

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of February 4, 2016 (3pm)**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated January 6, 2016 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: RNS/LNS Rates and Rate Protocols (EL16-19)	Jan 11 Jan 19 Jan 22 Jan 27	Chief Judge Cintron designates Judge Dring as settlement judge First settlement conf. Settlement Judge Dring schedules 2nd settlement conf. for Mar 24 VEC requests rehearing of Dec 28 order as to the inclusion of it and its non-jurisdictional LNS rates in this proceeding
2	206 Proceeding: Zonal Sloped Demand Curves (EL16-15)	Jan 7- Jan 19 Jan 27  Feb 3	NEPOOL, Champlain VT, CT DEEP, MA AG, MPUC, National Grid, NH OCA, API, APPA, intervene NEPOOL, ISO-NE, NESCOE jointly request extension of time, to Apr 15, 2016, for changes in response to the Dec 28 Order FERC grants extension of filing of changes to Apr 15, 2016
2	206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)	Jan 8  Feb 3	Trial Judge Baten issues order setting procedural schedule; Trial to begin Jul 19; Initial Decision due Nov 1, 2016 NHT files initial direct testimony, exhibits and workpapers
3	New Entry Pricing Rule Complaint (EL15-23)	Jan 7	FERC denies rehearing of <i>New Entry Pricing Rule Complaint Order</i>
4	NEPGA DR Capacity Complaint (EL15-21)	Jan 29	NEPGA withdraws Complaint in light of Supreme Court decision in <i>FERC v. EPSA</i>
4	Base ROE Complaints (2012 and 2014) Consolidated (EL13-33 and EL14-86)	Jan 15 Jan 20 Jan 27 Jan 28	TOs and FERC Staff file supplemental expert testimonies Consumer-Aligned Parties file supplemental expert testimony TOs move to strike Jan 20 supplemental expert testimony Consumer-Aligned Parties oppose TOs' Jan 27 motion to strike

**II. Rate, ICR, FCA, Cost Recovery Filings** 

5	ICR-Related Values and HQICCs - 2016/17 ARA3, 2017/18 ARA2, 2018/19 ARA1 (ER16-446)	Jan 29	Entergy, Eversource, National Grid, PSEG intervene Dominion, NEPGA, NRG file protests; NESCOE files comments ISO-NE answers Dominion, NEPGA, NRG protests
6	FCA10 Qualification Informational Filing (ER16-308)	Jan 21	FERC accepts filing; denies Lotus Energy Group request for revision of the New Resource Offer Floor Price for its projects
6	ICR, HQICCs and Related Values - 2019/20 Power Year (ER16-307)	Jan 8	FERC accepts 2019/20 ICR, HQICC, and LSR Values

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

8	Lotus Energy FCA10 Waiver Request (EL16-22)	Jan 7-21 Jan 19 Jan 21 Jan 28  Feb 2	APPA, Champlain VT, ConEd, National Grid, NEPGA intervene NEPOOL files limited comments ISO-NE, NRG file protests Lotus answers ISO-NE, NRG answers; makes emergency motion for FERC to delay start of FCA10 until after FERC acts on Request Lotus withdraws Waiver Request
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* 9	New DNE Dispatch Changes Effective Date (ER16-870)	Feb 2	ISO-NE files to establish May 25, 2016 as the new effective date for the DNE Dispatch Changes; comment date Feb 23
* 9	CSO Termination: Spruce Mountain Wind (ER16-864)	Feb 1 Feb 3	ISO-NE files to terminate a portion of Spruce Mountain Wind's CSO for Resource 38173; comment date Feb 22 NEPOOL intervenes
* 9	Waiver Request: FCM Qualification Lock-In Election (Calpine) (ER16-708)	Jan 8 Jan 14 Jan 19 Jan 20 Feb 4	Calpine requests waiver of FCM qualification rules to allow it to correct an inadvertently omitted lock-in election NEPOOL intervenes PSEG protests waiver request NESCOE, Westfield support waiver request FERC grants waiver request
10	FCM Resource Retirement Reforms (ER16-551)	Jan 11 Jan 27 Feb 1	Dominion, GEN Group, NEPGA, NRG, PSEG file protests; NESCOE files supportive comments ISO-NE, Eversource answer protests Potomac Economics (EMM) moves to intervene out-of-time, supports ISO/IMM Proposal with 3 recommended changes
10	De-List Bid Information Release Change (ER16-538)	Feb 2	FERC accepts change, eff. Feb 14, 2016
11	CTS Winter Reliability Program Cost Allocation Correction (ER16-462)	Jan 28	FERC accepts correction, eff. Dec 15, 2015

**IV. OATT Amendments / TOAs / Coordination Agreements**

* 12	RSP Timing Changes (ER16-819)	Jan 29 Feb 1-4	ISO-NE and NEPOOL file changes to timing of full RSP report (once every 2 years, rather than annually); comment date Feb 19 NESCOE, National Grid intervene
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**V. Financial Assurance/Billing Policy Amendments**

*No Activity to Report*

**VI. Schedule 20/21/22/23 Changes**

* 12	Schedule 21-EM: Covanta Maine LTSA Terminations (ER16-840)	Jan 29	Emera files notice of termination of two expired LTSAs with Covanta Maine; comment date Feb 19
* 13	Schedule 21-NSTAR: Fore River LGIA Termination	Jan 29	Eversource files notice of termination of prior Fore River LGIA (since replaced by 3-party LGIA); comment date Feb 19

**VII. NEPOOL Agreement/Participants Agreement Amendments**

*No Activity to Report*

**VIII. Regional Reports**

13	Opinions 531-A/531-B Local Refund Reports (EL11-66)	Jan 8 Jan 11 Jan 13	Emera Maine files local refund report; comment date Jan 29 UI supplements Dec 31 report; comment date Feb 1 VT Transco files local refund report; comment date Feb 3
* 13	LFTR Implementation: 29 <sup>th</sup> Quarterly Status Report (ER07-476)	Jan 15	ISO-NE files its 29th quarterly report
* 14	IMM Quarterly Markets Reports - 2015 Fall (ZZ15-4)	Jan 29	ISO-NE files 2015 Fall Report

**IX. Membership Filings** ▼

* 14	February 2016 Membership Filing (ER16-836)	Jan 29	Membership: GBE Power; Terminations: Glacial, Parkview AMC, Vermont Marble; Name Change: Constellation Energy Power Choice, LLC; comment date Feb 19
* 14	Involuntary Termination of Membership: NAPP (ER16-820)	Jan 29	NEPOOL and ISO-NE file to involuntarily terminate NAPP's NEPOOL and Market Participant status; comment date Feb 19
* 14	Involuntary Termination of Membership: Negawatt (ER16-818)	Jan 29	NEPOOL and ISO-NE file to involuntarily terminate Negawatt's NEPOOL and Market Participant status; comment date Feb 19
* 14	Suspension Notices (not docketed)	Jan 26 Jan 27	Lotus Danbury LMS100 One and Two suspended from New England Markets ISO-NE files notice of Lotus Danbury suspensions

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

15	Glossary Definition Changes (RD16-3)	Jan 21	FERC approves changes to 26 defined terms in the Reliability Standards Glossary
* 15	New Reliability Standard: BAL-002-2 (RM16-7)	Jan 29	NERC files BAL-002-2 for approval
15	<i>Order 822</i> : Revised CIP Reliability Standards (RM15-14)	Jan 21 Jan 28	FERC approves Supply Chain Cyber Controls Changes, eff. Mar 31, 2016 Technical conference on supply chain risk management issues held
18	Rules of Procedure Changes (RR16-2)	Jan 21	FERC approves changes to NERC's Rules of Procedure

**XI. Misc. - of Regional Interest** ▼

19	203 Application: Calpine/Granite Ridge (EC16-19)	Jan 28	FERC approves proposed transaction
19	PURPA Complaint: Allco Renewable Energy v. CT Agencies (EL16-11 et al.)	Jan 8	FERC issues notice of intent not to initiate Allco-requested PURPA enforcement action; Allco may itself bring an enforcement action against CT DEEP and CT PURA in the appropriate court
20	FirstEnergy PJM DR Complaint (EL14-55)	Jan 29	FirstEnergy withdraws Complaint in light of Supreme Court decision in <i>FERC v. EPSA</i>
* 20	Cost Sharing Agreements re: Greater Boston Area Transmission Solution Plan (ER16-878 et al.)	Feb 3	NSTAR, PSNH, NGrid file Cost Sharing Agreement for the Greater Boston Area Transmission Solution Plan; comment date Feb 24
* 20	LGIA: National Grid/Wheelabrator Saugus (ER16-760)	Jan 21	National Grid files LGIA with Wheelabrator Saugus; comment date Feb 11
20	SGIA: CMP/Hackett Mills Hydro (ER16-518)	Jan 20	CMP files correction and supplement to SGIA with Hackett Mills Hydro; comment date Feb 10
21	D&E Agreement NSTAR/NRG Canal 3 (ER16-510)	Feb 2	FERC accepts Agreement, eff. Dec 11, 2015
21	D&E Agreement NSTAR/Exelon West Medway (ER16-509)	Feb 2	FERC accepts Agreement, eff. Dec 11, 2015
21	LGIA – PSNH/Schiller Generating Station (ER16-391)	Jan 11	FERC accepts LGIA, eff. Jan 1, 2016

21	Emera MPD OATT Changes (ER15-1429; EL16-13)	Jan 12	Judge Johnson issues status report, notice of Mar 3, 2016 second settlement conference
		Jan 20	Emera Maine moves for adoption of protective order
		Jan 21	Chief Judge Cintron issues order adopting protective order
23	FERC Enforcement Action: Show Cause Order – Coaltrain et al. (IN16-4)	Jan 29	Respondents request extension of time, to Mar 4, 2016, to file answer
		Feb 1	FERC issues notice extending time for filing of Respondents’ answer to Mar 4, 2016
24	Etracom & M. Rosenberg (IN16-2)	Jan 14	Etracom invokes statutory rights to prompt assessment of a penalty and a <i>de novo</i> review of that penalty in federal district court should FERC assess penalties following response to Show Cause Order

**XII. Misc. - Administrative & Rulemaking Proceedings** ▼

* 24	Clean Power Plan Modeling Guidance Principles (AD16-14)	Jan 19	FERC issues staff white paper
		Jan 20	FERC issues errata to white paper
25	Price Formation in RTO/ISO Energy and Ancillary Services Markets (AD14-14)	Jan 15	ISO/RTO Council requests extension of time, to Mar 4, 2016, for ISO/RTO responses
		Jan 27	FERC grants extension of time; ISO/RTO responses due Mar 4; public comments on responses, Apr 4
* 25	NOPR: Price Formation Fixes - Price Caps in RTO/ISO Markets (RM16-5)	Jan 21	FERC proposes to require each RTO/ISO to cap incremental energy offers to the higher of \$1,000/MWh or a resource’s verified cost-based offer (regardless of fuel-type); comment date Apr 4
25	NOPR: Reactive Power Requirements for Wind Generators (RM16-1)	Jan 27	Over 20 parties submit comments; NEPOOL submits initial comments (to be supplemented following Feb 5 NPC meeting)
26	NOPR: Connected Entity Data Collection (RM15-23)	Jan 7 Jan 20-28	Public Citizen submits partial opposition to Industry Groups’ request Over 50 parties submit comments

**XIII. Natural Gas Proceedings** ▼

28	Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)	Jan 21	FERC issues orders initiating Natural Gas Act Section 5 investigations into whether the rates charged by the named gas pipeline companies were too high above their costs under federal law
		Jan 27	Acting Chief ALJ Cintron designates presiding ALJs for each of the proceedings

**XIV. State Proceedings & Federal Legislative Proceedings** ▼

*No Activity to Report*

**XV. Federal Courts** ▼

* 34	NEPGA Peak Energy Rent (PER) Complaint (16-1024**)	Jan 19	NEPGA appeals FERC’s order on its PER Complaint
		Jan 25	Clerk issues order regarding appearances and initial submissions
* 34	FCM Jump Ball and Compliance Proceedings (16-1023**)	Jan 19	NEPGA appeals FERC’s orders in the FCM Jump Ball and Compliance proceedings; clerk issues order regarding appearances and initial submissions
35	<i>Order 1000</i> Compliance Filings (15-1139, 15-1141**) (consolidated)	Jan 11	Joint Petitioner Briefs filed
38	<i>Orders 745 and 745-A (FERC v. EPSA, Supreme Court, 14-840 and 14-841)</i>	Jan 25	Supreme Court overturns DC Circuit Court of Appeals’ Decision vacating <i>Order 745</i>

## M E M O R A N D U M

**TO:** NEPOOL Participants Committee Member and Alternates

**FROM:** Patrick M. Gerity, NEPOOL Counsel

**DATE:** February 4, 2016

**RE:** Status Report on Current Regional Wholesale Power and Transmission Arrangements Pending Before the Regulators, Legislatures, and Courts

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures through February 4, 2016. If you have questions, please contact us.<sup>1</sup>

<b>I. Complaints/Section 206 Proceedings</b>
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- **206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)**

As previously reported, the FERC instituted this Section 206 proceeding on December 28, 2015, finding that the ISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff “lacks adequate transparency and challenge procedures with regard to the formula rates” for Regional Network Service (“RNS”) and Local Network Service (“LNS”).<sup>2</sup> The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”.<sup>3</sup> Accordingly, the FERC established hearing and settlement judge procedures to develop just and reasonable formula rate protocols to be included in the ISO-NE Tariff and to examine the justness and reasonableness of the RNS and LNS rates. The FERC encouraged the parties to make every effort to settle this matter before hearing procedures are commenced.<sup>4</sup> Hearings will be held in abeyance pending the outcome of settlement judge procedures.<sup>5</sup> The FERC-established refund date is January 4, 2016.<sup>6</sup> Interventions were due February 3, 2016. Interventions were filed by NEPOOL, the ISO, Braintree, Chicopee, Champlain VT, CT AG, CT DEEP, CT OCC, CT PURA, CMEEC, Fitchburg, Green Mountain, Liberty Utilities, MA AG, MA DPU, Maine Office of Public Advocate (“MOPA”), Middleborough, MMWEC, MPUC, Nat’l Grid, NESCOE, NHEC, NH OCA, Norwood, Public Citizen, Reading, RI PUC, Taunton VEC, VELCO, VPSA, VT DPS, Wallingford, and APPA.

