

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of May 4, 2016

The following activity, as more fully described in the attached litigation report, has occurred since the report dated April 6, 2016 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

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| I. Complaints/Section 206 Proceedings |  |
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| * | 1 Base ROE Complaint IV (2016) (EL16-64) | Apr 29 | EMCOS file a complaint to reduce the current Base ROE to 8.93% and to cap the Combined ROE for all rate base components at 11.24%; comment date May 16 |
| | | May 3 | NEOOL, CT AG intervene |
| | | May 4 | TOs request extension of time, to Jun 3, to answer the Complaint |
| 1 | NextEra Bellingham FCA10 Complaint (EL16-48) | Apr 7 | ISO-NE answers Complaint; Dominion, NRG intervene |
| | | Apr 18 | NextEra answers ISO-NE's Apr 7 answer |
| | | Apr 27 | ISO-NE answers Apr 18 NextEra answer |
| | | May 4 | NextEra submits letter asserting that the relief it seeks does not require FCA10 to be re-run |
| 2 | Dominion Energy Manchester Street FCA10 Complaint (EL16-38) | May 2 | FERC issues order granting complaint in part (finding ISO-NE Tariff unjust and unreasonable with respect to composite offer requirement for new incremental and existing capacity at the same generating station) but denying Dominion's requested relief (resettlement for its new incremental capacity); ISO-NE compliance filing due on or before Jul 1 |
| 2 | 206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19) | Apr 12 | Settlement Judge Dring issues status report, recommends settlement procedures be continued |
| | | Apr 28 | 2nd Settlement conference held |
| | | May 4 | Settlement Judge Dring schedules 3rd settlement conf. for Jul 28 |
| 4 | Base ROE Complaints II & III (2012 & 2014) Consolidated (EL13-33 and EL14-86) | Apr 13, 18 | Judge Sterner issues erratas correcting certain paragraph numbering in his Mar 22 Initial Decision and Apr 13 errata |
| | | Apr 21 | TOs, Complainant-Aligned Parties, EMCOS, and FERC Trial Staff file briefs on exceptions |
| | | Apr 22 | TOs request extension of time to file brief opposing exceptions |
| | | Apr 27 | FERC grants extension of time, to May 20, for briefs opposing exceptions |

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| II. Rate, ICR, FCA, Cost Recovery Filings |  |
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| 5 | FCA10 Results Filing (ER16-1041) | Apr 12-14 | Calpine, Emera, Eversource, NRG, PSEG, Public Citizen intervene |
| | | Apr 14 | Dominion, UWUA Local 464 file protests |
| | | Apr 19 | NEA intervenes (out-of-time) and submits comments |
| | | Apr 25 | NEPGA answers UWUA Local 464 protest |
| | | Apr 29 | ISO-NE answers Dominion, NEA and UWUA Local 464 protests |

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

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| * 8 | Demand Curve Design Improvements (ER16-1434) | Apr 15 Apr 18-29 Apr 22 Apr 26 Apr 28 May 4 | ISO-NE and NEPOOL jointly file changes; comment date May 13 Calpine, CT PURA, Con Ed, Dominion, EPSA, Eversource, Exelon, HQUS, NESCOE, NRG/Gen On, UI intervene Calpine, Dominion, Exelon, NRG/GenOn request 14-day extension (to May 20) of comment deadline ISO-NE supplements filing by submitting A. McBride testimony FERC grants partial extension of time, to May 13, for comments NEPOOL submits supplemental information; Emera Energy, FirstLight, GDF SUEZ Energy Marketing NA intervene |
| * 8 | Info Policy Changes (Default Notice Provisions) (ER16-1413) | Apr 15 Apr 27 | ISO-NE and NEPOOL jointly file changes; comment date May 6 Exelon intervenes |
| 8 | Forward Reserve Heat Rate Calculation Revisions (ER16-1296) | Apr 13-20 | National Grid, Dominion, Eversource, intervene |
| 8 | FCM Resource Retirement Reforms (ER16-551) | Apr 12 | FERC conditionally accepts filing, eff. Mar 1, 2016, subject to an ISO-NE compliance filing due on or before May 12 |
| 9 | Demand Curve Changes Remand Proceedings (ER14-1639) | Apr 8 | FERC issues order affirming its earlier finding that the renewables exemption from the minimum offer price rule is just and reasonable, and not unduly discriminatory or preferential |

IV. OATT Amendments / TOAs / Coordination Agreements

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| 10 | Generator Interconnection Revisions (ER16-946) | Apr 15 | FERC conditionally accepts revisions; compliance filing due May 16 |
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V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

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| 10 | Schedule 21-EM: Rate Adjustments for Anticipated Changes (ER16-1301) | Apr 14 Apr 15-21 Apr 27 | MPUC files protest Eversource, MOPA, CMP/UI intervene Emera Maine answers MPUC protest |
| 10 | Schedule 21-EM: GNP East IOA Termination (ER16-1063) | Apr 26 | FERC accepts notice of termination of a 2003 IOA between Emera Maine and GNP East (successor to Katahdin Paper Co.) |
| 11 | Schedule 22: New England Wind LGIA (ER16-1024) | Apr 22 | FERC accepts LGIA, eff. Jan 19, 2016 |
| 11 | Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023) | Apr 18 May 3 | EMCOS files answer to Eversource Apr 4 answer FERC accepts "Option B" changes, eff. and subject to refund, as of Jun 1, 2016; establishes hearing and settlement judge procedures |
| * 11 | Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434) | Apr 15 Apr 15-21 Apr 27 | MPUC protests filing Eversource, MOPA, CMP/UI intervene Emera Maine answers MPUC protest |
| * 12 | Schedule 21-EM: Annual Informational Filing (ER15-1434) | May 2 | Emera Maine submits annual informational filing |

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports ▼

- * 13 LFTR Implementation: 30th Quarterly Status Report (ER07-476) Apr 15 ISO-NE files its 30th quarterly report; ISO-NE to abandon third-party clearing approach
- * 13 ISO-NE FERC Form 1 Apr 20 ISO-NE files CPA Certification Statement for its 2015 FERC Form 1 filed Mar 31
- * 13 ISO-NE FERC Form 582 Apr 14 ISO-NE submits 2015 annual report of total MWh of transmission service

IX. Membership Filings ▼

- * 13 May 2016 Membership Filing (ER16-1537) Apr 29 Memberships: Anbaric Management; FirstLight Power Resources Management; GDF SUEZ Energy Resources NA; Hancock Wind; and Wolverine Holdings; Apr 1 termination of Gallop Power Greenville; and Avangrid Renewables name change
- 13 April 2016 Membership Filing (ER16-1321) Apr 29 FERC accepts (i) the memberships of Atlantic Energy, Eversource Energy Transmission Ventures; Roctop Investments, Sustaining Power Solutions; and (ii) Aequitas' termination
- 13 March 2016 Membership Filing (ER16-1031) Apr 12 FERC accepts membership of EDF Energy Services and termination of Guzman Energy and the Westerly Hospital Companies, eff. Mar 1

