 134 FERC ¶ 61,054 (Jan. 24, 2011).

nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **FERC Audit of ISO-NE (PA16-6)**

On November 24, 2015, the FERC informed ISO-NE that it will evaluate ISO-NE's compliance with: (1) the transmission provider obligations described in the Tariff, (2) *Order 1000* as it relates to transmission planning and expansion, and interregional coordination, (3) accounting requirements of the Uniform System of Accounts under 18 C.F.R. Part 101, (4) financial reporting requirements under 18 C.F.R. Part 141; and (5) record retention requirements under 18 C.F.R. Part 125. The FERC indicated that the audit will cover the period July 10, 2013 through the present.

XII. Misc. - Administrative & Rulemaking Proceedings

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

On October 30, 2015, the nation's six RTO/ISOs submitted a report in response to the FERC's "Request for Information on Common Performance Metrics for RTOs and ISOs and Utilities Outside RTO and ISO Regions" issued August 17, 2015 in this proceeding. The 589-page October 30 Report includes discussion and data on both the 30 Common Metrics as well as the "Other Metrics Specific to ISO and RTO Performance" identified in Staff 's August 26, 2014 "Common Metrics Report". The Report has not been noticed for public comment.

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

On November 20, 2015, the FERC directed each RTO/ISO to publicly provide information related to certain price formation issues.⁸⁹ Specifically, the FERC asked for information regarding five price formation issues: (1) pricing of fast-start resources; (2) commitments to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency. The FERC direct each RTO/ISO to file a report that provides an update on its current practices in the identified topic areas, that provides the status of its efforts (if any) to address each of the five issues, and that fully responds to the questions contained herein on or before February 3, 2016. Following the submission of the RTOs'/ISOs' reports, the FERC will allow for public comment. The FERC also indicated it would use the reports and comments to determine what further action is appropriate.

- **Enforcement Annual Report (AD07-13-009)**

On November 19, 2015, the FERC issued its Annual Enforcement Report. The report provides additional transparency and guidance for regulated entities and the public. Highlights include summaries of activities undertaken by the Office of Enforcement's investigations, audits and accounting, market oversight, and analytics and surveillance divisions. In 2016, the Office Enforcement will continue to target fraud and manipulation, serious violations of mandatory Reliability Standards, anticompetitive conduct, and conduct that threatens the transparency of regulated markets. The Report is available at <http://ferc.gov/enforcement/enforce-res.asp>.

- **NOPR: Reactive Power Requirements for Wind Generators (RM16-1)**

On November 19, the FERC issued a NOPR proposing to eliminate the exemptions for wind generators from the requirement to provide reactive power.⁹⁰ As a result, all newly interconnecting generators, and all existing non-synchronous generators making upgrades to their generation facilities that require new interconnection requests, would be required to provide reactive power. To implement this requirement, the

⁸⁹ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

⁹⁰ *Reactive Power Requirements for Non-Synchronous Generation*, 153 FERC ¶ 61,175 (Nov. 19, 2015).

FERC proposes to revise the *pro forma* LGIA, Appendix G to the *pro forma* LGIA, and the *pro forma* SGIA. Comments on this NOPR are due on or before January 25, 2016.⁹¹

- **NOPR: Price Formation Fixes - Settlement Intervals/Shortage Pricing (RM15-24)**

On September 17, the FERC issued a NOPR proposing to revise its regulations to require that each RTO/ISO (i) settle (a) energy transactions in its real-time markets at the same time interval it dispatches energy and (b) operating reserves transactions in its real-time markets at the same time interval it prices operating reserves; and (ii) trigger shortage pricing for any dispatch interval during which a shortage of energy or operating reserves occurs.⁹² The FERC stated that adopting these reforms would align prices with resource dispatch instructions and operating needs, providing appropriate incentives for resource performance. The *Settlement Intervals/Shortage Pricing NOPR* was discussed at the October 7-9 Markets Committee meeting. Comments on this NOPR were due on or before November 30, 2015.⁹³ Nearly 50 sets of comments were filed, including comments by NEPOOL (summarizing the status of New England's consideration of pricing reforms like those identified in the NOPR and urging that FERC action on the NOPR, and any final rule, be sufficiently flexible in implementation schedule and details to permit final approval and implementation of New England's solutions, which are planned to be filed in the first half of 2016 and implemented in 2017), ISO-NE, Potomac Economics (ISO-NE EMM), APPA/NRECA, EEI, EPSA, Direct Energy, Dominion, Entergy, ESA, Exelon, IRC, NEI, Public Interest Organizations, and PSEG. This matter is pending before the FERC.