**Request for Rehearing.** On January 27, Vermont Electric Cooperative (“VEC”) requested rehearing of the December 28 order. Specifically, VEC asserted that, because VEC is not a public utility, the FERC has no

<sup>1</sup> 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”).

<sup>2</sup> *ISO New England Inc. Participating Transmission Owners Admin. Comm. et al.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh’g requested*.

<sup>3</sup> *Id.* at P 8.

<sup>4</sup> *Id.* at P 11.

<sup>5</sup> *Id.*

<sup>6</sup> The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

power under Section 206 of the Federal Power Act (“FPA”) to institute a proceeding against it. In addition, VEC asserted that by directing an investigation of VEC’s LNS rate, the FERC also exceeded its authority, as VEC’s LNS rate is not a pass through rate that is administered or charged by the ISO. The VEC request for rehearing is pending before the FERC, with FERC action required on or before February 26, 2016, or the VEC request will be deemed denied.

**Settlement Judge Procedures.** On January 11, Chief Judge Cintron designated Judge John P. Dring as the Settlement Judge and scheduled a first settlement conference, which was held January 19. On January 22, Judge Dring issued an order scheduling a second settlement conference for March 24.

- **206 Proceeding: Zonal Sloped Demand Curves (EL16-15)**

Also on December 28, 2015, the FERC instituted a Section 206 proceeding finding that the ISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff “applies vertical demand curves within constrained zones, which does not sufficiently address concerns such as price volatility and a susceptibility to the exercise of market power as part of the Forward Capacity Market (“FCM”) rules.”<sup>7</sup> The FERC directed the ISO to submit Tariff revisions “that provide for inclusion of zonal sloped demand curves in its FCM rules, to be implemented beginning with FCA 11.”<sup>8</sup> Finding that “concerns with continued use of vertical demand curves weigh more heavily than they did a year ago,”<sup>9</sup> and that “the general challenges cited by ISO-NE [explaining the delay in developing zonal sloped demand curves] do not justify further delay,”<sup>10</sup> the FERC directed that Tariff changes be filed, following a request for extension granted, by **April 15, 2016**.<sup>11</sup> Interventions in EL16-15 were due January 19. Interventions were filed by the ISO, NEPOOL, Calpine, Champlain VT, CT DEEP, CT OCC, CT PURA, EPSA, Essential Power, Exelon, MA AG, MPUC, National Grid, NEPGA, NESCOE, NH OCA, Public Citizen, TransCanada, and the American Petroleum Institute (“API”), American Public Power Association (“APPA”). On January 27, NEPOOL, the ISO and NESCOE jointly requested an extension of time, to April 15, 2016, to file changes in response to the December 28 order in this proceeding. That request was granted on February 3. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)**

The hearing process in this proceeding is underway. As previously reported, after settlement judge proceedings were terminated, Chief Judge Cintron designated ALJ Philip Baten as the trial judge in this proceeding, and, ultimately, established Track II procedural time standards for the hearing. On January 8, 2016, Judge Baten issued an order setting the procedural schedule for the hearing process, with hearing set to commence July 19, 2016 and an initial decision due November 1, 2016. Since the last Report, NHT filed, on February 2, its initial direct testimony, exhibits and workpapers. Intervenors’ direct and answering testimony (with summaries), exhibits and workpapers are due March 2, 2016.

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<sup>7</sup> *ISO New England Inc. et al.*, 153 FERC ¶ 61,338 (Dec. 28, 2015).

<sup>8</sup> *Id.* at P 11.

<sup>9</sup> *Id.* at P 15.

<sup>10</sup> *Id.* at P 14.

<sup>11</sup> *Id.* at P 16. The original compliance filing date, March 31, 2016, was slightly accelerated from the tentative schedule identified by the ISO in its Oct. 30, 2015 informational report in ER14-1639. That Report summarized a schedule contemplating Participants Committee consideration of a zonal demand curve proposal at the NPC’s April 2016 meeting, with a FERC filing shortly thereafter. See Dec. 2, 2015 Litigation Report, Section VIII, Demand Curve Changes Progress Reports (ER14-1639) at p. 17. The compliance filing date was subsequently extended to April 15, 2016, to allow for a vote at the April 8, 2015 NPC meeting.



**Background.** 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",<sup>12</sup> 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.<sup>13</sup> The FERC encouraged the parties to make every effort to settle their dispute before hearings were commenced, and held the hearings in abeyance pending the outcome of settlement judge procedures.<sup>14</sup> The FERC-established refund effective date is August 19, 2015.<sup>15</sup> On December 11, Public Representatives requested the following two clarification of the *August 12 Order*: (i) that, in establishing the August 19, 2015 refund effective date, the FERC "did not intend to preclude the ability to order refunds for past periods if it is found that a formula rate has been misapplied"; and (ii) that, in establishing an FPA Section 206 proceeding, the FERC did not intend to relieve NHT of its obligation to demonstrate that its Sealink planning costs "are properly recoverable under the formula rate on file with the [FERC]." On December 14, NHT filed a response taking no position on whether the FERC should provide the requested clarifications, but should it, stating no objection to the FERC making the clarifications requested. Public Representatives' request for clarifications is pending before the FERC. If there are questions on these proceedings, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

On January 7, the FERC denied Exelon's and Calpine's request for rehearing<sup>16</sup> of the FERC's January 30 order denying the New Entry Pricing Rule Complaint.<sup>17</sup> 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 asserted, 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.

In its *New Entry Pricing Rule Rehearing Order*, the FERC disagreed with Exelon/Calpine's assertion that it had failed to provide a reasoned basis for finding that the New Entry Pricing Rule, coupled with the lock-in requirement, is just and reasonable or that it failed to address their arguments regarding artificial price suppression in the entry FCA.<sup>18</sup> In addition, the FERC stated that its opinion regarding whether zero-price offers from locked-in resources may be just and reasonable had evolved. Based on further consideration, the FERC has come to realize that a zero-price capacity offer from a new merchant resource that has cleared in at least one previous auction and has incurred construction costs can be a competitive offer that reflects the resource's going-forward costs, not an attempt to lower capacity market clearing

<sup>12</sup> "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").

<sup>13</sup> *ISO New England Inc. Participating Transmission Owners Administrative Committee and New Hampshire Transmission, LLC*, 152 FERC ¶ 61,121 (Aug. 12, 2015) ("*August 12 Order*").

<sup>14</sup> *Id.* at P 20.

<sup>15</sup> The notice of this proceeding was published in the *Fed. Reg.* on Aug. 19, 2015 (Vol. 80, No. 160) p. 50,271.

<sup>16</sup> *Exelon Corp. and Calpine Corp. v. ISO New England Inc.*, 154 FERC ¶ 61,005 (Jan. 7, 2016) ("*New Entry Pricing Rule Rehearing Order*").

<sup>17</sup> 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 denied*, 154 FERC ¶ 61,005 (Jan. 7, 2016).

<sup>18</sup> *New Entry Pricing Rule Rehearing Order* at P 15.

prices.<sup>19</sup> Unless the *New Entry Pricing Rule Rehearing Order* is challenged in Federal Court, this proceeding will be concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

On January 29, 2016, in light of the Supreme Court ruling in *FERC v. EPSA* overturning the DC Circuit Court of Appeals' decision vacating *Order 745* (see Section XV below), NEPGA withdrew its November 14, 2014 Complaint. As previously reported, the Complaint requested that (i) Demand Response ("DR") Capacity Resources be disqualified from FCA9 and (ii) the Tariff be revised to exclude DR from FCM participation going forward (as a result of the DC Circuit Court of Appeals' reversal of *Order 745*). If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC, in response to second (EL13-33<sup>20</sup>) and third (EL14-86<sup>21</sup>) 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;<sup>22</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>23</sup> and, because of "common issues of law and fact", consolidated the two proceedings for purposes of hearing and decision, with the FERC finding it "appropriate for the parties to litigate a separate ROE for each refund period."<sup>24</sup> The TOs requested rehearing of both orders. On May 14, the FERC denied rehearing of both orders.<sup>25</sup> On July 13, the TOs appealed those order to the DC Circuit Court of Appeals (see Section XIV below).

**Hearings.** The hearings in this matter 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

<sup>19</sup> *Id.* at P 18.

<sup>20</sup> 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%.

<sup>21</sup> 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.

<sup>22</sup> *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).

<sup>23</sup> *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).

<sup>24</sup> *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).

<sup>25</sup> *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).



July 13, 2015. Judge Sterner adopted the transcript corrections on July 15. 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. On December 18, 2015, finding none of the parties performed the discounted cash flow (“DCF”) methodology in accordance with the FERC’s preferred approach, Trial Judge Sterner reopened the record for the limited purpose of having calculations re-run based on data already in the record as of the close of hearing on July 2, 2015, so that the zone of reasonableness and ROE could be established in both cases. Judge Sterner scheduled a January 5 prehearing conference for the purpose addressing questions and completing the remainder of the procedural schedule. Also on December 18, Chief Judge Cintron set the deadline for supplemental reply briefs and a new deadline for Judge Sterner’s Initial Decision at March 1 and March 31, 2016, respectively.

Since the last Report and in accordance with Judge Sterner’s January 5 procedural order, TOs and FERC Staff filed the supplemental testimonies of their expert witnesses on January 15; Consumer-Aligned Parties, January 20. On January 27, the TOs’ moved to strike Consumer-Aligned Parties’ supplemental expert testimony. The Consumer-Aligned Parties opposed the TOs’ motion to strike on January 28. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@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*<sup>26</sup> and *531-B*.<sup>27</sup> As previously reported, following the issuance of *Opinion 531-B*, which denied rehearing of *Opinion 531*<sup>28</sup> 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 submitted the additional local refund reports at the end of December (*see* Section VIII below). Other than action on the filed 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](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto: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 January 29, 2016, the FERC accepted materials identifying 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.<sup>29</sup> The ICR-Related Values and HQICCs were accepted effective as of January 30, 2016, as requested. As previously reported, protests were filed by Dominion (limited to the ISO’s new methodology for incorporation in the load forecast of predicted future amounts of behind-the-meter photovoltaic resources that have not been captured in historical loads

<sup>26</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

<sup>27</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

<sup>28</sup> *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).

<sup>29</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 154 FERC ¶ 61,057 (Jan. 29, 2016).

(“BTMNEL”), NEPGA (on the basis that the ISO has yet to consider and vet with NEPOOL stakeholders the potential market and operational effects of its proposed change in ICR methodology, and because the ISO seeks to make change its ICR methodology without filing Tariff language under FPA Section 205), and NRG (objecting, as it did in ER16-307, to the use of forecasted values and forecasted performances in the calculation of reserve requirements, including the use of BTMNEL, and asserting that the changes to the ICR methodology must be filed under Section 205). NESCOE submitted comments (incorporating by reference its comments supporting the inclusion of the solar PV forecast as an input into the ICR determination filed earlier in ER16-307). Interventions were filed by Entergy, Eversource, National Grid, and PSEG. On January 5, 2016, the ISO answered the Dominion, NEPGA, and NRG protests. In accepting the ICR-Related Values, the FERC rejected the challenges, noting the challenges were addressed in the *2019/20 ICR/HQICCs Order* (see ER16-307 just below). Unless the January 29 order is challenged, with any challenges due on or before February 29, 2016, this proceeding will be concluded. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

On January 21, 2016, the FERC accepted the ISO’s informational filing for qualification in FCA10 (the “FCA10 Informational Filing”).<sup>30</sup> As previously reported, The FCA10 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. In response to the FCA10 Information Filing, 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. In accepting the FCA10 Informational Filing, the FERC denied Lotus’s request, “unpersuaded by Lotus’s assertion that ISO-NE evaluated the Offer Floor Price for the Projects based on an unreasonably high cost of equity figure,”<sup>31</sup> declining to overrule “ISO-NE’s judgment as to whether Lotus had substantiated its position as to the correct cost of equity figure without any evidentiary support”,<sup>32</sup> and agreeing with ISO-NE that “granting the requested waiver would be harmful to other participants.”<sup>33</sup> Unless the *FCA10 Qual. Informational Filing Order* is challenged, with any challenges due on or before February 22, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

On January 8, 2016, the FERC accepted the ICRs, Hydro Quebec Interconnection Capability Credits (“HQICCs”) and related Local Sourcing Requirements (“LSR”) values for the 2019/20 Capability Year.<sup>34</sup> As previously reported, the values will be used in FCA10 to be held this month. 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. In accepting the 2019/20 values, the FERC noted “that ISO-NE followed the Commission’s expectation that ISO-NE would work with its stakeholders to address the incorporation of solar PV

<sup>30</sup> *ISO New England Inc.*, 154 FERC ¶ 61,041 (Jan. 21, 2016) (“*FCA10 Qual. Informational Filing Order*”).