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

- 14 Revised Reliability Standard: FAC-003-4 (RD16-4) Apr 26 FERC accepts FAC-003-4; eff. Oct 1, 2106
- * 14 Revised Reliability Standards: BAL-005-1 & FAC-001-3 (RM16-13) Apr 20 NERC files revised standards for approval
- 15 Order 822: Revised CIP Reliability Standards (RM15-14) Apr 8-21 H. Baptiste, APPA/LPPC/TAPS, EEI/EPSCA/NRECA, FRS file post-technical conference comments
- 16 NOPR: New Reliability Standard: TPL-007-1 (RM15-11) Apr 28 NERC supplements filing

XI. Misc. - of Regional Interest ▼

- 18 203 Application: Passadumkeag Wind Park (Southern Renewable Energy / Quantum) (EC16-86) Apr 20 FERC authorizes sale of Passadumkeag to SRE
- 18 203 Application: Essential Power (EC16-82) Apr 25 FERC directs Essential Power to provide Public Citizen with a copy of purchase and sale agreement
Apr 27 Public Citizen receives copy of agreement; Public Citizen comments due on or before May 18
- 19 CL&P Petition for Declaratory Order (Dominion Outage Dispute Governing Document) (EL16-45) Apr 7 Dominion files protest
Apr 21 CL&P answers Dominion's Apr 7 protest
May 2 Dominion answers CL&P's Apr 21 answer
May 4 CL&P answers Dominion's May 2 answer
- * 19 Maine Power Express Project (ER16-1619) May 2 MPX requests authority to sell transmission rights at negotiated rates on the MPX Project; comment date May 23
- * 19 IA Cancellation: Superseded 1993 NSTAR/NEA Interconnection Agreement (ER16-1477) Apr 20 NSTAR submits notice of cancellation of 1993 IA with NEA (IA superseded by recent LGIA); comment date May 11

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| * 19 | D&E Agreement Cancellation NSTAR/NRG Canal 3 (ER16-1473) | Apr 20 | Eversource files to cancel D&E Agreement superseded by an LGIA; comment date May 11 |
| 20 | Emera MPD OATT Changes (ER15-1429; EL16-13) | Apr 26 | 3rd settlement conference held |
| 21 | MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844) | Apr 19 Apr 27 Apr 28 | NYPSC requests issuance of final order in this proceeding PJM requests issuance of final order NY TOs request issuance of final order |
| 21 | FERC Enforcement Action: Show Cause Order – Coaltrain et al. (IN16-4) | Apr 14 Apr 28 May 4 | OE Staff submits notice of supplemental authority Respondents answer OE Staff’s Apr 1 reply and Apr 14 notice of supplemental authority OE Staff replies to Respondents’ Apr 28 answer |
| 22 | Etracom & M. Rosenberg (IN16-2) | Apr 19 Apr 22 May 3 | Etracom answers CAISO and OE Staff motions opposing its request that CAISO be required to disclose certain materials and information that Etracom asserts is relevant to this proceeding OE Staff answers Apr 19 motion Etracom submits materials in order to preserve its defenses to a civil penalty order |

XII. Misc. - Administrative & Rulemaking Proceedings

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| * 23 | Electric Storage Participation in RTO/ISO Markets (AD16-20) | Apr 11 Apr 11 Apr 20 Apr 21 | FERC staff issues data request, directing ISO-NE to provide information on rules that affect the New England Market participation of electric storage resources; comment date (as extended) May 16 FERC issues notice directing comments on this topic and on the ISO/RTO filings be submitted (as extended) on or before Jun 6 ISO/RTO Council requests 21-day extension of time for submissions FERC grants extensions of time; RTO/ISO comments due May 16; stakeholder comments due Jun 6 |
| 24 | Price Formation in RTO/ISO Energy and Ancillary Services Markets (AD14-14) | Apr 7 | Additional parties file comments |
| 24 | Review of Generator IAs & Procedures / AWEA Petition for LGIA/LGIP Rulemaking (RM16-12; RM15-21) | Apr 13 May 4 | FERC issues supplemental notice of May 13 technical conference FERC issues second supplemental notice of May 13 technical conference identifying panelists |
| 25 | NOI: Primary Frequency Response - Need for Reforms Related to Provision and Comp. (RM16-6) | Apr 18-25 | Over 50 parties file comments |
| 26 | NOPR: Price Formation Fixes - Price Caps in RTO/ISO Markets (RM16-5) | Apr 7 Apr 19 Apr 20 | Ohio PUC files comments (out-of-time) PJM Provider Group files answer PJM IMM files reply comments |
| 25 | NOPR: Reactive Power Requirements for Wind Generators (RM16-1) | Apr 29 | NextEra files supplemental comments |

XIII. Natural Gas Proceedings

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| 28 | Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618) | Apr 15 May 5 | FERC issues notice of May 9 technical conference FERC issues supplemental notice of May 9 technical conference |
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| 29 | Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299) | Apr 12 Apr 21 Apr 22 Apr 28 | RP16-300: settlement judge issues order adopting protective order RP16-302: settlement judge issues order adopting protective order RP16-299: settlement judge issues order adopting protective order RP16-301: 1st settlement conf. held; 2nd conf. scheduled for May 18 |
| 31 | New England Pipeline Proceedings | Apr 8-11 Apr 13 Apr 19 Apr 20 Apr 22 | <i>Conn. Expansion Project:</i> Requests for rehearing and/or clarification of certificate order filed <i>Atlantic Bridge Project:</i> FERC staff issues data request <i>Atlantic Bridge Project:</i> Algonquin responds to data request <i>NED Project:</i> Kinder Morgan announces suspension of further work and expenditures <i>Constitution Pipeline:</i> NY Dept. of Environmental Conservation denies Clean Water Act Section 401 permit application |
| * 30 | Enforcement Action: Total Gas & Power North America, Inc. (IN12-17) | Apr 28 | FERC issues show cause order directing TGPNA and its West Desk traders and supervisors to show cause why (i) they should not be found to have violated NGA Section 4A and the FERC's Anti-Manipulation Rule and (ii) be required to disgorge \$9.18 million in unjust profits, and civil penalties totaling \$216.6 million (TGPNA - \$213.6 million; Hall - \$1 million; Tran - \$2 million) |

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| XIV. State Proceedings & Federal Legislative Proceedings | |
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No Activity to Report