- **NOPR: Connected Entity Data Collection (RM15-23)**

The FERC issued a NOPR that would dramatically expand the corporate and relationship structure information that all Market Participants will be required to share with the ISO as a condition to their participation and that the ISO would be required to share with the FERC.⁹⁴ The FERC proposes to require that all ISO/RTO market participants report all of their "Connected Entities," which is a newly defined term that is much broader than, and is intended to replace, "Affiliate" as defined in and administered under the ISO Tariff. The rule would multiply by several factors the amount of information required to be reported, by including reporting of certain employee and contractual relationships, and of debt/profitability arrangements. The NOPR proposes additional registration and compliance requirements for each market participant and RTO/ISO. The FERC explains in the NOPR that this additional data collection will improve the information that it has for detecting market manipulation, which is a FERC enforcement priority. A more detailed summary of the *Connected Entity Data Collection NOPR* was distributed with the additional materials for the October 2 meeting.

Dec 8 Technical Conference. Pursuant to a request submitted by a number of market participants, and supported by a number of trade groups and individual market participants, the FERC scheduled a technical conference for December 8 and postponed the due date for comments until 45 days following the technical conference, or January 22, 2016. The technical conference will be held at the FERC's headquarters between 10:00 am and 1:00 pm in the Commission Meeting Room and led by Commission staff (and may be attended by one or more Commissioners). For those not attending in person, the technical conference will be webcast. A supplemental notice issued on November 30 sets out the proposed agenda for the technical conference. In order to advance the discussion, NEPOOL filed its comments on the NOPR on December 1 (consistent with the outline approved at the November 6 Participants Committee meeting). Since the last Report, comments were also filed by Public Citizen. A summary of the December 8 technical conference will be included in the next Report.

⁹¹ The *Reactive Power Requirements for Non-Synchronous Generation NOPR* was published in the *Fed. Reg.* on Nov. 25, 2015 (Vol. 80, No. 227) pp. 73,683-73,689.

⁹² *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,218 (Sep. 17, 2015) ("*Settlement Intervals/Shortage Pricing NOPR*").

⁹³ The *Settlement Intervals/Shortage Pricing NOPR* was published in the *Fed. Reg.* on Sep. 29, 2015 (Vol. 80, No. 188) pp. 58,393-58,405.

⁹⁴ *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219 (Sep. 17, 2015) ("*Connected Entity Data Collection NOPR*").

- **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. Comments in response to this petition were due on or before September 8, 2015. More than 30 sets of comments were filed, including by ISO-NE, NESCOE, ISO/RTO Council (“IRC”), APPA/NRECA/Large Public Power Council, EEI, EPSA, NextEra, NRG, and PSEG. Reply comments were filed by AWEA and SunEdison. This matter is pending before the FERC.

- **Order 812: Revisions to Public Utility Filing Requirements (RM15-3)**

On July 16, the FERC issued *Order 812*⁹⁵ revising its regulation to eliminate the requirement for (i) RTOs/ISOs and EWGs to submit FERC-566 (Annual Report of a Utility’s 20 Largest Customers), (ii) for public utilities that have not made any reportable sales under FERC-566 in any of the three preceding years to submit a FERC-566, and (iii) public utilities, when submitting FERC-566, to identify individual residential customers by name and address. The *Order 812* changes became effective October 6, 2015.⁹⁶ On August 17, Dominion Resources Services, Inc. (“Dominion”) requested clarification and/or rehearing of *Order 812* (seeking clarification that an entity that is both an EWG and QF is not required to file a FERC-566, or rehearing if not so clarified). On November 19, the FERC granted the requested clarification, clarifying “that an entity that is an EWG/QF is exempt from the FERC-566 filing requirement, for the same reasons that an EWG standing alone is exempt from the FERC-566 filing requirement.”⁹⁷ This proceeding is now concluded.

- **Order 819: Third-Party Provision of Primary Frequency Response Service (RM15-2)**

On November 20, the FERC issued a Final Rule permitting the sale of primary frequency response service at market-based rates by sellers with market-based rate authority.⁹⁸ Order 819 expands upon the FERC’s earlier pronouncement in *Order 784*, which permitted sellers to sell other ancillary services, including imbalance and operating reserve services, at market-based rates. In *Order 784*, the FERC limited the ability of sellers to make similar market-based rate sales of reactive supply and voltage control service, and regulation and frequency response service, to only certain transactions if certain circumstances are met. Following the issuance of *Order No. 784*, the FERC held a technical conference in an effort to gather additional information regarding the provision of reactive supply and voltage control service, and regulation and frequency response service at market-based rates. As a result of the information gathered, the FERC issued a proposed rule that differentiated between regulation service and primary frequency response service and also proposed to allow sales of primary frequency response service at market-based rates.

Order 819 found that existing market power screens for sales of energy and capacity are sufficient to demonstrate a lack of market power for sales of primary frequency response, and therefore permits entities granted market-based rate authority to make such sales at market-based rates. The FERC defined “primary frequency response service” as a resource standing by to provide autonomous, pre-programmed changes in output to rapidly arrest large changes in frequency until dispatched resources can take over. The FERC also addressed certain other issues regarding the provision of primary frequency response service, including, among other things, a determination that a transmission reservation and schedule is not necessarily required to provide

⁹⁵ *Revisions to Public Util. Filing Reqs.*, Order No. 812, 152 FERC ¶ 61,032 (July 16, 2015) (“*Order 812*”), clarification granted, 153 FERC ¶ 61,176 (Nov. 19, 2015).