<sup>31</sup> *Id.* at PP 23-24.

<sup>32</sup> *Id.* at P 25.

<sup>33</sup> *Id.*

<sup>34</sup> *ISO New England Inc.*, 154 FERC ¶ 61,008 (Jan. 8, 2016) (“*2019/20 ICR/HQICCs Order*”).

forecasts into the ICR calculation for FCA 10.”<sup>35</sup> The FERC found that the ISO “properly incorporated Non-Embedded Solar Resources into its ICR calculation, and has supported that action,” dismissing arguments made by protesters to the contrary.”<sup>36</sup> With respect to protests regarding the underlying stakeholder process, the FERC found that, “while those discussions did not result in NEPOOL’s support of ISO-NE’s proposed ICR, [ ] the stakeholder process ... provided sufficient process, and, contrary to NEPGA’s assertion in its answer, considered the operational and market consequences of its change to its method of calculating the ICR.”<sup>37</sup> Challenges to the *2019/20 ICR/HQICCs Order*, if any, are due on or before February 8, 2016. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

As previously reported, Eversource submitted, on October 19, 2015, a proposal 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*. The proposal included changes to OATT Attachment F and the Attachment F Implementation Rule. Eversource stated that its proposal will have a rate reduction effect. 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). Comments on this filing were due on or before November 9, 2015; none were filed. Doc-less interventions were filed by NESCOE, MA AG, and National Grid.

On December 16, the FERC issued a deficiency letter, indicating that additional information identified in the deficiency letter is required for the filing to be processed. The FERC directed that the response to the deficiency letter be submitted on or before January 15, 2016. In addition to the deficiency letter response, the FERC directed Eversource to have the ISO re-submit the proposed revisions to Attachment F to recover the CCRP costs based on the current effective version of the ISO Tariff (finding the Tariff revisions submitted did not reflect the currently effective version of Attachment F accepted by the FERC in ER15-1629, effective June 1, 2015). On December 24, Eversource requested an extension of time, to February 15, 2016, to submit the additional information. On December 31, the FERC granted an extension of time, to February 15, 2016, as requested, for Eversource’s response to the deficiency letter. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order<sup>38</sup> that PSEG’s May 2010 petition for review be granted, remanding the FERC’s orders in this proceeding<sup>39</sup> 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.

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<sup>35</sup> *Id.* at P 27.

<sup>36</sup> *Id.* at PP 30-37.

<sup>37</sup> *Id.* at P 37.

<sup>38</sup> *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).

<sup>39</sup> *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).

In a long-awaited order, the FERC, on June 2, 2015, 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.<sup>40</sup> “[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.”<sup>41</sup> 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 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 remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

- **Lotus Energy Waiver Request (EL16-22)**

On February 2, Lotus withdrew its Waiver Request/Complaint. As previously reported, in a December 22 motion filed under Section 206 of the FPA, Lotus Energy Group, LLC (“Lotus”) requested a waiver of the application of the existing New Resource Offer Floor Price rules to its two generating facilities currently under development (the “Projects”). Lotus stated that it did not seek the adoption of a generically applicable exemption

<sup>40</sup> *ISO New England Inc.*, 151 FERC ¶ 61,196 (June 2, 2015) (“*FCA1 Remand Order*”).

<sup>41</sup> *Id.* at P 14.



from those rules and does not seek to change any Market Rules.<sup>42</sup> Rather, it sought an order that allows the Projects to avoid be subject to mitigation under the Tariff, mitigation which Lotus asserts would be “unjust, unreasonable, and directly contrary to [FERC] policy and precedent”. Comments on the Lotus Complaint were due on or before January 21. Interventions were filed by APPA, Calpine, Champlain ConEd, VT, Entergy, National Grid, NEPGA, and NESCOE. NEPOOL filed limited comments on January 19, 2016. The ISO and NRG filed protests on the January 21 comment date. Lotus answered the ISO and NRG protests on February 28 and, “because ISO-NE has stated that an order granting the Complaint would necessitate a delay in [FCA10], Lotus respectfully makes an emergency motion asking the Commission to delay the start of the auction until after it acts on the Complaint and ISO-NE has had sufficient time to implement relief.” However, on February 2, Lotus withdrew that motion and its Complaint, stating that it “has been unable to secure the financing necessary to satisfy the remainder of the collateral deposit required for the Projects ... to participate in ... FCA 10. Lotus’ inability to secure financing was caused in large part by ISO-NE’s imposition of a New Resource Offer Price under its currently effective tariff and the associated business uncertainty.” Lotus noted that it had separately “commenced discussions with ISO-NE concerning the need to avoid the unnecessary and harmful mitigation of truly competitive entrants in the future. Lotus intends to pursue this issue through the stakeholder process in advance of [FCA11].” If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **New DNE Dispatch Changes Effect Date (ER16-870)**

On February 2, 2016, the ISO filed changes to establish May 25, 2016 (rather than April 10, 2016) as the effective date for the new Do Not Exceed (“DNE”) Dispatch Changes. The FERC accepted the DNE Dispatch Changes to become effective on April 10, 2016 in an order issued on July 23, 2015.<sup>43</sup> However, in its February 2 filing, the ISO reported that it would not be able to implement the DNE Dispatch Changes on that date as planned, “in part due to the need to complete thorough quality assurance testing of these changes because they affect the real-time dispatch systems.” Accordingly, the ISO requested the brief delay to permit implementation on May 25, 2016. Comments, if any, on this filing are due February 23, 2016. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **CSO Termination: Spruce Mountain Wind (ER16-864)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on February 2 to terminate a portion of the CSO for Resource No. 38173 held by Project Sponsor Spruce Mountain Wind. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the applicable amount of financial assurance provided by Spruce Mountain Wind with respect to the portion of the CSO to be terminated. NEPOOL filed a doc-less intervention on February 3. Comments on this filing are due on or before February 22. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Waiver Request: FCM Qualification Lock-In Election (Calpine) (ER16-708)**

On February 4, the FERC granted Calpine’s requested waiver of the FCM qualification rules to allow it to correct the New Capacity Qualification Package for one of its resources to reflect Calpine’s desire to lock-in the FCA10 Capacity Clearing Price for the next six Capacity Commitment Periods (which it omitted to do in its originally submitted Qualification package documents)<sup>44</sup>. Comments on this waiver request were due on or before January 19, 2016. NEPOOL filed a doc-less motion to intervene. Comments supporting the filing were filed by NESCOE and Westfield Gas & Electric Light Department. PSEG filed a protest. The ISO did not intervene or comment. Unless the February 4 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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<sup>42</sup> Lotus Complaint at pp. 12-13.

<sup>43</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 152 FERC ¶ 61,065 (July 23, 2015) (“DNE Dispatch Order”).

<sup>44</sup> *Calpine Energy Services, L.P.*, 154 FERC ¶ 61,082 (Feb. 4, 2016).



- **FCM Resource Retirement Reforms (ER16-551)**

As previously reported, On December 17, the ISO filed revisions it and its Internal Market Monitor (“IMM”) propose to make to the FCM rules for resource retirements (the “ISO/IMM Proposal”). Specifically, the ISO/IMM Proposal requires (i) that capacity suppliers with existing resources to submit a price for the retirement of a resource (to replace the existing Non-Price Retirement Request process), (ii) the use of a Proxy De-List Bid, and (iii) notice of the potential retirement and proposed retirement price to be submitted prior to the commencement of an FCA’s qualification process for new resources. The ISO/IMM Proposal was considered but not supported by the Participants Committee at its December 4, 2015 meeting. A February 16, 2016 effective date was requested. Comments on this filing were initially due on or before January 7, but following a December 18 request by NEPGA, the FERC granted a limited extension of time to submit comments to January 11. Document interventions were filed by Calpine, CMEEC, ConEd, Emera, Entergy, Eversource, Exelon, MMWEC, National Grid, NEPGA, NESCOE, NextEra, NHEC, NRG, PSEG, and TransCanada. NEPOOL submitted comments on December 30 expanding on the reporting of stakeholder consideration of the ISO/IMM Proposal and amendments thereto.

Since the last Report, protests were filed by *GEN Group* (urging the FERC to adopt the GEN Group Proposal, while highlighting concerns with the ISO’s proposed sole use of its new discounted cash flow methodology, excessive discretion, assignment of filing rights, price suppression, over-mitigation and impact on retirement rights), *NEPGA* (asserting that (a) elimination of the Non Price Retirement Request mechanism was not sufficiently justified, (b) proposed use of FERC-approved and proxy de-list bids will result in over-mitigation and undue discrimination, and (c) protesting the proposed assignment of filing rights), *Dominion* (supporting NEPGA’s protest and highlighting (a) retirement decisions are significant business decisions unlikely to be used to exercise market power; (b) the concepts of “premature” or “uneconomic” retirements cannot be captured by a bright line test; and (c) de-list bid review should defer to the business judgment of the capacity supplier to match the allocation of risk in the market), *NRG* ((a) identifying price suppression, over-mitigation, and unduly discriminatory pricing effects of the ISO’s proposal; and (b) asserting that it would be unjust and unreasonable to eliminate the ability for resource owners to reduce bids or to bind a resource to its retirement for every year after it places its retirement bid, and *PSEG* (urging the FERC to reject the filing for many of the same reasons identified by the other protestors and, if not rejected, to direct the ISO to address what PSEG perceives as the real problem -- the lack of flexibility in developing and submitting Static De-List Bids.). *NESCOE* submitted comments supporting the ISO’s filing. On January 27, the ISO and Eversource answered the protests filed.

On February 1, the External Market Monitor, *Potomac Economics* moved to intervene out-of-time, supported the ISO/IMM Proposal, and recommended the following three changes to “address some of the concerns and make the reforms more effective in mitigating potential exercises of market power”:

1. Allocation of the additional costs of procuring capacity to the retiring supplier when the resource in question was economic based on its competitive, FERC-approved proxy de-list bid.
2. Institution of a 15% threshold for the imposition of mitigation (i.e. mitigation only where the original de-list bid exceeds the ISO’s competitive estimate by 15% or more), reasonably allowing for differing expectations and risk preferences of the supplier.
3. Augmenting the proposed portfolio test to include incremental revenues that may result from the higher FCA prices that derive not only from a supplier’s portfolio of generation assets, but also from its other physical and financial positions.

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](mailto:slombardi@daypitney.com)).

- **De-List Bid Information Release Change (ER16-538)**

On February 2, the FERC accepted revised Tariff sections which remove the requirement that the ISO publish de-list bid prices 15 days after a FCA (“De-List Bid Info Release Changes”). Instead, the De-List Bid Info Release Changes keep resource-specific bid and offer prices confidential even after completion of an FCA, because of the potential harm publication could have on the competitiveness of the FCM. The De-List Bid Info

Release Changes will become effective February 14, 2016, as requested.<sup>45</sup> Unless the February 2 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](mailto:slombardi@daypitney.com)).

- **CTS Winter Reliability Program Cost Allocation Correction (ER16-462)**

On January 28, the FERC accepted revised Tariff sections to correct a mistake in the cost allocation rules for the Winter Reliability Program that went into effect on September 14, 2015 (the “Cost Allocation Correction”). As previously reported, the Cost Allocation Correction exempts all Coordinated External Transactions from the cost allocation for the Winter Reliability Program, consistent with the underlying principles that justify CTS for Coordinated External Transactions. The Cost Allocation Correction was accepted effective as of December 15, 2015, as requested. Unless the January 28 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto: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”,<sup>46</sup> since submitted and accepted. The *Winter 2015-18 Reliability Program Order* was challenged by Entergy, which asserted 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; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)), Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC conditionally accepted on May 30, 2014, revisions to the FCM rules, jointly submitted by the ISO and NEPOOL, that establish a system-wide sloped demand curve (“Demand Curve Changes”).<sup>47</sup> The Demand Curve Changes defined the shape of the system-wide sloped demand curve (with key points defined by CONE and the 0.1 days/year LOLE target), extended the period during which a Market Participant may “lock-in” the capacity price for a new resource from five to seven years, establish a limited renewables resource exemption, and eliminated, at the system-wide level, the administrative pricing rules that were necessary in certain market conditions under the vertical demand curve construct. In response to challenges, the FERC denied rehearing of the *Demand Curve Order*,<sup>48</sup> 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).<sup>49</sup> 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.<sup>50</sup> NextEra, NRG and PSEG then petitioned the DC Circuit Court of Appeals for review of the

<sup>45</sup> The FERC issued a Feb. 3 errata order correcting the Feb. 2 order to state that the effective date is February 14, 2016, as requested and filed.

<sup>46</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 152 FERC ¶ 61,190 (Sep. 11, 2015) (“*Winter 2015-18 Reliability Program Order*”) at P 44.

<sup>47</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”).

<sup>48</sup> *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).

<sup>49</sup> *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*”).

<sup>50</sup> The changes become effective with FCA-10, and will not apply to the resources in FCA9, totaling 12.96 MW, that utilize both the renewable resource exemption and the price lock-in election.