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| XV. Federal Courts | |
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| 33 | FCA9 Results Filing (16-1068) | Apr 11 Apr 13 | FERC files certified index to record Court grants NEPGA, CPV Towantic interventions |
| 33 | NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024) (consol.) | May 4 | Dynergy files notice that it does not intend to file a separate brief on the merits |
| 34 | Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated) | Apr 22 | TOs, States file reply briefs |
| 34 | Base ROE Complaint (2011) (15-1118, 15-1119, 15-1121**) (consolidated) | Apr 15 Apr 26 Apr 29 | Parties file Joint Appendix FERC files final brief TOs, Customers file final briefs |
| 35 | <i>Hughes v. Talen Energy Marketing et al.</i> (Supreme Court, 14-614/14-623) | Apr 19 | Supreme Court unanimously rules that MD's incentive program was preempted by the FPA |
| 36 | <i>CPV Power Development, et al. v. PPL EnergyPlus, LLC, et al.</i> (Supreme Court, 14-634, 14-694) | Apr 25 | In light of <i>Hughes</i> , Supreme Court denies petitions for <i>certiorari</i> |
| 36 | <i>Entergy Nuclear Fitzpatrick, LLC et al v. Zibelman et al</i> (NY PSC Commissioners) (NDNY 5:15-cv-00230-DNH-TWD) | Apr 20 | Status conference was held; Court continues stay of discovery for a limited time pending briefs on impacts of <i>Hughes</i> decision |

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: May 5, 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 May 4, 2016. If you have questions, please contact us.¹

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| I. Complaints/Section 206 Proceedings |
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- **Base ROE Complaint IV (2016) (EL16-64)**

On April 29, 2016, EMCOS² filed a complaint to have the FERC reduce the TOs’ current 10.57% return on equity (“Base ROE”) to 8.93% and determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. EMCOS state that there are three main considerations that require the submission of this complaint: (1) the continuing decline of the market cost of equity capital has made NETOS’ currently authorized ROE “excessive, unjust and unreasonable, and therefore ripe for adjustment under FPA Section 206”; (2) “divergent rulings concerning the persistence of the “anomalous” capital market conditions”; and (3) “the extent to which the Commission’s anomalous conditions rationale in Opinion No. 531 is intended to reflect changes in its long-standing reliance on the DCF methodology, and particularly the DCF midpoint, for determining ROE remains unclear.” Comments and responses to this Complaint are due May 16, though the TOs requested an extension of time, to June 3, to answer the Complaint. That request is pending as of the date of this Report. As for interventions, doc-less interventions have thus far been filed by NEPOOL and the CT AG. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **NextEra Bellingham FCA10 Complaint (EL16-48)**

As previously reported, NextEra Energy Power Marketing (“NEPM”) and Northeast Energy Associates (“NEA”, and together with NEPM, “NextEra”) filed a complaint alleging that the ISO violated its Tariff by disallowing the proposed capacity increase at NEA’s Bellingham Energy Center (“Bellingham”) from participating in the tenth Forward Capacity Auction (“FCA10”). As a result, NextEra asked the FERC to direct the ISO to increase Bellingham’s Capacity Supply Obligation (“CSO”) for 2019-2020 Capacity Commitment Period by including the Bellingham capacity increase as if it had cleared in FCA10, and compensate the capacity increase at the FCA10 clearing price (\$7.03/kW-month). In addition, NextEra asked

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, or the ISO New England Inc. (“ISO” or “ISO-NE”) Transmission, Markets and Services Tariff (the “Tariff”).

² “EMCOS” are: Belmont Municipal Light Department, Braintree Electric Light Department, Concord Municipal Light Plant, Georgetown Municipal Light Department, Groveland Electric Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light & Water Department, Middleborough Gas & Electric Department, Middleton Electric Light Department, Reading Municipal Light Department, Rowley Municipal Lighting Plant, Taunton Municipal Lighting Plant, and Wellesley Municipal Light Plant.

for fast track processing of the Complaint. Doc-less interventions were filed by NEPOOL, NESCOE, National Grid, Entergy, Dominion, and NRG/GenOn. The ISO answered the Complaint on April 7. On April 18, NextEra answered the ISO's April 7 answer. The ISO answered NextEra's April 18 answer on April 27. On May 4, NextEra submitted a letter asserting that, contrary to the FERC's assumption in the *Manchester Street FCA10 Order*, the ISO's comments in the FCA10 Results Filing proceeding (*see* ER16-1041 below) clarify that the FCA10 results need not be re-run should the FERC grant NextEra's requested relief in this complaint proceeding. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Dominion Energy Manchester Street FCA10 Complaint (EL16-38)**

On May 2, the FERC issued an order (1) finding the ISO-NE Tariff unjust and unreasonable for its lack of clarity as to whether new incremental capacity and existing capacity at the same generating station must submit a composite offer in order to participate in a FCA but (2) denying Dominion's requested relief (resettlement of the auction results to allow Dominion's new incremental capacity to be treated as if it had participated in FCA10).³ The FERC directed the ISO to submit a compliance filing, due on or before July 1, with Tariff language (a) expressly addressing whether new incremental and existing capacity at the same resource must submit a composite offer (and to provide the rationale for any such requirement); and (b) allowing an existing generating resource to lock-in the price for the new incremental capacity (or to provide reasons why the lock-in should not be allowed).⁴ As previously reported, Dominion Resources Services, Inc., on behalf of Dominion Energy Marketing, Inc. ("DEMI") and Dominion Energy Manchester Street, Inc. (collectively, "Dominion") filed a Complaint, on February 5, 2016, requesting that the FERC find that the ISO violated its Tariff in preventing new incremental capacity at Manchester Street Station ("Manchester Street") from participating in FCA10 and direct the ISO to award the incremental capacity a CSO for the FCA10 Capacity Commitment Period at the higher of the New Capacity Offer approved for the incremental MWs or the FCA10 Capacity Clearing Price for the Southeastern New England ("SENE") Capacity Zone, if it is apparent that the incremental capacity would have cleared the auction. Dominion explained that the ISO prevented incremental capacity from Manchester Street from participating because Dominion failed to submit a "composite offer" between the new capacity and the existing capacity at the same Manchester Street Unit. Dominion challenged the ISO-NE position that the Manchester Street-related composite offer was required. In the *Manchester Street FCA10 Order*, although the FERC found that ISO-NE's Tariff was unjust and unreasonable, it did not grant Dominion's requested relief. The FERC emphasized that it did not find that ISO-NE violated its Tariff (precluding mandatory resettlement). Further, the FERC found that Dominion failed to take advantage of its opportunities to challenge its disqualification in a timely manner (a factor that weighed against Dominion). Noting that it generally disfavors rerunning markets, the FERC determined, "considering the relevant circumstances in this case ... not [to] require ISO-NE to rerun FCA10."⁵ Challenges, if any, to the *Manchester Street FCA10 Order* are due on or before June 1. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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").⁶ 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

³ *Dominion Energy Marketing, Inc. and Dominion Energy Manchester Street, Inc. v. ISO New England Inc.*, 155 FERC ¶ 61,121 (May 2, 2016) ("*Manchester Street FCA10 Order*").

⁴ *Id.* at PP 22-23.

⁵ *Id.* at P 23.

⁶ *ISO New England Inc. Participating Transmission Owners Admin. Comm. et al.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh'g denied*, 154 FERC ¶ 61,230 (Mar. 22, 2016).