⁹⁶ *Order 812* was published in the Fed. Reg. on July 23, 2015 (Vol. 80, No. 141) pp. 43,619-43,625.

⁹⁷ *Revisions to Public Util. Filing Reqs.*, 153 FERC ¶ 61,176 (Nov. 19, 2015).

⁹⁸ *Third-Party Provision of Primary Frequency Response Service*, Order No. 819, 153 FERC ¶ 61,220 (Nov. 20, 2015) (“*Order 819*”).

short duration frequency response service (but may be necessary under certain circumstances; e.g., sales of primary frequency response service from resources in transmission constrained areas).

Order 819 requires sellers to revise the third-party provider ancillary services provision of their market-based rate tariffs in order to make sales of primary frequency response service at market-based rates. However, while *Order 819* is effective as of February 25, 2016,⁹⁹ the FERC permits market-based rate sellers to wait to file this tariff revision until the next time they make a market-based rate filing with the FERC, such as a notice of change in status filing or a triennial update. In addition, entities selling primary frequency response service will need to report such sales in their EQRs. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Order 816: MBR Authorization Refinements (RM14-14)**

As previously reported, the FERC issued *Order 816* on October 16, 2015.¹⁰⁰ *Order 816* represents another step in the FERC's efforts to modify, clarify and streamline certain aspects of its market-based rate ("MBR") program. The *Order 816* revisions are intended to both increase transparency and refine existing filing requirements. By way of example, *Order 816*:

- ◆ requires electronic submissions of asset appendices in MBR filings to be searchable and sortable, and eliminates the requirement to report behind-the-meter generation in asset appendices
- ◆ requires MBR sellers to report all long-term firm purchases of capacity and energy that have associated long-term firm transmission (thereby providing a more accurate measure of a seller's generation resources)
- ◆ eliminates MBR sellers' requirement to file quarterly land acquisition information for new generation sites
- ◆ reduces the number of "notice of change in status" filings by establishing a new threshold for reporting new affiliations and redefines the default relevant geographic market for an independent power producer with generation capacity located in a generation-only balancing authority area
- ◆ provides clarification on issues including capacity ratings and simultaneous transmission import limit (SIL) studies

Order 816 will become effective January 28, 2016.¹⁰¹ Requests for clarification and/or rehearing of *Order 816* were filed by EDF Renewables, EEI, EPSA, Invenergy, NextEra, Southern Company, TAPS, SoCal Edison, and the National Hydropower Association. These requests are pending before the FERC, with FERC action required on or before December 14, 2015, or the requests will be deemed denied.

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

On November 19, the FERC denied rehearing and addressed the requests for clarification of the portions of *Order 771* that had not been addressed in *Order 771-A*.¹⁰² Specifically, *Order 771-B* denied rehearing requested by NRECA (finding without merit the arguments that the FERC lacked authority to promulgate the regulations that it adopted in *Order 771*) and clarified certain issues. As previously reported, *Order 771*,¹⁰³ 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.

⁹⁹ *Order 819* was published in the Fed. Reg. on Nov. 27, 2015 (Vol. 80, No. 228) pp. 73,965-73,977.

¹⁰⁰ *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Srvcs. by Public Utils.*, 153 FERC ¶ 61,065 (Oct. 16, 2015) ("*Order 816*").

¹⁰¹ *Order 816* was published in the Fed. Reg. on Oct. 30, 2015 (Vol. 80, No. 210) pp. 67,056-67,123.

¹⁰² *Availability of E-Tag Info. to Comm'n Staff*, Order No. 771-B, 153 FERC ¶ 61,177 (Nov. 19, 2015) ("*Order 771-B*").

¹⁰³ *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), *reh'g denied and clarif. granted*, 153 FERC ¶ 61,177 (2015).

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, 2013.¹⁰⁴ 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*.¹⁰⁵ *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*.¹⁰⁶ As noted above, the FERC issued on November 19 *Order 771-B*, which addressed remaining issues raised on rehearing and clarification. Unless *Order 771-B* is challenged, this proceeding will be concluded.

XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Inquiry Into Natural Gas Trading, and Proposal to Establish an Electronic Information and Trading Platform (AD14-19)**

On September 18, 2014, Commissioner Moeller convened a meeting to discuss issues related to how transactions are conducted on the natural gas system and potential transactional improvements to address the needs of electric generators for natural gas. The meeting included representatives/speakers from various sectors of the natural gas and electric industries (load, suppliers, marketers, exchanges, gas associations, and ISOs) and environmental interests. Representatives from NYISO and PJM were among the speakers on the electric side (ISO-NE was not present). A summary of that meeting is posted on the Litigation Updates & Reports webpage (http://nepool.com/uploads/Lit_Supp_AD14-19_20140918_Mtg_Summary.pdf). Written comments on issues discussed at the meeting, limited to 5 pages, were due on or before October 1, 2014. Comments were filed by more than 30 parties. There was no published activity in this proceeding since the last Report.