FERC's Demand Curve orders (March 30, 2015). Following submission of Petitioner and Intervenor for Petitioner briefs (October 5 and 20, 2015, respectively), the FERC, on November 20, 2015, requested that the Court remand the case back to the FERC for further proceedings (stating that "review of the opening briefs indicates that further consideration by the Commission is appropriate"). On December 1, 2015, the Court granted FERC's unopposed motion, and remanded the case back to the FERC for further proceedings. Since that remand, there have been no public developments to report. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

#### IV. OATT Amendments / TOAs / Coordination Agreements

- **RSP Timing Changes (ER16-819)**

On January 29, 2016, the ISO and NEPOOL jointly filed changes to OATT Attachment K to modify the timing of the Regional System Plan ("RSP") so that the full RSP report will be published every other year, rather than every year, but with supporting documents like the RSP project list, the annual load forecast, and other annual planning inputs, to continue to be published as they are completed ("RSP Timing Changes"). The RSP Timing Changes were supported by the Participants Committee at its January 8, 2016 meeting (Consent Agenda Item # 1). A March 29, 2016 effective date was requested. Comments on this filing are due February 19, 2016. Thus far, doc-less interventions were filed by NESCOE and National Grid. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

As previously reported, 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").<sup>51</sup> The 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. The November 9 order was not challenged and is final and unappealable.

*Notice of December 15, 2015 Effective Date and Tariff Corrections.* On December 1, the ISO filed notice that CTS would become effective **December 15, 2015**. It also filed the minor corrections directed by the November 9 order. Comments on the notice and corrections were due on or before December 22; none were filed. CTS was implemented on December 15, 2015, and subject to action on the December 1 compliance filing, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

#### V. Financial Assurance/Billing Policy Amendments

*No Activity to Report*

#### VI. Schedule 20/21/22/23 Changes

- **Schedule 21-EM: Emera Maine/Covanta Maine LTSA Terminations (ER16-840)**

On January 29, Emera filed a notice of termination of two expired long-term transmission service agreements ("LTSAs") with Covanta Maine that had expired December 31, 2015 by their own terms. The Agreements were Service Agreements 69 and 70 under Schedule 21-EM. Emera requested that the terminations also become effective December 31, 2015. Comments on this filing are due on or before February 19, 2016. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

<sup>51</sup> *ISO New England Inc., New England Power Pool Participants Comm., and the Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,159 (Nov. 9, 2015).

- **Schedule 21-NSTAR: Fore River LGIA Termination Notice (ER16-816)**

On January 29, Eversource filed a notice of termination of an LGIA that has since been replaced by an executed a three-party LGIA (NSTAR/ISO-NE/Calpine) as a result of Calpine's Interconnection Request to increase the Fore River Energy Center's Capacity Network Resource Interconnection Service. The Agreement was Service Agreement 68 under Schedule 21-NSTAR. Eversource requested that the terminations become effective January 20, 2016, the effective date of the new LGIA. Comments on this filing are due on or before February 19, 2016. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

## VII. NEPOOL Agreement/Participants Agreement Amendments

*No Activity to Report*

## VIII. Regional Reports

- **Opinion 531-A Local 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](mailto:pmgerity@daypitney.com)).

- **Opinions 531-A/531-B Local Refund Reports (EL11-66)**

In accordance with *Opinions 531-A and 531-B*, the following TOs filed their refund reports for their customers taking local service during the refund period (comment date on refund report noted in parentheses):

- ◆ Central Maine Power (Jan 21)
- ◆ Emera Maine (Jan 29)
- ◆ Eversource (CL&P, PSNH, WMECO) (Jan 21)
- ◆ National Grid (Jan 13)
- ◆ New Hampshire Transmission (Jan 21)
- ◆ NSTAR (Jan 21)
- ◆ United Illuminating (Jan 21); supplement (Feb 1)
- ◆ VT Transco (Feb 3)

All comments dates have passed. No comments were filed in response to any of the reports and each is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **LFTR Implementation: 29<sup>th</sup> Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the twenty-ninth of its Quarterly Status Reports regarding LFTR implementation on January 15, 2016. The ISO reported that a significant issues have arisen with the third-party clearing approach it has been pursuing. Specifically, during the process of developing contracts with the exchange and the clearing house, several new issues emerged that have yet to be resolved. The ISO reported that it is working both to resolve those issues and to develop an alternative approach to address the financial assurance issues inherent in the LFTR market that have long been identified in this matter. If the issues with the exchange and clearing house can be resolved, and it is possible to move forward with the third-party clearing design, the ISO reported that the Commodities Futures Trading Commission ("CFTC") and the FERC would need to serially approve the proposed structure. The ISO's preliminary sense was that CFTC approval might be obtained during the second half of 2016. That approval would be followed by finalization of rules through the NEPOOL process and a filing with the FER in early 2017. Assuming CFTC approval and Commission acceptance, the third-party clearing design could be put in place during the fourth quarter of 2017 for the auction that covers the 2018 annual FTR period. Monthly reconfiguration auctions under the third-party clearing design could be implemented about six months later (mid-2018). Finally, the ISO expects that the

initial auction of LFTRs under the third-party clearing design could be implemented during the fourth quarter of 2019. These status reports are not noticed for public comment and no comments have been filed.

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

On January 29, 2016, the Internal Market Monitor (“IMM”) filed with the FERC its report for the Fall quarter of 2015 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. Please note that, beginning with this report, the periods covered by these reports have been adjusted to more closely reflect the seasons but still increment the metrics by a quarter of a year (i.e. Winter: Dec-Feb; Spring: Mar-May; Summer: Jun-Aug; and Fall: Sep-Nov). These filings are not noticed for public comment by the FERC. The IMM will present a summary of this report at the February 5 meeting (Agenda Item 4A).

## IX. Membership Filings

- **February 2016 Membership Filing (ER16-836)**

On January 29, NEPOOL requested that the FERC accept (i) the membership of GBE Power Inc. (Supplier Sector); (ii) the terminations of: Glacial Energy of New England (Supplier Sector), Parkview Adventist Medical Center (End User Sector), and Vermont Marble (Supplier Sector); and (iii) the name change of: Constellation Energy Power Choice, LLC (f/k/a Constellation Energy Power Choice, Inc.). Comments on this filing are due on or before February 19.

- **Involuntary Termination of Membership: NAPP (ER16-820)**

Also on January 29, NEPOOL and the ISO requested that the FERC accept the involuntary termination of the NEPOOL and Market Participant status of North America Power Partners (“NAPP”) as a result of NAPP’s failure to pay when due the amounts invoiced to it by ISO-NE. A January 1, 2016 effective date was requested. Comments on this filing are due on or before February 19.

- **Involuntary Termination of Membership: Negawatt (ER16-818)**

Again on January 29, NEPOOL and the ISO requested that the FERC accept the involuntary termination of the NEPOOL and Market Participant status of Negawatt Business Solutions (“Negawatt”) as a result of Negawatt’s failure to pay when due the amounts invoiced to it by ISO-NE. A January 1, 2016 effective date was requested. Comments on this filing are due on or before February 19.

- **January 2016 Membership Filing (ER16-670)**

On December 30, NEPOOL requested that the FERC accept (i) the membership of Solea Energy (Supplier Sector), and Archer Energy (Supplier Sector); (ii) the terminations of: Gulf Oil (Supplier Sector), Tyngsboro Spindle and Beacon Power (AR Sector), and Hawkes Meadow Energy (Related Person of Wallingford Energy, Generation Sector); and (iii) the name change of: Uniper (f/k/a E.ON) Global Commodities North America LLC. Comments on this filing were due on or before January 20, 2016; none were filed. This matter is pending before the FERC.

- **Suspension Notices (not docketed)**

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



<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Jan 26/27	Lotus Danbury LMS100 One, LLC	Feb 4, 2016
Jan 26/27	Lotus Danbury LMS100 Two, LLC	Feb 4, 2016

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

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

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

- **Glossary Definition Changes (RD16-3)**

On January 21, the FERC approved changes to 26 defined terms in NERC's Glossary, which contains the definitions of terms used in NERC Reliability Standards. The changes will become effective April 1, 2016, as requested. Unless the January 21 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standard: BAL-002-2 (RM16-7)**

On January 29, 2016, NERC filed for approval a revised Reliability Standard -- BAL-002-2 (Disturbance Control Performance - Contingency Reserve for Recovery from a Balancing Contingency Event), and associated Glossary definitions, implementation plan, VRFs and VSLs (together, the "BAL Changes"). NERC stated that the BAL Changes consolidate six requirements in BAL-002-1 into three requirements. The 3 requirements are supported by several proposed associated NERC Glossary definitions, along with a revised Applicability section that incorporates language from the existing Standard. BAL-002-2 requires responsible entities to maintain and deploy energy reserves and to stabilize system frequency through identification of a Reportable ACE deviation and restoration of Reporting ACE to defined values after a system disturbance. BAL-002-2 will also require the responsible entity to maintain an Operating Process to ensure maintenance of Contingency Reserves to a level at least equal to the responsible entity's Most Severe Single Contingency ("MSSC"). By doing so, BAL002-2 will create and implement a continent-wide reserve policy to ensure that responsible entities will always have adequate Contingency Reserves to be deployed as necessary. NERC requested that responsible entities be required to comply with BAL-002-2 on the first day of the first calendar quarter that is six months after this standard is approved by the FERC. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Order 822: 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 January 21, the FERC issued Order 822<sup>52</sup> approving changes to seven CIP (Critical Infrastructure Protection) Reliability Standards designed to improve the cyber security protections required by the CIP Standards and address four directives from *Order 791* (the "Supply Chain Cyber Controls Changes"). As previously reported, 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 bulk electric system ("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.

<sup>52</sup> *Revised Critical Infrastructure Protection Reliability Standards*, Order No. 822, 154 FERC ¶ 61,037 (Jan. 21, 2016) ("*Order 822*").

In approving the Supply Chain Cyber Controls Changes, the FERC directed NERC to develop the following modifications to improve the revised CIP Standards: (i) modifications to address the protection of transient electronic devices used at Low Impact BES Cyber Systems; (ii) modifications to CIP-006-6 to require protections for communication network components and data communicated between all bulk electric system Control Centers according to the risk posed to the bulk electric system; and (iii) modifications to the definition for Low Impact External Routable Connectivity. *Order 822* does not address the supply chain risk management issues to be discussed at the January technical conference (the FERC will determine the appropriate action on that issue following the technical conference). *Order 822* will become effective March 31, 2016.<sup>53</sup>

**Technical Conference on supply chain risk management issues.** On January 28, 2016, the FERC held a technical conference to facilitate dialogue on supply chain risk management issues identified by the FERC in *Order 822*. Staff presented on supply chain efforts by other Federal agencies, followed by industry panels on: (1) the need for a new or modified Reliability Standard; (2) the scope and Implementation of a new or modified Standard; and (3) current supply chain risk management practices and collaborative efforts. New England panelists included: John Galloway (ISO-NE, Director, Cyber Security); and Jonathan Appelbaum (UI, Director, NERC Compliance). Speaker materials from the technical conference on posted on the FERC's eLibrary.

- **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").<sup>54</sup> 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.<sup>55</sup> 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, 2015<sup>56</sup> 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.

**March 1, 2016 Technical Conference.** On December 22 (as corrected December 23), the FERC issued a notice of a technical conference to be held on March 1, 2016. The technical conference will facilitate a structured dialogue on GMD-related topics, including but not limited to: (1) the benchmark GMD event(s); (2) vulnerability

<sup>53</sup> *Order 822* was published in the *Fed. Reg.* on Jan. 26, 2016 (Vol. 81, No. 16) pp. 4,177-4,191.

<sup>54</sup> *Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) ("*TPL-007 NOPR*").

<sup>55</sup> *Reliability Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 ("*Order 779*").

<sup>56</sup> The *TPL-007 NOPR* was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

assessments; and (3) monitoring of related parameters. The technical conference will be led by Commission staff, with prepared remarks to be presented by invited panelists, which must be submitted to the Commission in advance of the conference. A subsequent notice providing an agenda and details on the topics for discussion will be issued in advance of the conference. Members of the public are encouraged to attend and preregister online at: <https://www.ferc.gov/whats-new/registration/03-01-16-form.asp>.

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

As previously reported, the FERC issued, on September 17, 2015, a NOPR proposing to approve PRC-026-1 (Relay Performance During Stable Power Swings) and associated VRFs and VSLs (the “PRC-026 Standard”).<sup>57</sup> The PRC-026 Standard was filed in response to the FERC’s directive to NERC in *Order 733*<sup>58</sup> 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, 2015<sup>59</sup> 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.

- **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.<sup>60</sup> The MOD Changes would 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 Standards<sup>61</sup> 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,<sup>62</sup> 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

<sup>57</sup> *Relay Performance During Stable Power Swings Reliability Standard*, 152 FERC ¶ 61,200 (Sep. 17, 2015).

<sup>58</sup> *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*”).

<sup>59</sup> The *PRC-026 NOPR* was published in the *Fed. Reg.* on Sep. 24, 2015 (Vol. 80, No. 185) pp. 57,549-57,553.

<sup>60</sup> *Modeling, Data, and Analysis Reliability Standards*, 147 FERC ¶ 61,208 (June 19, 2014).