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”.⁷ 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.⁸ Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.⁹ The FERC-established refund date is January 4, 2016.¹⁰ Interventions were due February 3, 2016 and 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, Maine Public Utilities Commission (“MPUC”), Nat’l Grid, NESCOE, NHEC, NH OCA, Norwood, Public Citizen, Reading, RI PUC, Taunton VEC, VELCO, VPSA, VT DPS, Wallingford, and American Public Power Association (“APPA”).

Settlement Judge Procedures. As previously reported, John P. Dring was designated the Settlement Judge in these proceedings. A first settlement conference was held on January 19; a second conference, April 28. On May 4, Judge Dring issued an order scheduling a third settlement conference for July 28. On April 12, Judge Dring issued status report indicating that the parties were making progress toward settlement, and recommending settlement procedures be continued. The Transmission Committee is being kept apprised of settlement efforts.

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

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.”¹¹ 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.”¹² Finding that “concerns with continued use of vertical demand curves weigh more heavily than they did a year ago”,¹³ and that “the general challenges cited by ISO-NE [explaining the delay in developing zonal sloped demand curves] do not justify further delay”,¹⁴ the FERC directed that Tariff changes be filed, following a request for extension granted, by **April 15, 2016**.¹⁵ Interventions in EL16-15 were due January 19. Interventions were filed by the ISO, NEPOOL, Calpine, Champlain VT, CT DEEP, CT OCC, CT PURA, Dominion (out-of-time), EPSA, Essential Power, Exelon, MA AG, MPUC, National Grid, NEPGA, NESCOE, NH OCA, Public Citizen, TransCanada, and the American Petroleum Institute (“API”), and APPA. Tariff revisions to implement a proposed methodology for establishing FCM system-wide and zonal demand curves were supported by the Participants Committee at its April 8 meeting and filed on April 15 (*see* Demand Curve Design Improvements (ER16-1434), Section III below). If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁷ *Id.* at P 8.

⁸ *Id.* at P 11.

⁹ *Id.*

¹⁰ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

¹¹ *ISO New England Inc. et al.*, 153 FERC ¶ 61,338 (Dec. 28, 2015).

¹² *Id.* at P 11.

¹³ *Id.* at P 15.

¹⁴ *Id.* at P 14.

¹⁵ *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.

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

The hearing process in this proceeding is underway, but as noted below, is currently being held in abeyance. 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. NHT filed, on February 2, its initial direct testimony, exhibits and work papers. Orders setting the rules for the conduct of hearings and adopting a protective order for use in this proceeding (as requested by NextEra) were issued on February 23 and 26, respectively. Intervenor's direct and answering testimony (with summaries), exhibits and work papers were filed March 2, 2016. However, on April 1, NHT and the New England State Agencies ("NESA")¹⁶ requested that the hearing be held in abeyance for 60 days to afford the parties an opportunity to finalize a settlement agreement based on the agreement-in-principle reached between NHT and NESA. On April 5, Chief Judge Cintron granted the NHT/NESA motion, holding hearings in abeyance for 60 days. If an offer of settlement resolving all issues in this proceeding has not been filed by June 6, 2016, Chief Judge Cintron directed NHT and NESA to provide her with a status report on that date.

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 NESA, 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.¹⁷ 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.¹⁸ The FERC-established refund effective date is August 19, 2015.¹⁹ On December 11, NESA requested the following two clarifications 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. NESA's request for clarifications remain pending before the FERC. If there are questions on these proceedings, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Base ROE Complaints II & III (2012 & 2014) (EL13-33 and EL14-86) (consolidated)**

As previously reported, the FERC, in response to second (EL13-33)²⁰ and third (EL14-86)²¹ complaints regarding the TOs' 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings

¹⁶ The New England State Agencies are: the Attorney General of the Commonwealth of Mass. ("MA AG"), the Conn. Office of Consumer Counsel ("CT OCC"), the Conn. Public Utilities Regulatory Authority ("CT PURA"), the Rhode Island Div. of Public Utilities and Carriers ("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").

¹⁷ *ISO New England Inc. Participating Transmission Owners Administrative Committee and New Hampshire Transmission, LLC*, 152 FERC ¶ 61,121 (Aug. 12, 2015) ("*August 12 Order*").

¹⁸ *Id.* at P 20.

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

²⁰ 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%.

²¹ 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

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;²² the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²³ 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.”²⁴ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²⁵ On July 13, 2015, the TOs appealed those orders to the DC Circuit Court of Appeals (*see* Section XIV below), and that appeal remains pending.

Hearings and Trial Judge Initial Decision. Initial hearings on these matters were completed on July 2, 2015. In mid-December, Judge Sterner reopened the record for the limited purpose of having the discounted cash flow (“DCF”) calculations re-run in accordance with the FERC’s preferred approach and re-submitted. A limited hearing on that supplemental information was held on February 1, 2016. On March 22, 2016, Judge Sterner issued his 939-paragraph, 371-page Initial Decision, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.²⁶ The Decision also lowered the ROE ceilings. Judge Sterner’s decision, if upheld by the FERC, would result in refunds totaling as much as \$100 million, largely concentrated in the EL13-33 refund period. On April 21, briefs on exceptions were filed by the TOs, Complainant-Aligned Parties (“CAPs”), EMCOS, and FERC Trial Staff. Following a request for an extension of time by the TOs, granted April 27, briefs opposing exceptions will now be due May 20, 2016. Judge Sterner’s findings and Initial Decision, and pleadings in response thereto, are pending, and will be subject to challenge, before the FERC. The Initial Decision and its findings can be approved or rejected, in whole or in part.

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **FCA10 Results Filing (ER16-1041)**

On February 29, the ISO filed the results of the tenth FCA (“FCA10”) held February 8, 2016. The ISO reported the following highlights:

- ◆ FCA10 Capacity Zones were the Southeastern New England (“SENE”) Capacity Zone (the Northeastern Massachusetts (“NEMA”)/Boston, Southeastern Massachusetts, and Rhode Island Load Zones) and the Rest-of-Pool Capacity Zone (the Connecticut, Maine, Western/Central Massachusetts, New Hampshire, and Vermont Load Zones)

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.

²² *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).

²³ *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).

²⁴ *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).

²⁵ *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).

²⁶ *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al. and Mass. Att’y Gen. et al. -v- Bangor Hydro et al.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) (“2012/14 ROE Initial Decision”).