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

On April 16, 2015, the FERC issued *Order 809*,¹⁰⁷ which changed the nationwide Timely Nomination Cycle deadline for scheduling natural gas transportation from 11:30 a.m. Central Clock Time (CCT) to 1:00 p.m.

¹⁰⁴ *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹⁰⁵ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

¹⁰⁶ *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.

¹⁰⁷ *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*”).

CCT, and revised the intraday nomination timeline to add an additional intraday scheduling opportunity during the gas operating day (Gas Day). *Order 809* also modified the scheduling practices used by interstate pipelines to schedule natural gas transportation service, and provided additional contracting flexibility to firm natural gas transportation customers through the use of multi-party transportation contracts. *Order 809* DID NOT change the start time of the nationwide Gas Day (which remains 9:00 a.m. CCT), as had been proposed in the underlying NOPR.¹⁰⁸ *Order 809* established an implementation date of April 1, 2016.¹⁰⁹ On July 23, in response to *Order 809*, ISO-NE described why changes to the time at which the results of the Day-Ahead Energy Market and RAA process are posted were not necessary in response to the FERC's rulemaking. Comments on the ISO-NE's filing were due on or before August 18, 2015, and no party submitted adverse comments in response to ISO-NE's filing (ISO-NE's response was filed 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 May 19, 2015, 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." On September 17, 2015, the FERC issued an Order on Rehearing denying a request from a group of utilities and state regulators from Southwest states for rehearing of *Order No. 809*.¹¹⁰ The Commission recognized the time commitments in implementing the revised nomination timeline, and requested that the natural gas and electric industries, through NAESB, begin considering the development of standards related to faster, computerized scheduling and file such standards or a report on the development of such standards with the Commission by October 17, 2016.

On May 28, 2015, the American Gas Association, the American Public Gas Association, and the Interstate Natural Gas Association of America (collectively, the Associations) filed a request for the Commission to clarify the manner in which all pipelines should implement the standards on April 1, 2016, as well as requested clarification relating to interpretations of recall rights under existing capacity release contracts in light of the transition from two to three intraday nomination cycles. On July 31, 2015, the FERC issued an Order on Request for Clarification and Notice of Comment Procedures.¹¹¹ The FERC indicated that it recognized the value in establishing a default interpretation of capacity release contractual recall provisions to assist parties in navigating the transition between the two intraday and three intraday nomination schedules. The FERC explained that the new day-ahead nomination timelines will apply as of March 31, 2016, for those nominations that will become effective April 1, 2016. Furthermore, with respect to capacity releases, the new biddable release schedule will start at 9:00 a.m. CCT on March 31, 2016, for all releases with contracts to be effective on March 31, 2016, April 1, 2016, or thereafter. Non-biddable releases effective on March 31, 2016 will follow the existing posting schedule for the Intraday 1 and Intraday 2 Nomination Cycles, and will follow the new day-ahead nomination schedule for the Timely and Evening Nomination Cycles.

In response to comments received in response to its July 31 Order, the FERC issued an order on October 15, 2015¹¹² in which it provided default interpretations to apply to the intraday recall rights associated with capacity release transactions that spanned the implementation date of April 1, 2016. The interpretations are intended to assist parties to capacity release transactions straddling April 1, 2016 in agreeing in advance to contractual recall rights, as such rights are necessarily affected by whether there are three or two intraday

¹⁰⁸ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

¹⁰⁹ *Order 809* was published in the *Fed. Reg.* on Apr. 24, 2015 (Vol. 80, No. 79) pp. 23,198-23,227.

¹¹⁰ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 809, 152 FERC ¶ 61,049 (Apr. 24, 2015), *order on reh'g*, 152 FERC ¶ 61,212 (Sept. 17, 2015).

¹¹¹ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 152 FERC ¶ 61,095 (July 31, 2015).

¹¹² *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 153 FERC ¶ 61,049 (Oct. 15, 2015), "Order Establishing Default Interpretations for Capacity Release Contracts".

nomination schedules. Moreover, the FERC also directed releasing shippers to notify the applicable interstate pipeline and the replacement shippers by November 13, 2015 if the parties do not agree on alternative recall rights, and to specify what the releasing shipper believes should be the alternative recall rights.

- **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.¹¹³ 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.¹¹⁴ 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.¹¹⁵ Of the 157 filings, 64 pipelines revised their respective tariffs to provide for the posting of offers to purchase released capacity in a manner that complies with section 284.8(d), and 23 pipelines demonstrated that their tariffs already comply with that section. The FERC found that, and identified in its omnibus order on the Compliance filings the, 69 Compliance filings that did not appear to be in full Compliance with that section, and directed further Compliance filings from those companies as described in the omnibus order.