<sup>61</sup> 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.

<sup>62</sup> The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

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.<sup>63</sup> 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,<sup>64</sup> and were filed by NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. As noted, this NOPR remains pending before the FERC.

- **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 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.

- **Rules of Procedure Changes (RR16-2)**

On January 21, 2016, the FERC approved revisions to the following parts of the NERC Rules of Procedure ("ROP"): (i) Section 317 (Periodic Review of Reliability Standards); (ii) Section 1003 (Infrastructure Security Program); (iii) Appendix 2 (Definitions Used in the Rules of Procedure); and (iv) Appendix 4D (Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards). As previously reported, NERC stated that the ROP revisions were proposed to provide consistency with the version 5 CIP Reliability Standards, consistency with the Glossary of Terms (*see* RD16-3 above), and to reflect, in the body of the ROP, previously-approved revisions regarding the timing of periodic reviews of Reliability Standards. The proposed revisions will become effective April 1, 2016, as requested. Unless the January 21 order is challenged, this proceeding will be concluded.

- **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.<sup>65</sup> In accepting the RDAs, the FERC required that NERC submit changes (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

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<sup>63</sup> *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

<sup>64</sup> 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.

<sup>65</sup> *N. Amer. Elec. Rel. Corp.*, 153 FERC ¶ 61,135 (Nov. 2, 2015).

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. NERC submitted its compliance filing on December 18. Comments on that compliance filing are due on or before January 8, 2016; none were filed. The compliance changes are pending before the FERC

## XI. Misc. - of Regional Interest

- **203 Application: ReEnergy Sterling (EC16-58)**

On December 29, 2015, ReEnergy Sterling CT Limited Partnership ("ReEnergy Sterling") requested FERC authorization for the sale of 100% of its partnership interests to Empire Tire of Edgewater 2, LLC ("Empire Tire"). Should the transaction be consummated, ReEnergy Sterling will no longer be a Related Person to ReEnergy Stratton, Dartmouth Power or TrailStone Power. Comments on this filing were due on or before January 19, 2016; 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](mailto:pmgerity@daypitney.com)).

- **203 Application: Narragansett/Entergy Rhode Island State Energy (EC16-50)**

On December 11, 2015, Narragansett Electric Company ("National Grid") requested FERC authorization to acquire from Entergy Rhode Island State Energy, L.P. ("RISE") interconnection assets associated with the RISE combined cycle natural gas-fired electric generating facility located in Johnston, Rhode Island. The purchase and sale of these limited interconnection assets are provided for by a 2015 LGIA between RIA, National Grid, and ISO-NE. Comments on this filing were due on or before January 4, 2016; 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](mailto:pmgerity@daypitney.com)).

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

On January 28, 2016, the FERC approved the acquisition by Calpine Granite Holdings, LLC ("Calpine") of 100% of the membership interests of Granite Ridge Energy, LLC ("Granite Ridge").<sup>66</sup> Challenges, if any, to the January 28 order must be filed on or before February 29, 2016. Calpine and Granite Ridge must notify the FERC within 10 days of the date that the transaction has been consummated. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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.<sup>67</sup> 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](mailto:pmgerity@daypitney.com)).

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

On January 8, 2016, the FERC issued a notice that it was declining to initiate an enforcement action under section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 ("PURPA") as requested by Allco Renewable Energy Limited ("Allco") on November 9, 2015.<sup>68</sup> As previously reported, Allco's request

<sup>66</sup> *Calpine Granite Holdings, LLC and Granite Ridge Energy, LLC*, 154 FERC ¶ 62,058 (Jan. 28, 2016).

<sup>67</sup> *Passadumkeag Windpark, LLC*, 153 FERC ¶ 62,110 (Nov. 17, 2015).

<sup>68</sup> *Allco Renewable Energy Limited et al.*, 154 FERC ¶ 61,007 (Jan. 8, 2016) ("*Allco Notice*").



was for a FERC enforcement action under PURPA against CT DEEP and CT PURA<sup>69</sup> to remedy “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). The FERC’s decision not to initiate an enforcement action means that Allco may themselves bring an enforcement action against CT DEEP and CT PURA in the appropriate court.<sup>70</sup> If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On January 29, 2016, in light of the Supreme Court ruling in *FERC v. EPSA* overturning the DC Circuit Court of Appeals’ decision vacating *Order 745* (see Section XV below), FirstEnergy withdrew its May 23, 2014 Complaint. As previously reported, 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. No FERC action on this Complaint had yet been taken and with FirstEnergy’s withdrawal, reporting on this proceeding has concluded. If you have any questions concerning this matter, please contact Jamie Blackburn ([jblackburn@daypitney.com](mailto:jblackburn@daypitney.com); 202-218-3905) or Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Cost Sharing Agreements: National Grid/NSTAR/PSNH (Greater Boston Area Transmission Solution Plan) (ER16-878, -879, -882)**

On February 3, 2016, National Grid, NSTAR and PSNH each filed an identical version of a Cost Sharing Agreement designed to set forth in writing the respective rights and obligations of National Grid and the Eversource Companies (together, the “Parties”) in connection with the sharing of costs the planning, engineering, permitting and siting of facilities associated with the Greater Boston transmission projects. The Parties entered into this Agreement to document their cooperation and coordination in constructing the Greater Boston transmission projects, which are planned reliability upgrades to satisfy certain New England regional reliability transmission needs. An April 4, 2016 effective was requested. Comments on this filing are due on or before February 24, 2016. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: National Grid/Wheelabrator Saugus (ER16-760)**

On January 21, 2016, National Grid filed a non-conforming Large Generation Interconnection Agreement (“LGIA”) with Wheelabrator Saugus to govern the interconnection of Wheelabrator Saugus’ 36 MW generating facility located in Saugus, Massachusetts. Since the LGIA continues the existing interconnection arrangements between National Grid and Wheelabrator Saugus, without modification to the Saugus facility’s capability or operating characteristics, a new three-party Interconnection Agreement (that would include the ISO) was not required. A January 1, 2016 effective was requested. Comments on this filing are due on or before February 11, 2016. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **SGIA: CMP/Hackett Mills Hydro (ER16-518)**

As previously reported, CMP filed, on December 14, a non-conforming Small Generation Interconnection Agreement (“SGIA”) with Hackett Mills Hydro Associates (“Hackett Mills Hydro”) to cover the interconnection between CMP and respect Hackett Mills Hydro’s 500 kW hydroelectric facility located in Poland, Maine. Since the SGIA merely continues the existing interconnection arrangement between CMP

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<sup>69</sup> 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.

<sup>70</sup> *Allco Notice* at P 2.

and Hackett Mills, without modification to that facility's capability or operating characteristics, a new three-party Interconnection Agreement (that would include the ISO) was not required. A January 1, 2016 effective was requested. Comments on this filing were due on or before January 4, 2016; none were filed. Since the last Report, on January 20, CMP amended its filing, removing Effective Date as a Milestone, and supplementing the filing with a one-line diagram not previously included. Comments on the January 20 filing are due on or before February 10, 2016. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement NSTAR/NRG Canal 3 (ER16-510)**

On February 2, 2016 the FERC accepted a Design and Engineering Agreement (“D&E Agreement”) between NSTAR and NRG Canal 3 Development LLC (designated as service agreement IA-NSTAR-33) that sets forth the terms and conditions under which NSTAR will undertake certain design and engineering activities on the Interconnection Facilities identified in ISO-NE studies, prior to execution of an LGIA under Schedule 22 of the ISO-NE Tariff. Eversource stated that NSTAR's costs include applicable overheads and loaders in performing design and engineering activities for NRG's 342 MW Sandwich, MA facility. The D&E Agreement was accepted for filing as of December 11, 2015, as requested. Unless the February 2 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement NSTAR/Exelon West Medway (ER16-509)**

Also on February 2, 2016, the FERC accepted a D&E Agreement between NSTAR and Exelon West Medway (designated as service agreement IA-NSTAR-32) that sets forth the terms and conditions under which NSTAR will undertake certain design and engineering activities on the Interconnection Facilities identified in ISO-NE studies, prior to execution of an LGIA under Schedule 22 of the ISO-NE Tariff. Eversource stated that NSTAR's costs include applicable overheads and loaders in performing design and engineering activities for Exelon's 207 MW West Medway, MA facility. The D&E Agreement was accepted for filing as of December 11, 2015, as requested. Unless the February 2 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On January 11, the FERC accepted a two-party LGIA between Eversource (PSNH) and Schiller Generating Station, a 180 MW, four-unit power plant, consisting of two coal-fired steam units, one wood-fired steam unit and one combustion turbine located in Portsmouth, New Hampshire. The LGIA was entered into in order to demonstrate compliance with REC Purchase Agreements and to formalize a pre-existing LGIA covering the station. PSNH is the owner and operator of Schiller Station. The LGIA was accepted effective as of January 1, 2016, as requested. Unless the January 11 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](mailto:pmgerity@daypitney.com)).

- **Emera MPD OATT Changes (ER15-1429; EL16-13)**

As previously reported, the FERC conditionally accepted, on December 7, 2015, changes to the Maine Public District Open Access Transmission Tariff (“MPD OATT”), including to the rates, terms, and conditions set forth in MPD OATT Attachment J.<sup>71</sup> However, the FERC found, ultimately, that the changes to the MPD OATT had not been shown to be just and reasonable, may be unjust and unreasonable, instituted a Section 206 proceeding (in EL16-13) to examine the provisions, and set the matter for a trial-type evidentiary hearing, to be held in abeyance pending the outcome of settlement judge procedures (*see* below). In addition, the FERC noted an inconsistency between the tariff language that Emera Maine filed in eLibrary and the electronic tariff language that Emera Maine submitted through eTariff. Emera was directed to review the entire eLibrary and eTariff Record and to submit appropriate modifications on or before January 6, 2016

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<sup>71</sup> *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

to either the eTariff version or the eLibrary version of the filing, or both, to ensure consistency. Emera submitted a filing on January 4, 2016 in response to that directive.

**Background.** As previously reported, 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. Emera Maine stated that the changes to the MPD OATT were 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. The “Maine Customer Group”<sup>72</sup> 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.

**Hearing and Settlement Judge Procedures.** The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures. As previously reported, Chief Judge Cintron designated ALJ Karen Johnson as the settlement judge for these proceedings on December 14. A first settlement conference was held January 5, 2016. In a January 12 status report, Judge Johnson reported that, at the January 5 conference, the parties agreed to exchange information and discuss settlement options. Accordingly, Judge Johnson recommended that settlement judge procedures be continued. A second settlement conference was scheduled for March 3, 2016. On January 20, Emera moved for adoption of a protective order. That order was adopted by Chief Judge Cintron on January 21.

If you have any questions concerning these matters, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **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

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<sup>72</sup> 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”).

(“ITC”) to NYISO and PJM”,<sup>73</sup> which the Midwest ISO (“MISO”) and ITC proposed unilaterally to do (without the support of either PJM or NYISO) in its October 20, 2010 filing initiating this proceeding. For a summary of specific findings, please refer to any of the January to June 2013 Reports.

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

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

***MISO Zone 4 Planning Resource Auction Offers.*** 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: Show Cause Order – Coaltrain, its Co-Owners & Traders/Analysts (IN16-4)**

On January 6, 2015, the FERC issued an order<sup>74</sup> directing Coaltrain Energy L.P. (“Coaltrain”), its co-owners Peter Jones and Shawn Sheehan, and its traders/analysts Robert Jones, Jeff Miller, Jack Wells and Adam Hughes (Collectively, “Respondents”) to show cause why (i) they should not be found to have violated the FERC’s Anti-Manipulation Rule by executing a scheme involving manipulative PJM Up-To Congestion trading between June and September 2010; (ii) why Coaltrain should not be found to have violated the FERC’s Market Behavior Rules through false and misleading statements and material omissions relating to the existence of documents responsive to data requests and relating to the trading conduct at issue; (iii) why Coaltrain, P. Jones and Sheehan should not be jointly and severally required to disgorge unjust profits of \$4,121,894; and (iv) why all Respondents should not be assessed civil penalties as follows: Coaltrain (\$26 million); P. Jones and Sheehan (\$5 million); R. Jones (\$1 million); Miller and Wells (\$500,000); and Hughes (\$250,000). Following an extension request and notice by the FERC, Respondents must file an answer by March 4, 2016. In that answer, Respondents will have the option to choose between either (a) an administrative hearing before a FERC ALJ prior to the assessment of a penalty, or (b) a prompt penalty assessment by the FERC under FPA section 31(d)(3)(A). FERC Staff’s reply will be due 30 days following Respondent’s reply.

<sup>73</sup> *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

<sup>74</sup> *Coaltrain Energy, L.P. et al*, 154 FERC ¶ 61, 002 (Jan. 6, 2016).