- ◆ FCA10 commenced with a starting price of \$17.296/kW-mo. and concluded for SENE and Rest-of-Pool after four rounds.
- ◆ Resources will be paid as follows:
 - ▶ SENE, Rest-of-Pool, and imports over the HQ interfaces (224 MW): \$7.03/kW-month
 - ▶ NY AC Ties imports (1,045 MW): \$6.26/kW-month
 - ▶ New Brunswick imports (181 MW): \$4.00/kW-month
- ◆ No resources cleared as Conditional Qualified New Generating Capacity Resources
- ◆ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource
- ◆ No de-list bids were rejected for reliability reasons

The ISO asked the FERC to accept the FCA10 rates and results, effective June 28, 2016. Comments on this filing were due on or before April 14, 2016. Doc-less interventions were filed by NEPOOL, Calpine, Emera, Entergy, Eversource, Exelon, National Grid, NEA (out-of-time), NEPGA, NESCOE, NRG, PSEG, and Public Citizen. Protests were filed by Dominion (to ensure that the FCA10 results appropriately reflected any CSOs associated with the incremental capacity at Manchester Street Station should the FERC grant Dominion's requested relief in EL16-38, [note: the May 2 order in EL16-38 did not grant the relief requested by Dominion, *see* Section I above]) and the Utility Workers Union of America Local 464 ("UWUA Local 464") (alleging, as it did for FCA8 and FCA9, that the FCA10 results are the product of continued illegal market manipulation and violation of the ISO Tariff). NEA filed comments (solely to provide notice that the capacity values for NEA listed in Appendix A to the ISO's filing would be modified should the FERC grant the relief requested by NEA/NextEra in EL16-48, which remains pending). Answers to the UWUA Local 464 protest were filed by NEPGA and the ISO. The ISO also answered the Dominion protest and NEA comments. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

The FERC's January 8, 2016 order accepting the 2019/20 Capability Year ICRs, Hydro Quebec Interconnection Capability Credits ("HQICCs") and related Local Sourcing Requirements ("LSR") is subject to a request for rehearing.²⁷ As previously reported, 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 forecasts into the ICR calculation for FCA 10."²⁸ 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.²⁹ 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."³⁰

NRG Request for Rehearing. NRG requested rehearing of the *2019/20 ICR/HQICCs Order* on February 8, 2016 (asserting that, because "ISO-NE provided no evidence that it meaningfully 'explore[d] the incorporation of distributed generation' and 'examine[d] the market and operational issues,' the Commission erred in agreeing with ISO-NE that it abided by the Commission's earlier order." NRG requested that the FERC "clarify that any further changes to the Installed Reserve Margin forecasting methodology to take into account behind-the-meter resources will provide market participants advance notice, and the opportunity to comment on, methodological

²⁷ *ISO New England Inc.*, 154 FERC ¶ 61,008 (Jan. 8, 2016) ("*2019/20 ICR/HQICCs Order*"), *reh'g requested*.

²⁸ *Id.* at P 27.

²⁹ *Id.* at PP 30-37.

³⁰ *Id.* at P 37.

changes to ICR calculations.” On February 26, NESCOE answered the NRG request for rehearing (asserting that the *2019/20 ICR/HQICCs Order* reflects the FERC’s careful consideration of the issues raised in NRG’s rehearing request and that none of NRG’s arguments require the FERC to provide any additional explanation of its finding). On March 7, the FERC issued a tolling order affording it additional time to consider the NRG request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

As previously reported, the DC Circuit issued a December 23, 2011 *per curium* order³¹ that granted PSEG’s May 2010 petition for review, remanding the FERC’s orders in this proceeding³² 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.

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.³³ “[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.”³⁴ 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, 2015, 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 PSEG. Bridgeport Energy submitted a reply brief (requesting that payments be paid to the legal entity that owned the resource at the time of the FCA1

³¹ *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).

³² *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).

³³ *ISO New England Inc.*, 151 FERC ¶ 61,196 (June 2, 2015) (“*FCA1 Remand Order*”).

³⁴ *Id.* at P 14.

Commitment Period or, if that legal entity no longer exists, to the successor in interest to ownership of the subject resource). The ISO answered Bridgeport Energy's reply brief on September 2, 2015, advocating for resettlement payments to the Lead Market Participant during the first Capacity Commitment Period. There has been no published activity in this proceeding since that September answer and 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) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

- **Demand Curve Design Improvements (ER16-1434)**

On April 15, 2016, the ISO and NEPOOL jointly filed Tariff changes to implement a proposed methodology for establishing FCM system-wide and zonal demand curves ("Demand Curve Design Improvements"). The ISO supplemented the filing on April 26 by submitting testimony of Al McBride inadvertently omitted from the April 15 filing. The Demand Curve Design Improvements were supported by the Participants Committee at its April 8, 2016 meeting. A June 16, 2016 effective date was requested. The improvements will be applicable for the FCA11 auction process. Comments on this filing are due on or before May 13, 2016.³⁵ Thus far, doc-less interventions have been filed by Calpine, CT PURA, ConEd, Dominion, Emera Energy Services, EPSA, Exelon, Eversource, FirstLight, GDF SUEZ Energy Marketing NA, HQUS, NEPGA, NESCOE, NRG, and UI. On May 4, NEPOOL submitted supplemental information regarding the stakeholder process that led to NEPOOL's support for the Demand Curve Design Improvements. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Info Policy Changes (Default Notice Provisions) (ER16-1413)**

Also on April 15, the ISO and NEPOOL jointly filed changes to Section 2.3 of the Information Policy to support improved notices regarding Participant defaults, suspensions, or bankruptcies. These changes were supported by the Participants Committee at its February 5, 2016 meeting (Consent Agenda #1). A June 16, 2016 effective date was requested. Comments on this filing are due on or before May 6, 2016. Thus far, a doc-less intervention has been filed by Exelon. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Forward Reserve Heat Rate Calculation Revisions (ER16-1296)**

On March 31, 2016, the ISO and NEPOOL jointly filed Tariff changes that revise the calculation of the Forward Reserve Heat Rate. The Forward Reserve Heat Rate Revisions were supported by the Participants Committee at its March 4, 2016 meeting (Consent Agenda Item #1). A June 15, 2016 effective date was requested. Comments on this filing were due on or before April 21, 2016; none were filed. Doc-less interventions were filed by Dominion, Eversource, and National Grid. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On April 12, the FERC conditionally accepted, effective March 1, 2016, changes proposed by the ISO and its Internal Market Monitor ("IMM") to the FCM rules for resource retirements (the "ISO/IMM Proposal").³⁶

³⁵ Comments were initially due May 6. However, following an April 22 request by "Indicated Suppliers" (Calpine, Dominion, Exelon, and NRG/GenOn) for a 14-day extension of time, the FERC granted a partial 7-day extension of time, to May 20, for the filing of comments.

³⁶ *ISO New England Inc.*, 155 FERC ¶ 61,029 (Apr. 12, 2016) ("*Resource Retirement Reforms Order*"). As previously reported, 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.

The FERC conditioned its acceptance of the ISO/IMM Proposal on the filing, on or before May 12, of Tariff revisions “establishing a materiality threshold for determining whether or not a particular proxy de-list bid will replace a Retirement Bid in an FCA”³⁷ (as suggested by the EMM). The FERC granted the ISO and IMM the latitude to propose the percentage of the IMM’s determined price that they find appropriate.³⁸ Other than this EMM-suggested modification, all other protests and comments were rejected. Challenges, if any, to the *Resource Retirement Reforms Order* are also due on or before May 12.