- **Rice Energy Marketing, Order on Petition for Declaratory Order (RP15-1089)**

On October 15, 2015, the FERC issued a Declaratory Order in response to a petition filed by Rice Energy, a producer, clarifying the extent to which releases of natural gas pipeline capacity to asset managers are exempt from FERC's prohibition on buy/sell transactions. The FERC explained that the exemption applies to volumes of gas purchased from a releasing shipper in a "supply asset management agreement" (supply AMA) as well as a "delivery AMA," thereby clarifying that the two types of AMAs are equivalent exemptions from the prohibition on buy/sell transactions.

Under the FERC's regulations, shippers must conduct capacity release transactions through the pipeline consistent with FERC-prescribed posting and bidding requirements. To ensure that capacity holders and persons wishing to acquire capacity did not circumvent those requirements, the FERC established several safeguards, including the requirement that a shipper must have title to the gas transported in the shipper's capacity. Another safeguard is the prohibition on buy/sell transactions whereby a shipper, e.g., a local distribution company or "LDC," purchases gas in the production area from an end-user and uses its capacity to transport the gas and sell the gas to the end-user at the delivery point on its system.

However, in Order No. 712, the FERC exempted AMAs from the competitive bidding requirements of FERC's regulations, the prohibition against tying a release to an extraneous condition, and, at least to some degree, the prohibition on buy/sell transactions. An AMA is a contractual relationship by which a party, an asset manager, agrees to manage gas supply, delivery arrangements, and storage as well as transportation, for another party. Under an AMA, a holder of firm transportation capacity releases a portion or all of its capacity to the asset manager. The capacity holder may also assign gas production and sales contracts to the asset manager.

¹¹³ *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

¹¹⁴ *Id.* at P 6.

¹¹⁵ *See BR Pipeline Co. et al.*, 149 FERC ¶ 61,031 (Oct. 16, 2014).

The Declaratory Order effectively allows a releasing shipper in a supply AMA to use an asset manager solely to manage the releasing shippers' capacity, while continuing to market its own gas. By entering into a buy/sell transaction, producers and marketers can market their own gas and avail themselves of the benefits of an AMA without revealing sensitive competitive information to a competing marketer acting as an asset manager.

- **Opinion No. 538: ANR Storage Company, Order on Initial Decision (RP12-479)**

In what it described as “the first fully-litigated proceeding where a gas storage provider has sought market-based rate authority,” the FERC, on October 15, 2015, upheld a January 2014 Initial Decision in which a FERC Presiding Judge (ALJ) denied an application for market-based rate authorization by a natural gas storage provider that previously charged cost-based rates for its services. As the first case of its kind, the FERC provided clarity to its policies and procedures for market-based rate applications from gas storage providers, and also described how gas storage providers can meet the evidentiary burden to demonstrate that they lack significant market power. While reversing the ALJ on certain discrete issues (such as the Initial Decision’s finding that market-based rate applicants are required to meet their evidentiary burden solely through direct testimony), the FERC ultimately agreed with the ALJ that the applicant (ANR Storage) “has not met its evidentiary burden to show it lacks significant market power in the relevant markets.”¹¹⁶ Requests for rehearing of *ANR Order* were filed by ANR and the Joint Intervenor Group.¹¹⁷ These requests are pending before the FERC, with FERC action required on or before December 14, 2015, or the requests will be deemed denied.

- **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.

BP (INI13-15). On August 13, Judge Cintron issued her Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, “BP”) violated Section 1c.1 of the Commission’s regulations and section 4A of the Natural Gas Act.¹¹⁸ Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP’s Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel (“HSC”) trading point in order to benefit correspondingly long position at the Henry Hub trading point. Judge Cintron’s Initial Decision found that:

- ▶ There were at least 48 violations on 49 days;
- ▶ BP’s manipulation resulted in financial losses of \$1,375,482 to \$1,927,728 on the next-day natural gas markets at Houston Ship Channel (HSC) and Katy during the Investigative Period;
- ▶ the violation was less than five years after a prior FERC adjudication and adjudications of similar misconduct by the CFTC and DOJ (warranting a 2 point increase in BP’s culpability score);
- ▶ BP’s conduct contravened the terms of a permanent injunction with the CFTC (warranting a 2 point increase in BP’s culpability score);
- ▶ BP did not have an effective Compliance program; and
- ▶ the BP Texas team’s gross profits from the manipulation were between \$233,330 and \$316,170 and net profits between \$165,749 and \$248,589.

¹¹⁶ *ANR Storage Co.*, 153 FERC ¶ 61,052 (Oct. 15, 2015) (“*ANR Order*”), *reh’g requested*.

¹¹⁷ “Joint Intervenor Group” is comprised of the following: the Canadian Association of Petroleum Producers (“CAPP”), Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin (jointly, “NSP”), Tenaska Gas Storage, LLC (“Tenaska”), and BP Canada Energy Marketing Corp., (“BP Canada”).