- **FERC Enforcement Action: Show Cause Order - Etracom & M. Rosenberg (IN16-2)**

On December 16, 2015, the FERC issued an order<sup>75</sup> directing Etracom LLC (“Etracom”) and its principal member and primary trader, Michael Rosenberg, to show cause why (i) it should not be found to have violated the FERC’s Anti-Manipulation Rule by engaging, during May 2011, in manipulative virtual trading at CAISO’s New Melones Intertie in order to artificially lower the day-ahead LMP and economically benefit ETRACOM’s Congestion Revenue Rights sourced at that location; (ii) why ETRACOM should not pay a civil penalty in the amount of \$2.4 million; (iii) why Rosenberg should not pay a \$100,000 civil penalty; and (iv) why ETRACOM should not disgorge \$315,072 plus interest in unjust profits, or a modification to these amounts as warranted. On December 31, the FERC granted Etracom an extension of time to file its response, to February 16, 2016. On January 14, pursuant to Ordering Paragraph D of the *Etracom Show Cause Order*, Etracom elected, should the FERC assess any civil penalties in this proceeding, prompt assessment of a penalty and a *de novo* review of those penalties in federal district court, (rather than an ALJ review of such penalties). FERC staff will have 30 days from the date of Etracom’s yet-to-be-filed response to file a reply.

- **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).

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.<sup>76</sup> NoVs are designed to increase the transparency of Staff’s nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **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.

<b>XII. Misc. - Administrative &amp; Rulemaking Proceedings</b>
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- **White Paper: Guidance Principles on Clean Power Plan Modeling (AD16-14)**

On January 20, the FERC issued a Staff White Paper that identified four guiding principles that may assist transmission planning entities, or other interested stakeholders, in conducting effective analysis of the Clean Power Plan (“CPP”) and associated state plans, federal plans or multi-state plans (compliance plans). FERC stated that NERC and the regional electric reliability organizations may also benefit from following these guiding principles as they perform CPP-related analyses. The guiding principles address the following

<sup>75</sup> *ETRACOM LLC and Michael Rosenberg*, 153 FERC ¶ 61, 314 (Dec. 16, 2015) (“*Etracom Show Cause Order*”).

<sup>76</sup> *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).



four areas: (1) transparency and stakeholder engagement; (2) study methodology and interactions between studies; (3) study inputs, sensitivities and probabilistic analysis; and (4) tools and techniques.

- **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.<sup>77</sup> 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 directed 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 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. Since the last Report, the ISO/RTO Council requested, on January 15, an extension of time so that responses are due instead on March 4, 2016. The FERC granted that request on January 27, so that the ISO/RTO responses are now due on or before March 4, 2016, and public comments 30 days thereafter, or April 4, 2016.

- **NOPR: Price Formation Fixes - Price Caps in RTO/ISO Markets (RM16-5)**

On January 21, the FERC issued a NOPR proposing to require that each RTO/ISO cap each resource's incremental energy offer to the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer (regardless of fuel-type).<sup>78</sup> Verified cost-based incremental energy offers above \$1,000/MWh would be used for purposes of calculating Locational Marginal Prices (LMPs). Comments on the *Price Cap NOPR* are due on or before April 4, 2016.<sup>79</sup>

- **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.<sup>80</sup> 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 FERC proposes to revise the *pro forma* LGIA, Appendix G to the *pro forma* LGIA, and the *pro forma* SGIA. Comments on the *Reactive Power NOPR* were due on or before January 25, 2016<sup>81</sup> and were filed by more than 20 parties, including NEPOOL, ISO-NE, ISO/RTO Council, AWEA, EEI, NERC, NextEra, and UCS. In its initial comments, NEPOOL provided a status report both on NEPOOL's consideration of the *Reactive Power NOPR* and on NEPOOL's own consideration with the ISO of the reactive power requirement for non-synchronous (i.e., primarily wind) generators, that has been ongoing in New England for several months, independent of the *Reactive Power NOPR*. NEPOOL indicated that it would supplement its initial comments with substantive comments following the February 5 Participants Committee meeting (at which the comments are to be considered under Agenda Item 6).

- **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

<sup>77</sup> *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

<sup>78</sup> *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,038 (Jan. 21, 2016) (“*Price Cap NOPR*”).

<sup>79</sup> The *Price Cap NOPR* was published in the *Fed. Reg.* on Feb. 4, 2016 (Vol. 81, No. 23) pp. 5,951-5,965.

<sup>80</sup> *Reactive Power Requirements for Non-Synchronous Generation*, 153 FERC ¶ 61,175 (Nov. 19, 2015) (“*Reactive Power NOPR*”).

<sup>81</sup> 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.

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.<sup>82</sup> 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.<sup>83</sup> 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. Since the last Report, Golden Spread Electric Cooperative submitted limited reply comments. This matter is pending before the FERC.

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

As previously reported and summarized, 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.<sup>84</sup> The FERC proposed 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 proposed additional registration and compliance requirements for each market participant and RTO/ISO. The FERC explained 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.** A staff-led and Commissioner (LaFleur and Norris)-attended technical conference was held on for December 8. The technical conference was intended to allow for a dialogue regarding industry concerns and the extent of the burdens that would be imposed upon market participants under the NOPR. It also provided staff an opportunity to ask questions and clarify a number of issues, many raised in NEPOOL’s comments filed on December 1 (highlighted at the technical conference as “particularly constructive” and an example of how others might use the comment period to offer “specific, concrete suggestions”).

Staff clarifications included the following:

- ◆ The Proposed Rule is designed to address and give some visibility to the unknown and “hidden” relationships, and the incentives that may be associated with those relationships, that present a risk to the efficiency and fairness of the wholesale markets.
- ◆ The Proposed Rule applies only to participants in RTO/ISO markets. Participants in wholesale gas markets who are not RTO/ISO market participants have no obligation under the Proposed Rule.

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<sup>82</sup> *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*”).

<sup>83</sup> 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.

<sup>84</sup> *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*”).

- ◆ The unique Legal Entity Identifier (LEI) will only be required of market participants, not all Connected Entities.
- ◆ “FERC jurisdictional markets” means participation in any or all of an RTO/ISO’s markets, physical and financial. Natural gas resources not included.
- ◆ Trader. Similar to the NEPOOL-proposed definition, a trader is the person who makes the decisions, or devises the strategies, for buying and selling physical or financial products which are or may be traded in the RTO/ISO electric markets. It would not include a person who simply “pushes the button” to make a trade, if that person has no control over or input into the decision-making process.
- ◆ With respect to Contracts, Control, whether over trading activities or unit commitment decisions, is the defining characteristic that creates a connected entity relationship. Fuel arrangements, physical maintenance arrangements, and standard power purchase agreements, and other contracts not conferring control, would not be included.

Staff’s presentations, as well as presentations and written comments from some of the speakers, are available in the FERC’s eLibrary and attached for your convenience. For those who were unable to attend or view the technical conference via webcast, an archive of the webcast will be available for three months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>.

Comments on the NOPR were due on or before January 22, 2016. The FERC denied a December 30 request by Industry Groups<sup>85</sup> that it suspend the January 22 comment date and either: (1) withdraw the NOPR and issue a new or revised NOPR; or (2) issue a supplemental NOPR that takes into consideration the discussion and clarifications discussed at the December 8, 2015 Technical Conference.<sup>86</sup> Over 50 parties, including the ISO-NE IMM, ISO-NE/MISO, IRC, Backyard Farms, CMEEC/MMWEC/NHEC/VPPSA, Dominion, National Grid, NextEra, NRG, and SunEdison, submitted comments. This matter is pending before the FERC.

- **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 stated 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.

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<sup>85</sup> “Industry Groups” are American Forest & Paper Association (“AF&PA”), Canadian Electricity Association (“CEA”), Commercial Energy Working Group (“CEWG”), Edison Electric Institute (“EEI”), Electricity Consumers Resource Council (“ELCON”), Electric Power Supply Association (“EPSA”), Independent Power Producers of New York, Inc. (“IPPNY”), Industrial Energy Consumers Group (“IECG”), International Energy Credit Association (“IECA”), and the Retail Energy Supply Association (“RESA”). The Industry Groups’ request was supported by Ares EIF and the National Rural Electric Cooperative Association (“NRECA”) and American Public Power Association (“APPA”).

<sup>86</sup> *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,016 (2016).

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

As previously reported, the FERC issued *Order 816* on October 16, 2015.<sup>87</sup> *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* became effective January 28, 2016.<sup>88</sup> 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. On December 11, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC. On December 23, the FERC partially granted an extension of time such that market-based rate applicants and sellers will not be required to comply with the corporate organizational chart requirement prior to the issuance of an order on the merits of the requests for rehearing of the corporate organizational chart requirement.

### XIII. Natural Gas Proceedings

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

- **Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)**

On January 21, the FERC issued orders initiating Natural Gas Act Section 5 investigations into whether the rates charged by the following gas pipeline companies were too high above their costs under federal law:

- ◆ Columbia Gulf Transmission, LLC (Docket No. RP16-302);<sup>89</sup>
- ◆ Empire Pipeline, Inc. (Docket No. RP16-300);<sup>90</sup>
- ◆ Iroquois Gas Transmission System, LP (Docket No. RP16-301);<sup>91</sup> and
- ◆ Tuscarora Gas Transmission Company (Docket No. RP16-299);<sup>92</sup>

<sup>87</sup> *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Svcs. by Public Utils.*, 153 FERC ¶ 61,065 (Oct. 16, 2015) ("*Order 816*").

<sup>88</sup> *Order 816* was published in the *Fed. Reg.* on Oct. 30, 2015 (Vol. 80, No. 210) pp. 67,056-67,123.

<sup>89</sup> *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,027 (2016).

<sup>90</sup> *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (Jan. 21, 2016).

<sup>91</sup> *Iroquois Gas Transmission System, LP*, 154 FERC ¶ 61,028 (Jan. 21, 2016).

<sup>92</sup> *Tuscarora Gas Transmission Company*, 154 FERC ¶ 61,030 (Jan. 21, 2016).

Acting Chief Administrative Law Judge Carmen Cintron subsequently designated the following Administrative Law Judges to preside over the Track II hearings in the respective proceedings and orders, where applicable, scheduling pre-hearing conferences, and establishing dates for the commencement of hearings and initial decisions have been identified, as follows:

Case	Presiding Judge	Prehearing Conf	Hearings Commence	Initial Decision
Columbia Gas (RP16-302)	John P. Dring	TBD	TBD	TBD
Empire Pipeline (RP16-300)	Michael J. Cianci, Jr.	TBD	TBD	TBD
Iroquois Gas (RP16-301)	David H. Coffman	Feb 10, 2016	TDB	TBD
Tuscarora Gas (RP16-299)	Dawn E.B. Scholz.	Feb 11, 2016	Nov 15, 2016	Feb 28, 2017

Since the issuance of the orders, numerous parties have moved to intervene in each of the proceedings.

- **Order 820: Delegation of Authority for FERC Form No. 552 (RM16-4)**

On December 22, 2015 the Commission gave the Office of Enforcement express authority over FERC Form No. 552.<sup>93</sup> Form 552 collects information about transactions among participants in the natural gas market and was created in 2007 as part of *Order 704*. *Order 820* enhances consistency and clarity by adding Form 552 to the list of forms included in the delegations to the Office of Enforcement.

- **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*,<sup>94</sup> 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. 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.<sup>95</sup> *Order 809* established an implementation date of April 1, 2016.<sup>96</sup> In response to *Order 809*, ISO-NE described, and the FERC accepted ISO-NE's explanation, why changes to the time at which the results of the ISO-NE Day-Ahead Energy Market and RAA process are posted were not necessary in response to the FERC's rulemaking.

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*.<sup>97</sup> The Commission recognized the time commitments in implementing the revised nomination timeline, and requested that the natural gas and electric industries, through

<sup>93</sup> *Delegation of Authority for FERC Form No. 552*, Order No. 820, 153 FERC ¶ 61,335 (Dec. 22, 2015) ("*Order 820*").

<sup>94</sup> *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*").

<sup>95</sup> *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

<sup>96</sup> *Order 809* was published in the *Fed. Reg.* on Apr. 24, 2015 (Vol. 80, No. 79) pp. 23,198-23,227.

<sup>97</sup> *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).



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.<sup>98</sup> 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, 2015<sup>99</sup> 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 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.

- **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

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<sup>98</sup> *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 152 FERC ¶ 61,095 (July 31, 2015).

<sup>99</sup> *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".

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.

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.

- **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.<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup> 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.

- **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."<sup>103</sup> Requests for rehearing of *ANR Order* were filed by ANR and the Joint Intervenor Group.<sup>104</sup> On December 11, 2015, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending before the FERC..

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<sup>100</sup> *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

<sup>101</sup> *Id.* at P 6.

<sup>102</sup> *See BR Pipeline Co. et al.*, 149 FERC ¶ 61,031 (Oct. 16, 2014).

<sup>103</sup> *ANR Storage Co.*, 153 FERC ¶ 61,052 (Oct. 15, 2015) ("*ANR Order*"), *reh'g requested*.

<sup>104</sup> "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").

- **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 (IN13-15).** 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.<sup>105</sup> 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.

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.

- **FERC Enforcement Action: Staff Notices of Alleged Violations (IN\_\_ - \_\_)**

**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.

<sup>105</sup> *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

- ▶ 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.<sup>106</sup>
  - ▶ 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.
    - ▶ 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 first quarter 2016 (after final Federal Authorizations).

<sup>106</sup> Order Issuing Certificate and Approving Abandonment, *Algonquin Gas Transmission LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015), *reh'g requested*.

- **Salem Lateral Project (CPI4-522)**
  - ▶ 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.<sup>107</sup>
  - ▶ Construction began in May 2015.
  - ▶ In-Service: first quarter 2016 (anticipated).

<b>XIV. State Proceedings &amp; Federal Legislative Proceedings</b>
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*No Activity to Report.*

<b>XV. Federal Courts</b>
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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](mailto:pmgerity@daypitney.com)).