Compliance. Revisions to the FCM Rules proposed by the IMM in response to the *Resource Retirement Reforms Order* will be considered at the May 6 Participants Committee meeting (Agenda Item #6) and will be filed shortly thereafter. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On April 8, the FERC issued an order on remand affirming its earlier finding that the renewables exemption from the minimum offer price rule is just and reasonable, and not unduly discriminatory or preferential.³⁹ 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”).⁴⁰ 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*,⁴¹ 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).⁴² A compliance filing clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in was submitted on March 2, accepted on May 1, and became effective on May 2, 2015.⁴³ NextEra, NRG and PSEG petitioned the DC Circuit Court of Appeals for review of the 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, which, as noted above, resulted in the *Demand Curve Remand Order*. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **2013/14 Winter Reliability Program Remand Proceeding (ER13-2266)**

As previously reported, 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

³⁷ *Id.* at P 62.

³⁸ *Id.*

³⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 155 FERC ¶ 61,023 (Apr. 8, 2016) (“*Demand Curve Remand Order*”).

⁴⁰ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”).

⁴¹ *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).

⁴² *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*”).

⁴³ 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.

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).⁴⁴ 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 issued the mandate (official remand to the FERC) on February 17, 2016. 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).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Generator Interconnection Revisions (ER16-946)**

On April 15, the FERC conditionally accepted revisions to OATT Schedules 22, 23 and 25 that incorporate certain interconnection process improvements intended to: (i) to reduce the time to interconnect new generators; (ii) to address some of the operational issues related to inverter-based generators; and (iii) to meet NERC modeling and performance requirements.⁴⁵ The Generator Interconnection Revisions were accepted subject to the condition that the ISO file, on or before May 16, 2016, revisions to the SGIA to include the definition of "study case" and update the definition of "interconnection request" or, alternatively, explain their exclusion from the SGIA. The Revisions were accepted effective as of April 17, 2016, as requested. Challenges to the April 15 order, if any, are due on or before May 16. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-EM: Rate Adjustments for Anticipated Changes (ER16-1301)**

On March 31, Emera Maine filed changes to Schedule 21-EM to permit it to adjust historical load, revenue, and sales data used as inputs to the formula rate to reflect "known and measurable" anticipated changes, particularly when actual load falls short of historic load and Emera Maine might otherwise under-recover its revenue requirement. Comments on this filing were due on or before April 21, 2016. MPUC filed a protest on April 14. Doc-less interventions were filed CMP/UI, Eversource, and MOPA. Emera Maine answered the MPUC protest on April 27 (proposing a true-up mechanism to address concerns raised with respect to potential over-collection). This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-EM: GNP East IOA Termination (ER16-1063)**

On April 26, the FERC accepted a notice of termination of a 2003 Interconnection and Operating Agreement between Emera Maine and GNP East (as successor in interest to Katahdin Paper Company, having assumed the IOA in 2011) that governs the BHE/Great Northern-Millinocket 115 kV Interface Project. Emera filed the termination as a result of GNP East's Chapter 7 trustee's failure to assume the IOA in GNP East's bankruptcy proceeding. The notice of termination was accepted effective as of March 1, 2016, as

⁴⁴ *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

⁴⁵ *ISO New England Inc. and Participating Transmission Owners Admin. Comm.*, 155 FERC ¶ 61,031 (Apr. 15, 2016).

requested. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 22: New England Wind LGIA (ER16-1024)**

On April 22, the FERC accepted a non-conforming, 3-party LGIA between the ISO, New England Wind as Interconnection Customer, and National Grid as Interconnecting Transmission Owner. The LGIA replaces a prior 2007 non-conforming LGIA governing the current interconnection of New England Wind's 28.5 MW Hoosac Project in Florida and Monroe, MA. The need for a new LGIA was triggered by New England Wind's request to change from Network Resource Interconnection Service to Capacity Network Interconnection Service. The LGIA is non-conforming in that it contains certain deviations from Schedule 22's *pro forma* LGIA, reflected in the 2007 LGIA, necessary to accommodate resolutions agreed to in settlement. The LGIA was accepted effective as of January 19, 2016, as requested. Unless the April 22 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).

- **Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)**

On May 3, the FERC accepted but, finding that Eversource "has not shown that the transaction-related costs are just and reasonable and that such costs may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful", set for hearing and settlement judge procedures Eversource's changes to Schedule ES-21 to recover \$38.9 million in FERC-jurisdictional, merger-related transmission costs incurred as the result of the April 10, 2012 NU/NSTAR merger.⁴⁶ The FERC accepted Eversource's proposed "Option B" tariff revisions for filing, which would amortize costs over a three-year period, "to minimize the immediate impact on transmission customers while the issues are being resolved at hearing."⁴⁷ In accepting the changes, the FERC reiterated the following points with respect to transaction-related cost recovery, as explained in prior FERC orders: (i) "applicant must demonstrate its use of appropriate internal controls and procedures for proper identification, accounting, and rate treatment of all transaction-related costs"; (ii) transaction-related savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs; (iii) savings must be shown to have a nexus with the transaction and must directly benefit (i.e., be passed on to) transmission customers; (iv) the filing must be shown to be just and reasonable in light of all the other factors underlying the new rate; and (v) the applicant must demonstrate that the transaction-related costs are exceeded by the savings produced by the transaction.⁴⁸ The FERC also provided guidance on other points with respect to transaction-related cost recovery: (x) "only costs that would have been eligible for inclusion in the then-existing transmission rates, but for the hold harmless commitment, will be eligible for cost recovery"; and (y) "transaction-related savings should not be calculated based on an after-the-fact reconstruction of costs that would have been incurred absent the transaction, but instead should be based on a comparison of costs known prior to consideration of the transaction compared against actual spending."⁴⁹ The FERC encouraged participants to make every effort to settle their dispute before hearing procedures commence. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434)**

On March 31, Emera Maine sought authorization to recover certain merger-related costs viewed by the FERC's Office of Enforcement's Division of Audits and Accounting ("DAA") to be subject to the conditions of the orders authorizing Emera Maine's acquisition of, and ultimate merger with, Maine Public Service ("Merger Conditions"). The Merger Conditions imposed a hold harmless requirement, and required a compliance filing demonstrating fulfillment of that requirement, should Emera Maine seek to recover

⁴⁶ *ISO New England Inc. et al.*, 155 FERC ¶ 61,136 (May 3, 2016).

⁴⁷ *Id.* at P 27.

⁴⁸ *Id.* at P 28.