¹¹⁸ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

Judge Cintron also certified the *BP Initial Decision* and the record to the Commission on August 13, 2015. BP filed its Brief on Exceptions on September 14, 2015, and Enforcement Staff filed its Brief Opposing Exceptions on October 5, 2015. This matter is currently pending before the FERC.

Staff Notice of Alleged Violation: Total Gas & Power, North America, Inc. On September 21, 2015, the FERC issued a notice that Staff has preliminarily determined that Total Gas & Power, North America, Inc. (“TGPNA”) and its West Desk traders and supervisors Therese Nguyen and Aaron Hall, violated section 4A of the Natural Gas Act and the Commission’s Anti-Manipulation Rule, by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleges that the scheme involved making largely uneconomic trades for physical natural gas during bidweek designed to move indexed market prices in a way that benefited the company’s related positions. Staff alleges that the West Desk implemented the bidweek scheme on at least 38 occasions during the period of interest and that Therese Nguyen and Aaron Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

- **New England Pipeline Proceedings**

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

- **Algonquin Incremental Market Project (AIM Project) (CP14-96)**
 - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate Feb. 28, 2014
 - ▶ 342,000 dekatherms/day (Dth/d) 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 Staff-prepared Environmental Impact Statement (EIS) issued Jan. 23, 2015.
 - ▶ Certificate of public convenience and necessity granted Mar. 3, 2015.¹¹⁹
 - ▶ Construction began May 2015.
 - ▶ In-service: Nov. 2016 (anticipated).
- **Atlantic Bridge Project (CP16-9)**
 - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate on Oct. 22, 2015.
 - ▶ 132,700 Dth/d of firm transportation to new and existing delivery points on the Algonquin system and 106,276 Dth/d of firm transportation service from Beverly, MA to various existing delivery points on the Maritimes & Northeast system.
 - ▶ 6.3 miles of replacement pipeline along Algonquin in NY and CT; new 7,700-horsepower compressor station in Weymouth, MA; more horsepower at existing compressor stations in CT and NY.
 - ▶ Seven firm shippers: Heritage Gas Limited, Maine Natural Gas Company, NSTAR Gas Company d/b/a Eversource Energy, Exelon Generation Company, LLC (as assignee and asset manager of Summit Natural Gas of Maine), Irving Oil Terminal Operations, Inc., New England NG Supply Limited, and Norwich Public Utilities.
- **Connecticut Expansion Project (CP14-529)**
 - ▶ Tennessee Gas Pipeline filed for Section 7(c) certificate July 31, 2014.
 - ▶ 72,100 Dth/d of firm capacity.

¹¹⁹ Order Issuing Certificate and Approving Abandonment, *Algonquin Gas Transmission LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015), *reh’g requested*.

- ▶ 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.
 - ▶ Notice of Schedule issued Sept. 1 with FERC EA to be issued Oct. 23 and 90-day Federal Authorization Decision Deadline set at Jan. 21, 2016.
 - ▶ FERC Staff-prepared Environmental Assessment (EA) issued on Oct. 23, 2015, as well as contemporaneous notice soliciting comments on or before November 23, 2015.
 - ▶ Construction expected to begin Winter/Spring 2016.
 - ▶ In-service: Nov 2016 (anticipated).
- ***Constitution Pipeline (CP13-499) and Wright Interconnection Project (CP13-502)***
 - ▶ Constitution Pipeline Company and Iroquois Gas Transmission (Wright Interconnection) concurrently filed for Section 7(c) certificates on June 13, 2013.
 - ▶ 650,000 Dth/d 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 of public convenience and necessity granted Dec 2, 2014;
 - ▶ Construction expected to begin Dec. 2015 (after final Federal Authorizations).
 - ***Salem Lateral Project (CP14-522)***
 - ▶ Algonquin Gas Transmission filed application Jul 10, 2013.
 - ▶ 115,000 Dth/d of firm capacity.
 - ▶ 1.2 miles of pipeline to 630 MW Salem Harbor Station and other Salem, MA facilities.
 - ▶ Footprint Power sole firm customer.
 - ▶ FERC Staff-prepared EA issued Dec 2, 2014.
 - ▶ Certificate of public convenience and necessity granted May 14, 2015.¹²⁰
 - ▶ Construction began in May 2015.
 - ▶ In-Service: fourth quarter 2015 (anticipated).

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report.

¹²⁰ Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

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).

- **Base ROE Complaints (2012 and 2014) (15-1212)**

Underlying FERC Proceedings: EL13-33; EL14-86¹²¹

Appellants: New England Transmission Owners

On July 13, 2015, the TOs filed a petition for review of the FERC’s orders in the 2012 and 2014 ROE complaint proceedings. On July 16, the Court issued a scheduling order directing, among other things, a statement of issues and procedural motions to be filed by August 17 and dispositive motions to be filed by August 31; briefing was deferred until further order of the court. However, on August 14, 2015, NETOs filed an unopposed motion to hold this case in abeyance pending final FERC action on the 2012 and 2014 ROE Complaints (*see* Section I above). On August 20, 2015, the Court granted NETOs’ motion to hold the case in abeyance, subject to submission of status reports every 90 days. On November 18, the parties filed their first 90-day status report, indicating, ultimately, that the proceedings upon which the NETOs based their request for abeyance of this appeal remain ongoing.