- **NEPGA Peak Energy Rent (PER) Complaint (16-1024\*\*)**  
**Underlying FERC Proceedings: EL15-25<sup>108</sup>**  
**Appellants: NEPGA**

On January 19, 2016, NEPGA filed a petition for review of the FERC’s orders on NEPGA’s PER Complaint. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions are due February 24, 2016; dispositive motions, March 10.

- **FCM Jump Ball and Compliance Proceedings (16-1023\*\*)**  
**Underlying FERC Proceedings: ER14-1050;<sup>109</sup> EL14-52<sup>110</sup>**  
**Appellants: NEPGA**

Also on January 19, 2016, NEPGA filed a petition for review of the FERC’s orders on the FCM PI Jump Ball Filing and the subsequent compliance proceedings. A Docketing Statement Form, Statement of Issues to be Raised, and Appearances are due February 18, 2016.

<sup>107</sup> Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

<sup>108</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

<sup>109</sup> 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

<sup>110</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).



- **Base ROE Complaints (2012 and 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>111</sup>**  
**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; ER13-196<sup>112</sup>**

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

On May 15, 2015, NETOs<sup>113</sup> 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 (remaining dates only): 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. Since the last Report, Joint Petitioner Briefs were filed on January 11, 2016.

- **Base ROE Complaint (2011) (15-1118, 15-1119, 15-1121\*\*) (consolidated)**  
**Underlying FERC Proceedings: EL11-66<sup>114</sup>**  
**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,<sup>115</sup> NJ Division of 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 (remaining dates only): 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.

<sup>111</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

<sup>112</sup> 150 FERC ¶ 61,209 (Mar. 19, 2015); 143 FERC ¶ 61,150 (May 17, 2013).

<sup>113</sup> "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.

<sup>114</sup> 150 FERC ¶ 61,165 (Mar. 3, 2015); 149 FERC ¶ 61,032 (Oct. 16, 2014); 147 FERC ¶ 61,234 (June 19, 2014).

<sup>115</sup> "EMCOS" are Taunton, Reading, Hingham, and Braintree.

Since the last Report, on December 7, 2015, (i) “Customers”<sup>116</sup> and the TOs<sup>117</sup> filed their Opening briefs. On December 8, the clerk’s office sent to counsel a letter noting the use of uncommon acronyms and abbreviations in briefs filed with the court (parties are expected to limit the use of acronyms and to avoid using acronyms that are not widely known), advising counsel that they could submit within a week revised briefs eliminating any uncommon acronyms used in previously filed briefs, which the TOs did on December 15. The FERC’s brief is next up, due to be filed, as noted above, on February 12.

- **FCM Administrative Pricing Rules Complaint (15-1071\*\*)**

**Underlying FERC Proceedings: EL14-7**<sup>118</sup>

**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. With the FERC’s January 7, 2016 order denying rehearing of its order in EL15-23 (*see* Section I above), motions to govern future proceedings will be due February 8, 2016.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**

**Underlying FERC Proceedings: ER14-1409**<sup>119</sup>

**Appellants: Public Citizen and CT AG**

As previously reported, 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. Briefing on the issue of the Court’s jurisdiction to hear this matter (with FERC (supported by EPSA and NEPGA) asserting the FCA8 Results Filing Order was not an “order” within the meaning of section 313 of the FPA, or “agency action” reviewable under the Administrative Procedures Act, and Connecticut<sup>120</sup> and Public Citizen taking the opposing view) has now been completed. Since the last Report, the parties filed a Joint Appendix (reflecting all filings and issuances in ER14-1409) on December 16. Final Petitioner briefs and reply briefs were filed by Public Citizen on December 17; by Connecticut, on December 22. The FERC’s final brief was filed on December 23, as was the final brief of Joint Intervenor for Respondent (EPSA, GenOn Energy Management, HQUS, NRG, and NEPGA). With the jurisdictional issue now fully briefed, the Court will next issue a separate order notifying the parties of the date and time of oral argument. As of the date of this Report, that order (date for oral argument) has not been set.

<sup>116</sup> “Customers” are: the Commonwealth of Massachusetts, CT AG, CT PURA, NH PUC, RI PUC, CT OCC, MOPA, NH OCA, the “EMCOS” group (Braintree, Hingham, Reading, Taunton), MMWEC, NHEC, AIM, IECG, and Power Options.

<sup>117</sup> In this case, TOs are CMP, Emera Maine, Eversource, National Grid, NHT, UI, and Vermont Transco.

<sup>118</sup> 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

<sup>119</sup> 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).

<sup>120</sup> For purposes of this proceeding, “Connecticut” means the CT AG, CT PURA and CT OCC.

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**  
**Underlying FERC Proceedings: ER13-1851<sup>121</sup> and ER13-2266<sup>122</sup>**  
**Appellants: TransCanada and RESA**

On December 22, 2015, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable).<sup>123</sup> The FERC must either offer a reasoned justification for the order in ER13-2266 or revise its disposition to ensure that the Program rates are just and reasonable. With respect to TransCanada's claims regarding the FERC's decision in ER13-1851, the Court found that TransCanada's challenge with respect to the procurement process, bid results, and explanation of costs were properly raised and considered in conjunction with Docket ER13-2266 and were not ripe for review in ER13-1851, and found no merit in TransCanada's challenge to the FERC's order that Program costs should be allocated to Real-Time Load Obligation. The Clerk will withhold issuance of the mandate (official remand to the FERC) until seven days after disposition of any timely petition for rehearing or petition for rehearing *en banc*.

- **New England's Order 745 Compliance Filing (12-1306)**  
**Underlying FERC Proceedings: ER11-4336<sup>124</sup>**  
**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.

**Status of New England Implementation of Order 745 (in light of *FERC v. EPSA* below).** Recall that, in response to the FERC's issuance of *Order 745* on March 15, 2011,<sup>125</sup> ISO-NE submitted New England's compliance filing on August 19, 2011, proposing a two-stage implementation process (Transition Period Rules to be effective June 1, 2012; Full Integration Rules,<sup>126</sup> June 1, 2015 (later amended to June 1, 2016)).<sup>127</sup> NEPOOL did not support the ISO-NE compliance filing, with 51.9% voting to support the package at the August 12, 2011 Participants Committee meeting. On January 19, 2012, the FERC conditionally accepted New England's *Order 745* compliance filing, with the Transition Period Rules to be effective June 1, 2012 and Full Integration Rules effective June 1, 2016, as either in compliance with *Order 745* or just and reasonable under FPA § 205.<sup>128</sup> ISO-NE's 90-day compliance filing (providing further justification for using the Demand Reduction Threshold Price and amending the Transition Period rules to allow for ARCs to bid into the energy markets on behalf of smaller individual assets) was accepted on May 29, 2012.<sup>129</sup> A number

<sup>121</sup> 144 FERC ¶ 61,204 (Sep. 16, 2013); 147 FERC ¶ 61,026 (Apr. 8, 2014).

<sup>122</sup> 145 FERC ¶ 61,023 (Oct. 7, 2013); 147 FERC ¶ 61,027 (Apr. 8, 2014).

<sup>123</sup> *Transcanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

<sup>124</sup> 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

<sup>125</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187 (Mar. 11, 2015).

<sup>126</sup> The "Full Integration Rules" enable DR to (i) fully participate (make Demand Reduction Offers) in the Day-Ahead and Real-Time Energy Markets; (ii) provide Operating Reserve and participate in the Forward Reserve Market ("FRM"); and (iii) receive FCM obligations and compensation that are fully comparable with those of dispatchable generation resources.

<sup>127</sup> See *ISO New England Inc.* Order No. 745 Compliance Filing, Docket No. ER11-4336 (filed Aug 19, 2011).

<sup>128</sup> *ISO New England Inc.*, 138 FERC ¶ 61,042 (Jan. 19, 2012).

<sup>129</sup> *ISO New England Inc.*, Docket No. ER11-4336-005 (May 29, 2012) (unpublished letter order).

of parties requested rehearing of the January 19 Order, but the FERC denied rehearing on May 17, 2012.<sup>130</sup> EPSA and NEPGA petitioned the DC Circuit Court of Appeals for review of the FERC's January 19 and May 17, and, as noted above, that case has been held in abeyance pending resolution of the Federal Court challenges to *Order 745*.

The Transition Period rules were implemented on June 1, 2012, and have been in effect, subject to minor adjustment, since that time. With respect to the Full Integration Rules, the ISO included with an April 26, 2012 filing of FCM conforming changes, a request that implementation of the Full Integration Rules be pushed back another year, to June 1, 2017. That delay, together with the Market Rule changes, was accepted on January 14, 2013.<sup>131</sup> The Full Integration Rules have been clarified and revised several times since, with the most recently filed changes including a request, in light of the uncertainty created by the DC Circuit Order and Supreme Court review, to defer implementation of the Full Integration Rules one more year to June 1, 2018. That request was accepted December 23, 2015. Given the Supreme Court's January 25 Decision, in the time remaining before the Full Integration Rules are implemented on June 1, 2018, NEPOOL and ISO-NE will need to work together to identify, finalize, file, and implement any refinements to the Market Rules, Manuals, or other rules and procedures that may be necessary to support the full integration of DR in the New England's Markets as of June 1, 2018.

- **Orders 745 and 745-A (FERC v. EPSA, Supreme Court, 14-840 and 14-841)**  
**Underlying FERC Proceedings: RM10-17-000**<sup>132</sup>  
**Appellants: FERC and EnerNOC**

On January 25, 2016, the Supreme Court reversed the DC Circuit Court of Appeals' May 23, 2014 decision<sup>133</sup> vacating FERC Order 745.<sup>134</sup> As previously reported, the DC Circuit vacated *Order 745*<sup>135</sup> in its entirety as impermissibly encroaching on "states' exclusive jurisdiction to regulate the retail market". 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. 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," failing to reasonably consider and address arguments that *Order 745* will result in over-compensation of demand response resources.

The Supreme Court, however, held that the FPA does provide the FERC with the authority to regulate wholesale market operators' compensation of demand response bids, and the FERC's decision to compensate demand response providers at LMP instead of at LMP-G, is not arbitrary and capricious. As to the FERC's authority to regulate ISO/RTO compensation of DR bids, the Supreme Court reasoned that *Order 745* complies with the FPA's plain terms because the practices at issue directly affect wholesale rates and the FERC has not thereby regulated retail sales. The contrary view, the Court held, would conflict with the FPA's core purposes. As to compensation at LMP, the Court held that the FERC's serious and careful discussion of the issue (provided by its detailed explanation of its choice of LMP and response at length to contrary views) satisfies the arbitrary and capricious standard. In upholding FERC's choice of compensation at LMP, the Court did "not discount the cogency of EPSA's arguments in favor of LMP-G. Nor do we say that in opting for LMP instead, FERC made the better call. It is not our job to render that judgment, on which reasonable minds can differ. Our important but limited role is to ensure that the [FERC] engaged in reasoned decision-making—that it weighed competing views, selected a compensation formula with adequate support

<sup>130</sup> *ISO New England Inc.*, 139 FERC ¶ 61,116 (May 17, 2012).

<sup>131</sup> *ISO New England Inc.*, 142 FERC ¶ 61,027 (2013).

<sup>132</sup> 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

<sup>133</sup> *EPSA v. FERC*, 753 F.3d 216 (May 23, 2014), *reversed and remanded*.

<sup>134</sup> *FERC v. EPSA et al.*, 577 U. S. \_\_\_\_ (2016).

<sup>135</sup> *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.

in the record, and intelligibly explained the reasons for making that choice. FERC satisfied that standard.” This matter will be remanded to the DC Circuit Court of Appeals for disposition of any remaining issues (e.g. the unresolved cost allocation issue raised by the CAISO and CA PUC). The remand will not issue for at least 25 days pursuant to Rule 45 of the Rules of the Supreme Court.

- **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 Maryland<sup>136</sup> 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.<sup>137</sup> In affirming the District Court decision, the 4th Circuit found the MD PSC Order to be both field<sup>138</sup> and conflict pre-empted.<sup>139</sup>

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.”<sup>140</sup> 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”),<sup>141</sup> 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

<sup>136</sup> *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.

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

<sup>138</sup> “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.

<sup>139</sup> “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.”

<sup>140</sup> Slip op. at p. 14.

<sup>141</sup> *Id.* at p. 10.



receives for its sales in the PJM auction.”<sup>142</sup> The MD PSC Order “compromises the integrity of the federal scheme and intrudes on FERC’s jurisdiction” because the MD PSC Order “effectively supplants the rate generated by the auction with an alternative rate preferred by the state.” The 4th Circuit rejected arguments that the CfD payments “represented a separate supply-side subsidy implemented entirely outside the federal market.”<sup>143</sup> 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.”<sup>144</sup>

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”.<sup>145</sup> 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.’”<sup>146</sup> “Maryland’s initiative disrupts [the PJM scheme] by substituting the state’s preferred incentive structure for that approved by FERC.”<sup>147</sup> “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.”<sup>148</sup>

Petitions for rehearing *en banc* were filed by MD PSC and CPV Maryland on June 16, 2014. The Supreme Court granted certiorari on October 19, 2015. Oral argument is scheduled for February 24, 2016.