⁴⁹ *Id.* at P 29.

transaction-related costs through any transmission rate. Following its recent audit of Emera Maine, DAA found that Emera Maine “inappropriately included the costs of four merger-related capital initiatives in its formula rate recovery mechanisms” and “did not properly record certain merger-related expenses incurred to consummate the merger transaction to appropriate non-operating expense accounts as required by [FERC] regulations [and] inappropriately included costs of merger-related activities through its formula rate recovery mechanisms” without first making a compliance filing as required by the merger orders. Accordingly, Emera Maine submitted this filing. Comments on this filing were due on or before April 21, 2016. Doc-less interventions were filed by CMP/UI, Eversource and MOPA. On April 15 the MPUC filed a protest to the Emera filing. Emera answered the MPUC protest on April 27 (suggesting that the matter be set for hearing and settlement procedures). This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-EM: Annual Informational Filing (ER15-1434)**

On May 2, in accordance with Attachment P-EM to Schedule 21-EM, Emera Maine submitted a populated version of Attachment P-EM setting forth the rates that will go into effect on June 1, 2016. Emera noted that the rates reflect refunds and exclude certain cost calculations in accordance with findings in the FERC’s January 4, 2016 Audit Report in PA15-4. Emera highlighted that the cost recovery sought for the merger-related costs discussed immediately above were not included and recovery for those costs (with interest) would be sought at a later time should the FERC approve the recovery of merger-related costs described above. Information Filings like these are not noticed for public comment.

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| VII. NEPOOL Agreement/Participants Agreement Amendments |
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No Activity to Report

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| VIII. Regional Reports |
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- **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).

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

On November 2, 2015, the TOs submitted a refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*⁵⁰ and *531-B*.⁵¹ As previously reported, refunds resulting from *Opinion No. 531-B* were completed by August 31, 2015. If there are questions on this matter, please contact Pat Gerity (860-275-0533; 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)

⁵⁰ *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

⁵¹ *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

- ◆ 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).

- **LFTR Implementation: 30th Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the thirtieth of its Quarterly Status Reports regarding LFTR implementation on April 15, 2016. The ISO reported its conclusion that it will not be able to resolve the issues associated with the previously identified third-party clearing approach and will consider alternative paths forward on LFTR implementation. Third-party clearing approach issues include the inability of that approach to fully protect the ISO from a remote possibility of having to carry and settle FTRs. In addition, the third-party clearing approach would add unacceptable complexity and risk to the ISO's Commodities Futures Trading Commission ("CFTC") exemption. Accordingly, the ISO reported that it has abandoned effort to address financial assurance ("FA") issues through the third-party clearing approach. The ISO's current plan is to focus on implementation of the monthly reconfiguration auctions (accepted in ER12-2122) and to renew thereafter efforts to address FA issues associated with LFTRs. LFTR functionality would be subject to an 18-month implementation process following resolution of the FA issues. These status reports are not noticed for public comment and no comments have been filed.

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

On March 31, the ISO submitted its 2015 Annual Report of Major Electric Utilities, Licensees and Others. On April 20, the ISO filed the CPA Certification Statement for that Form. FERC Form 1 filings are not noticed for comment.

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

On April 14, the ISO submitted a report of its total MWh of transmission service during 2015. The ISO reported that 134,059,596.537 Mwh of transmission service in interstate commerce was provided during 2015. These filings are not noticed for comment.

IX. Membership Filings

- **May 2016 Membership Filing (ER16-1537)**

On April 29, NEPOOL requested that the FERC accept (i) the memberships of Anbaric Management LLC (Provisional Member); FirstLight Power Resources Management, LLC and GDF SUEZ Energy Resources NA, Inc. (Related Persons to GDF SUEZ Energy Marketing NA, Generation Sector); Hancock Wind, LLC (Related Person to SunEdison, AR Sector); and Wolverine Holdings, L.P. (Supplier Sector); (ii) the April 1, 2016 termination of Gallop Power Greenville (Generation Sector Group Seat); and (iii) the name change of Avangrid Renewables LLC (f/k/a Iberdrola Renewables LLC). Comments on this filing are due on or before May 20.

- **April 2016 Membership Filing (ER16-1321)**

On April 29, the FERC accepted (i) the memberships of Atlantic Energy MA, LLC (Supplier Sector); Eversource Energy Transmission Ventures, Inc. (Provisional Member, Related Person of the Eversource Companies; Transmission Sector); Roctop Investments Inc. (Supplier Sector); and Sustaining Power Solutions (Related Person of Marble River; Supplier Sector) and (ii) the March 1, 2016 termination of Aequitas Energy (Supplier Sector).

- **March 2016 Membership Filing (ER16-1031)**

On April 12, the FERC accepted, each effective March 1, 2016, (i) the membership of EDF Energy Services, LLC (Related Person of EDF Trading North America, LLC; Supplier Sector); and (ii) the terminations of: Guzman Energy (Supplier Sector) and the Westerly Hospital Companies (End User Sector).

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).

- **Revised Reliability Standard: FAC-003-4 (RD16-4)**

On April 26, the FERC accepted changes to Reliability Standard FAC-003 (Transmission Vegetation Management), an associated Implementation Plan, and for the retirement of the currently-effective version of the Reliability Standard, FAC-003-3. As previously reported, NERC stated that the purpose of the changes is to revise the Alternating Current Minimum Vegetation Clearance Distances (“MVCD Values”) set forth in the Standard to be higher and more conservative, given EPRI test results which suggested that MVCD Values under version 3 of the Standard appeared to be too low. FAC-003-4 will become effective October 1, 2016 (the first day of the first calendar quarter that is three months after the effective date of the order). Unless the April 26 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standards: BAL-005-1 & FAC-001-3 (RM16-13)**

On April 20, 2016, NERC filed for approval revised Reliability Standards -- BAL-005-1 (Balancing Authority Control) and FAC-001-3 (Facility Interconnection Requirements), and associated Glossary definitions, implementation plan, VRFs and VSLs (together, the “Frequency Control Changes”). NERC stated that the Frequency Control Changes clarify and refine Requirements for accurate, consistent, and complete reporting of Area Control Error (“ACE”) calculations. NERC indicated that the Frequency Control Changes will improve reliability by supporting efforts to maintain Interconnection frequency at 60 Hz in a manner consistent with FERC directives, technological developments, and NERC’s current framework of integrated Reliability Standards. NERC requested that the Frequency Control Changes become effective on the first day of the first calendar quarter that is 12 months after the effective date of an order approving the Standard, pursuant to the Implementation Plans included with the Changes. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

As previously reported, NERC filed for approval, on January 29, 2016, 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 three 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”), thereby implementing a continent-wide reserve policy to ensure that adequate Contingency Reserves will always be available 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. On February 12, 2016, NERC submitted supplemental information that clarified how BAL-002-2 will work in conjunction with the successor provisions to TOP-007-0 (TOP-007-0 is set to expire on April 1, 2017). On March 31, NERC provided further supplemental information to further clarify the significance of the Most Severe Single Contingency (“MSSC”) as the upper bounds for events that qualify as Reportable Balancing Contingency Events (“RBCE”) under Reliability Standard BAL-002-2 and the way in which other Reliability Standards are necessary and appropriate to address events beyond MSSC. 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)**

Rehearing remains pending of *Order 822*,⁵² which approved 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. 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* became effective March 31, 2016.⁵³ On February 22, the Foundation for Resilient Societies (“FRS”) and Isologic LLC requested rehearing of *Order 822*. On March 21, the FERC issued a tolling order affording it additional time to consider the FRS and Isologic requests for rehearing, which remain pending before the FERC. On March 29, FRS, Isologic and Applied Content Solutions asked the FERC to reopen the evidentiary record to consider new evidence and analysis it summarized, including new information related to the late 2015 cyber-attack against the electric grid in the Ukraine.