- **Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated)**

Underlying FERC Proceedings: ER13-193; ER13-196¹²²

Appellants: New England Transmission Owners (NETOs); NESCOE/CT DEEP/CT PURA, et al.

On May 15, 2015, NETOs¹²³ 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. On July 2, the Court granted all motions to intervene. On November 6, 2015, the court issued an order setting the following briefing schedule: Jan. 11, 2016 - Joint Brief for Petitioners in No. 15-1139 and Joint Brief for Petitioners in No. 15-1141; Mar. 11, 2016 - Brief for Respondent; Apr. 1, 2016 - Brief for Intervenors Supporting Respondent in No. 15-1139 and Brief for Intervenors Supporting Respondent in No. 15-1141; Apr. 22, 2016 - Joint Reply Brief in No. 15-1139 and Joint Reply Brief in No. 15-1141; May 13, 2016 - Deferred Appendix; May 20, 2016 - Final Briefs. The Court noted that parties would be notified separately of the oral argument date and composition of the merits panel.

- **Base ROE Complaint (2011) (15-1118, 15-1119, 15-1121**) (consolidated)**

Underlying FERC Proceedings: EL11-66¹²⁴

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,¹²⁵ NJ Division of

¹²¹ 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

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

¹²³ “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.

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

¹²⁵ “EMCOS” are Taunton, Reading, Hingham, and Braintree.

Rate Counsel, NHEC, MMWEC, CT PURA, CT OCC, CT AG, NJ BPU, Delaware PSC, and Coalition of MISO Transmission Customers. The Court granted all motions to intervene on June 23. On August 10, Petitioners filed an unopposed proposed briefing format and schedule. On October 6, 2015, the court issued an order setting the following briefing schedule: Dec. 7, 2015 - brief(s) for Complainants/EMCOS on the issue of the ROE being too high and Joint Brief for NETOs on the issues of the ROE being too low and the modification of incentive adders; December 14 - Joint Brief for Non-New England Intervenors on the issue of the ROE being too high. February 12, 2016 – FERC’s brief; March 4 - Joint Intervenor Brief for Complainant, EMCOS, and Non-New England Intervenors on the issues of the ROE being too low and modification of incentive adders and Joint Intervenor Brief for NETOs on the issue of the ROE being too high; March 25 - Reply Brief(s) for Complainants/EMCOS and Joint Reply Brief for NETOs; April 15 - Deferred Appendix; April 26, 2016 - Final Briefs. Since the last Report, the FERC filed a Supplement to the Certified Index of the Record (adding documents it believes are necessary to complete the record in the proceeding).

- **FCM Administrative Pricing Rules Complaint (15-1071**)**
Underlying FERC Proceedings: EL14-7¹²⁶
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, and did, file an abeyance status report on or before August 20, 2015. In its August 20 report, NEPGA indicated that the FERC had not taken final action in EL15-23 and requested the Court continue to hold the case in abeyance. NEPGA filed a second abeyance status report on November 18, again requesting that the Court continue to hold this case in abeyance.

- **Demand Curve Changes (15-1070**)**
Underlying FERC Proceedings: ER14-1639¹²⁷
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. On June 26, CT PURA filed a statement requesting permission from the Court to file its own brief in support of the FERC. Also on June 26, NESCOE, CPV and NHEC filed a statement regarding briefing format. On August 5, the Court issued a briefing schedule, which calls for brief for Petitioners by October 5; brief for Intervenor Supporting Petitioners by October 20; brief for Respondent by December 4; brief of Intervenor CT PURA Supporting Respondent by December 21; and brief of other Intervenors Supporting Respondent by December 21, 2015.

On October 5, 2015, the Petitioners submitted their brief, followed by an Intervenor brief in support filed by Entergy Nuclear Power Marketing, LLC, on October 20, 2015. The Petitioners’ brief set forth numerous objections to the FERC’s orders approving the renewables exemption, including that FERC’s FCA methodology will cause electric generation capacity rates to be unjust, unreasonable and unduly discriminatory, and that the

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

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

FERC ignored evidence that demonstrated that the exemption would cause significant artificial price discrimination.

On November 20, the FERC requested that the Court remand this case back to the Commission for further proceedings (stating that “review of the opening briefs indicates that further consideration by the Commission is appropriate”). On December 1, the Court granted FERC’s unopposed motion, and remanded the case back to the Commission for further proceedings.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
Underlying FERC Proceedings: ER14-1409¹²⁸

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, Connecticut¹²⁹ 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. On July 1, the Court issued a briefing schedule -- brief for State Petitioners due 9/4/2015; brief for Public Citizen due 9/4/2015; brief for Respondent due 11/3/2015; brief for FERC/Intervenors due 11/18/2015; reply briefs for Petitioners due 12/2/2015; final briefs due 12/23/2015. In accordance with that schedule, briefs of State Petitioners and Public Citizen were filed on September 4, FERC’s Respondents brief, on November 3; Intervenor for Respondent Brief by EPSA/HQ US/NRG/NEPGA, on November 18; and Petitioner Reply Briefs by CT OCC/CT PURA/CT AG and Public Citizen, on December 2. Final Briefs are due next, by December 23.