- **CPV Power Development, 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 affirmed<sup>149</sup> the analogous October 11, 2013 decision of the United States District Court for the District of New Jersey declaring

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<sup>142</sup> *Id.* at p. 16.

<sup>143</sup> *Id.* at pp. 18-19.

<sup>144</sup> *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.

<sup>145</sup> *Id.* at p. 27.

<sup>146</sup> *Id.* at p. 23.

<sup>147</sup> *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.”)

<sup>148</sup> *Id.* at p. 25.

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

unconstitutional (and therefore null and void) New Jersey’s Long Term Capacity Agreement Pilot Program Act (“LCAPP”).<sup>150</sup> In affirming the New Jersey District Court’s decision, the 3rd Circuit concluded:

LCAPP compels participants in a federally-regulated marketplace to transact capacity at prices other than the price fixed by the marketplace. By legislating capacity prices, New Jersey has intruded into an area reserved exclusively for the federal government. Accordingly, federal statutory and regulatory law preempts and, thereby, invalidates LCAPP and the Standard Offer Capacity Agreements.<sup>151</sup>

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) (NDNY 5:15-cv-00230-DNH-TWD)**

Entergy<sup>152</sup> filed, on February 27, 2015, in the United States District Court for the Northern District of New York (“NDNY”), 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”)<sup>153</sup> is preempted by the FPA and invalid under the dormant Commerce Clause of the US Constitution. Entergy also seeks a permanent injunction requiring the NYPSC Commissioners to withdraw the 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.

Since the last Report, the parties exchanged briefs regarding the import of a recent NYISO filing made with the FERC. On December 29, a previously-scheduled telephone conference was re-scheduled to February 23, 2016. A temporary stay of discovery remains in effect.

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

<sup>151</sup> *Id.* slip op. at 31.

<sup>152</sup> Plaintiffs are Entergy Nuclear FitzPatrick, LLC (“FitzPatrick”); Entergy Nuclear Power Marketing, LLC (“ENPM”); and Entergy Nuclear Operations, Inc. (“ENOI”).

<sup>153</sup> The Term Sheet provides that, in exchange for Dunkirk’s commitment to participate in the NYISO energy and capacity markets through 2025, Dunkirk will receive out-of-market payments of \$20.4 million per year from National Grid and a \$15 million one-time subsidy from a New York State agency. Entergy asserts that the contract structure will lead Dunkirk to bid below its actual costs in the capacity auction, causing the auction market to “clear” at a lower price than otherwise would have resulted, and resulting in all generators receiving lower capacity revenues than they otherwise would have received.

**INDEX**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of February 4, 2016**

***I. Complaints/Section 206 Proceedings***

206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs .....	(EL15-85) .....	2
206 Proceeding: RNS/LNS Rates and Rate Protocols .....	(EL16-19) .....	1
206 Proceeding: Zonal Sloped Demand Curves .....	(EL16-15) .....	2
Base ROE Complaints (2012 and 2014) (Consolidated) .....	(EL13-33 and EL14-86).....	4
Lotus Energy Waiver Request .....	(EL16-22) .....	8
NEPGA DR Capacity Complaint .....	(EL15-21) .....	4
New Entry Pricing Rule Complaint .....	(EL15-23) .....	3
PURPA Complaint: Allco Renewable Energy v. CT Agencies .....	(EL16-11 et al.).....	19

***II. Rate, ICR, FCA, Cost Recovery Filings***

206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs .....	(EL15-85) .....	2
206 Proceeding: RNS/LNS Rates and Rate Protocols .....	(EL16-19) .....	1
Base ROE Complaints (2012 and 2014) (Consolidated) .....	(EL13-33 and EL14-86).....	4
Base ROE Complaint (2011) Refund Reports .....	(EL11-66) .....	5
Eversource CCRP Cost Treatment Proposal.....	(ER16-116) .....	7
FCA1 Results Remand Proceeding.....	(ER08-633) .....	7
FCA10 Qualification Informational Filing .....	(ER16-308) .....	6
ICR-Related Values and HQICCs - 2016/17 ARA3, 2017/18 ARA2, 2018/19 ARA1 .....	(ER16-446) .....	5
ICR, HQICCs and Related Values - 2019/20 Power Year .....	(ER16-307) .....	6

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

206 Proceeding: Zonal Sloped Demand Curves .....	(EL16-15) .....	2
CSO Termination: Spruce Mountain Wind .....	(ER16-864) .....	9
CTS Conforming Changes.....	(ER15-2641) .....	12
CTS Winter Reliability Program Cost Allocation Correction .....	(ER16-462) .....	11
De-List Bid Information Release Change.....	(ER16-538) .....	10
Demand Curve Changes .....	(ER14-1639) .....	11
FCM Resource Retirement Reforms.....	(ER16-551) .....	10
Jump Ball Filing: Winter Reliability Program.....	(ER15-2208) .....	11
Lotus Energy Waiver Request .....	(EL16-22) .....	8
NEPGA DR Capacity Complaint .....	(EL15-21) .....	4
New DNE Dispatch Changes Effect Date .....	(ER16-870) .....	9
New Entry Pricing Rule Complaint .....	(EL15-23) .....	3
Status of New England Implementation of <i>Order 745</i> .....	.....	37
Waiver Request: FCM Qualification Lock-In Election (Calpine) .....	(ER16-708) .....	9

***IV. OATT Amendments/Coordination Agreements***

CTS Conforming Changes.....	(ER15-2641) .....	12
Eversource CCRP Cost Treatment Proposal.....	(ER16-116) .....	7
RSP Timing Changes .....	(ER16-819) .....	12

***V. Financial Assurance/Billing Policy Amendments***

No Activity to Report

**VI. Schedule 20/21/22/23 Updates**

Schedule 21-EM: Emera Maine/Covanta Maine LTSA Terminations ..... (ER16-840) ..... 12  
 Schedule 21-NSTAR: Fore River LGIA Termination Notice ..... (ER16-816) ..... 13

**VII. NEPOOL Agreement/  
 Participants Agreement Amendments**

No Activity to Report

**VIII. Regional Reports**

IMM Quarterly Markets Reports - 2015 Fall..... (ZZ15-4) ..... 14  
 LFTR Implementation: 29th Quarterly Status Report ..... (ER07-476; RM06-08)..... 13  
*Opinion 531-A* Refund Report: FG&E ..... (EL11-66) ..... 13  
*Opinions 531-A/531-B* Local Refund Reports ..... (EL11-66) ..... 13

**IX. Membership Filings**

February 2016 Membership Filing ..... (ER16-836) ..... 14  
 Involuntary Termination of Membership: NAPP ..... (ER16-820) ..... 14  
 Involuntary Termination of Membership: Negawatt ..... (ER16-818) ..... 14  
 January 2016 Membership Filing ..... (ER16-670) ..... 14  
 Suspension Notice (Lotus Danbury LMS100 One) ..... (not docketed) ..... 14  
 Suspension Notice (Lotus Danbury LMS100 Two) ..... (not docketed) ..... 14

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

Compliance Filing: BES Exclusions for Local Network Configurations ..... (RM12-6) ..... 18  
 Glossary Definition Changes ..... (RD16-3) ..... 15  
 NOPR: BAL-002-1a Interpretation Remand ..... (RM13-6) ..... 18  
 NOPR: New Reliability Standard: PRC-026-1 ..... (RM15-8) ..... 17  
 NOPR: New Reliability Standard: TPL-007-1 ..... (RM15-11) ..... 16  
 NOPR: Revised Rel. Standard: MOD-001-2 ..... (RM14-7) ..... 17  
*Order 822*: Revised Rel. Standards: CIP-003-6, CIP-004-6, CIP-006-6, CIP-007-6,  
 CIP-009-6, CIP-010-2, CIP-011-2 ..... (RM15-14) ..... 15  
 Revised Regional Delegation Agreements ..... (RR15-12) ..... 18  
 Revised Reliability Standard: BAL-002-2 ..... (RM16-7) ..... 15  
 Rules of Procedure Changes ..... (RR16-2) ..... 18

**XI. Misc. Regional Interest**

203 Application: Calpine/Granite Ridge ..... (EC16-19) ..... 19  
 203 Application: Narragansett/Entergy Rhode Island State Energy ..... (EC16-50) ..... 19  
 203 Application: Passadumkeag Wind Park (SunEdison/ Quantum) ..... (EC15-217) ..... 19  
 203 Application: ReEnergy Sterling ..... (EC16-58) ..... 19  
 Cost Sharing Agreements (Greater Boston Area Transmission Solution Plan):  
     National Grid, NSTAR, PSNH ..... (ER16-878, -879, -882) ..... 20  
 D&E Agreement NSTAR/Exelon West Medway ..... (ER16-509) ..... 21  
 D&E Agreement NSTAR/NRG Canal ..... (ER16-510) ..... 21  
 Emera MPD OATT Changes ..... (ER15-1429; EL16-3) ..... 21  
 FERC Audit of ISO-NE ..... (PA16-6) ..... 24  
 FERC Enforcement Action: Formal Investigation  
     (MISO Zone 4 Planning Resource Auction Offers) ..... (IN15-10) ..... 23  
 FERC Enforcement Action: Show Cause Order – Coaltrain et al. .... (IN16-4) ..... 23  
 FERC Enforcement Action: Show Cause Order (Etracom/M. Rosenberg) ..... (IN16-2) ..... 24  
 FERC Enforcement Action: Staff NoV (Berkshire/Powerplant Management Services) ..... 24  
 FirstEnergy PJM DR Complaint ..... (EL14-55) ..... 20

LGIA: National Grid/Wheelabrator Saugus .....	(ER16-760) .....	20
LGIA – PSNH/Schiller Generating Station .....	(ER16-391) .....	21
MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area ..	(ER11-1844) .....	22
PURPA Complaint: Allco Renewable Energy v. CT Agencies .....	(EL16-11 et al.) .....	19
SGIA: CMP/Hackett Mills Hydro .....	(ER16-518) .....	20

### ***XII. Misc: Administrative & Rulemaking Proceedings***

AWEA Petition for LGIA/LGIP Rulemaking .....	(RM15-21) .....	27
NOPR: Connected Entity Data Collection .....	(RM15-23) .....	26
NOPR: Price Formation Fixes - Price Caps in RTO/ISO Markets .....	(RM16-5) .....	25
NOPR: Price Formation Fixes - Settlement Intervals/Shortage Pricing .....	(RM15-24) .....	25
NOPR: Reactive Power Requirements for Wind Generators .....	(RM16-1) .....	25
<i>Order 816</i> : MBR Authorization Refinements .....	(RM14-14) .....	28
Price Formation in RTO/ISO Energy and Ancillary Services Markets .....	(AD14-14) .....	25
White Paper: Guidance Principles on Clean Power Plan Modeling .....	(AD16-14) .....	24

### ***XIII. Natural Gas Proceedings***

Enforcement Actions: BP Initial Decision .....	(IN15-13) .....	32
Enforcement Actions: Staff NoV: Total Gas & Power, North America, Inc. ....	.....	32
New England Pipeline Proceedings .....	.....	32
<i>Opinion 538</i> : ANR Storage Company, Order on Initial Decision .....	(RP12-479) .....	31
<i>Order 809</i> : Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities .....	(RM14-2) .....	29
<i>Order 820</i> : Delegation of Authority for FERC Form No. 552 .....	(RM16-4) <b>Error! Bookmark not defined.</b>	
Posting of Offers to Purchase Capacity (Section 5 Proceeding) .....	(RP14-442) .....	31
Rice Energy Marketing, Order on Petition for Declaratory Order .....	(RP15-1089) .....	30
Section 5 Investigation: Columbia .....	(RP16-302) .....	28
Section 5 Investigation: Empire .....	(RP16-300) .....	28
Section 5 Investigation: Iroquois .....	(RP16-301) .....	28
Section 5 Investigation: Tuscarora .....	(RP16-299) .....	28

### ***XIV. State Proceedings & Federal Legislative Proceedings***

No Activity to Report

### ***XV. Federal Courts***

2013/14 Winter Reliability Program and Bid Results .....	14-1104 (DC Cir.) .....	37
Base ROE Complaint (2011) .....	15-1118 (DC Cir.) .....	35
Base ROE Complaints (2012 and 2014) .....	15-1212 (DC Cir.) .....	35
<i>CPV Maryland, LLC v. PPL EnergyPlus et al.</i> .....	14-623 (Supreme Court) .....	39
<i>CPV Power Development, Inc., et al. v. PPL EnergyPlus, LLC, et al.</i> .....	14-634/694 (Supreme Ct) .....	40
<i>Energry Nuclear Fitzpatrick, LLC et al. v. Zibelman et al.</i> .....	5:15-cv-00230 (N.D.N.Y.) .....	41
FCM Administrative Pricing Rules Complaint .....	15-1071 (DC Cir.) .....	35
FCM Jump Ball and Compliance Proceedings .....	16-1023 (DC Cir.) .....	34
FCA8 Results .....	14-1244 (DC Cir.) .....	36
New England's <i>Order 745</i> Compliance Filing .....	12-1306 (DC Cir.) .....	37
NEPGA Peak Energy Rent (PER) Complaint .....	16-1024 (DC Cir.) .....	34
<i>Orders 745/745-A</i> .....	14-840 (Supreme Court) .....	38
<i>Order 1000</i> Compliance Filings .....	15-1139 (DC Cir.) .....	35
Status of New England Implementation of <i>Order 745</i> .....	.....	37