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**
Underlying FERC Proceedings: ER13-1851¹³⁰ and ER13-2266¹³¹

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,

¹²⁸ 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).

¹²⁹ For purposes of this proceeding, “Connecticut” means the CT AG, CT PURA and CT OCC.

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

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

2015. Final Briefs were filed on April 15, 2015. Oral argument was held on September 15, 2015 before Judges Tatel, Pillard and Edwards. This matter is pending before the Court.

- **New England’s Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹³²

Appellants: EPSA and NEPGA

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

- **Orders 745 and 745-A (FERC v. EPSA, Supreme Court, 14-840 and 14-841)**
Underlying FERC Proceedings: RM10-17-000¹³³

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.¹³⁴ 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. On July 9, briefs were submitted by EnerNOC, FERC, CA PUC, Joint States, and PJM. A number of amicus curiae briefs were submitted on July 16. Since the last Report, amicus curiae briefs were submitted by Midwest Load-Serving Entities and EPSA on August 31; by CES and Dr. Silkman on September 1; by the NC PUC on September 4; and on September 8 by NEI/America’s Natural Gas Alliance and Robert L. Borlick, et al. Oral argument was held October 14, 2015.

As previously reported, the DC Circuit vacated *Order 745*¹³⁵ 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

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

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

¹³⁴ *EPSA v. FERC*, 753 F.3d 216 (May 23, 2014).

¹³⁵ *Order 745* required RTOs and ISOs to include provisions in their tariffs that assured demand response would be paid at LMP for interrupting their loads when such interruption was cost effective.

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

- **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. Since the last Report, the Solicitor General filed, on September 16, an amicus brief of the United States. On September 29, petitioner CPV Maryland filed a supplemental brief. The case was distributed on September 30 for the Court's October 16, 2015 Conference. The Supreme Court granted certiorari on October 19, 2015. Oral argument is set for one hour and has yet to be scheduled.

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 Maryland¹³⁶ 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.¹³⁷ In affirming the District Court decision, the 4th Circuit found the MD PSC Order to be both field¹³⁸ and conflict pre-empted.¹³⁹

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."¹⁴⁰ 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"),¹⁴¹ 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 was "field preempted because it functionally sets the rate that CPV receives for its sales in the PJM auction."¹⁴² The MD PSC Order "compromises the integrity of the federal

¹³⁶ *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.

¹³⁷ *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467; 2014 U.S. App. LEXIS 10155.

¹³⁸ "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.

¹³⁹ "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."

¹⁴⁰ Slip op. at p. 14.

¹⁴¹ *Id.* at p. 10.

¹⁴² *Id.* at p. 16.

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."¹⁴³ 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."¹⁴⁴

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".¹⁴⁵ Preemption was appropriate because of the "extensive and disruptive" impact of the MD PSC Order on matters within federal control (the PJM markets). It found that the MD PSC Order had "the potential to seriously distort the PJM's auction's price signals, thus 'interfer[ing] with the method by which the federal statute (i.e. the PJM Markets) was designed to reach its goals."¹⁴⁶ "Maryland's initiative disrupts [the PJM scheme] by substituting the state's preferred incentive structure for that approved by FERC."¹⁴⁷ "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."¹⁴⁸

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. Since the last Report, the Solicitor General filed, on September 16, an amicus brief of the United States. On September 29, petitioner CPV Maryland filed a supplemental brief. The case was distributed on September 30 for the Court's October 16, 2015 Conference.

As previously reported, on September 11, 2014, the 3rd Circuit Court of Appeals affirmed¹⁴⁹ 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").¹⁵⁰ In affirming the New Jersey District Court's decision, the 3rd Circuit concluded:

¹⁴³ *Id.* at pp. 18-19.

¹⁴⁴ *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.

¹⁴⁵ *Id.* at p. 27.

¹⁴⁶ *Id.* at p. 23.

¹⁴⁷ *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.")

¹⁴⁸ *Id.* at p. 25.

¹⁴⁹ *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, ("NJ Order").

¹⁵⁰ *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

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.¹⁵¹

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)**

Entergy¹⁵² filed, on February 27, in the United States District Court for the Northern District of New York, a Complaint that seeks a declaratory judgment that the NYPSC Commissioners' order ("Order") approving an agreement to keep NRG's 435 MW Dunkirk facility in the NYISO market, "repowered" as a natural gas-fired (rather than coal-fired) plant (the "Term Sheet")¹⁵³ 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.

¹⁵¹ *Id.* slip op. at 31.

¹⁵² Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

¹⁵³ 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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