Extension of Time for Compliance with CIP Version 5 Standards. On February 25, the FERC granted Trade Associations⁵⁴ February 4, 2016 request for an extension of time for implementation of the CIP version 5 Standards for entities with High and Medium Impact BES Cyber Systems from April 1, 2016 to July 1, 2016 to align with the effective date for the revised CIP Standards approved in *Order 822*.⁵⁵ In granting the request, the FERC found that “separate implementation dates in short succession create unnecessary administrative burdens with little or no commensurate benefit to reliability”.⁵⁶

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 are posted on the FERC’s eLibrary. Since the last Report, post-technical conference comments were filed by H. Baptiste, APPA/LPPC/TAPS, EEI/EPISA/NRECA, and FRS.

⁵² *Revised Critical Infrastructure Protection Rel. Standards*, Order No. 822, 154 FERC ¶ 61,037 (Jan. 21, 2016) (“*Order 822*”).

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

⁵⁴ “Trade Associations” are Edison Electric Institute (“EEI”), APPA, Electricity Consumers Resource Council (“ECRC”), Electric Power Supply Association (“EPSA”), Large Public Power Council (“LPPC”), National Rural Electric Cooperative Association (“NRECA”), and Transmission Access Policy Study Group (“TAPS”).

⁵⁵ *Revised Critical Infrastructure Protection Rel. Standards*, 154 FERC ¶ 61,137 (Feb. 25, 2016).

⁵⁶ *Id.* at P 9.

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

As previously reported, FERC issued a NOPR, on May 14, 2015, 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”).⁵⁷ 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.⁵⁸ 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, 2015,⁵⁹ 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. Additional comments and reply comments were filed by EEI, APPA, ECRC, NRECA, D. Bardin, U.S. Geological Survey, Southern Company, IEEE PES Transformers Committee, Storm Analysis Consultants & Advanced Fusion Systems, and J. Stolov. On April 28, NERC supplemented its filing to inform the FERC that it had identified new information that might necessitate a minor revision to a figure in one of the supporting technical white papers; the revision, however, would not require a change to any of the Requirements of the proposed Reliability Standard. NERC indicated that it would provide a further update following additional vetting in its stakeholder process, likely by the end of the summer.

March 1, 2016 Technical Conference. A technical conference was held on March 1, 2016. The technical conference was led by Commission staff, with prepared remarks presented by invited panelists. Topics and related questions discussed during the conference included: the benchmark GMD event definition (including geomagnetic fields and earth conductivity); vulnerability assessments (harmonics and vibrational effects during benchmark GMD events, transformer thermal assessments, non-uniform geoelectric fields), and monitoring and future work. Speaker materials are posted on the FERC’s e-Library. Additional comments following the technical conference were filed by Trade Associations,⁶⁰ D. Bardin, J. Kappenman/C. Birnbach, FRS, and AEP.

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

The *ATC NOPR* remains pending before the FERC. As previously reported, the FERC’s June 19, 2014, NOPR⁶¹ proposed to approve changes to MOD-001-2 (Modeling, Data, and Analysis - Available Transmission System Capability) to replace, consolidate and improve upon the Existing MOD Standards in addressing the

⁵⁷ *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

⁵⁸ *Rel. Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (“*Order 779*”).

⁵⁹ The *TPL-007 NOPR* was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

⁶⁰ “Trade Associations” are the Edison Electric Institute (“EEI”), APPA, Electricity Consumers Resource Council (“ECRC”), Electric Power Supply Association (“EPSA”), Large Public Power Council, and National Rural Electric Cooperative Association (“NRECA”).

⁶¹ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) (“*ATC NOPR*”).

reliability issues associated with determinations of Available Transfer Capability (“ATC”) and Available Flowgate Capability (“AFC”). MOD-001-2 will replace the six Existing MOD Standards⁶² 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, 2014,⁶³ 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. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the *ATC NOPR* remains pending before the FERC.

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

This May 16, 2013 NOPR⁶⁴ remains pending. As previously explained, this NOPR 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). 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, 2013,⁶⁵ 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.

⁶² 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.

⁶³ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁶⁴ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) (“*BAL-002-1a Interpretation Remand NOPR*”).

⁶⁵ 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.

- **Rules of Procedure Revisions Compliance Filing (RR15-2)**

On March 3, 2016, NERC submitted, pursuant to a November 4, 2015 order,⁶⁶ a compliance filing revising Section 401 and Appendix 4C of the NERC Rules of Procedure (“Rules of Procedure”). The Section 401 changes address public posting of compliance exceptions. The Appendix 4C changes address the inclusion of Regional Entities’ self-logging review period, notice that FERC Staff receive non-public, preliminary notice of self-logged matters received by Regional Entities, and the inclusion of data and information related to self-logging in ERO Enterprise data retention requirements. Comments on this filing were due on or before March 24; none were filed. This matter is pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: GDF Suez Energy Resources/Atlas Power (Dynegy/ECP) (EC16-93)**

On March 25, 2016, Atlas Power Finance, a subsidiary of Atlas Power (a newly-formed joint venture between Dynegy and ECP III), Dynegy Inc. (“Dynegy”), Energy Capital Partners III, LLC (“ECP”) and GDF Suez requested FERC authorization of Atlas Power’s acquisition of GDF Suez Energy Resources. In addition, Dynegy and ECP III requested in a separate proceeding (EC16-94) that the FERC approve the purchase by an ECP affiliate, Terawatt Holdings, LP (“Terawatt”), of newly-issued Dynegy common stock representing approximately 10% of the outstanding shares of Dynegy. Comments on both those filings are due on or before May 24, 2016. Thus far, a doc-less intervention was filed by Public Citizen. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: FirstLight/PSP (EC16-89)**

On March 17, 2016, FirstLight Hydro Generating Company (“FirstLight Hydro”) and FirstLight Power Resources Management, LLC (“FirstLight Management”) (or collectively, “FirstLight”) requested FERC authorization for a proposed transaction that will result in a transfer of control of FirstLight Power Resources Holdings, Inc. and its indirect wholly-owned public utility subsidiaries FirstLight Hydro and FirstLight Management to PSP H2O FL USA LLC (“PSP”). Comments on this filing were due on or before April 7; 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).

- **203 Application: Passadumkeag Wind Park (Southern Renewable Energy / Quantum) (EC16-86)**

On April 20, 2016, the FERC authorized the sale of 100% of the membership interests in Passadumkeag Windpark, LLC (“Passadumkeag”) to Southern Renewable Energy, Inc. (“SRE”), a wholly-owned subsidiary of Southern Power Company.⁶⁷ Unless the April 20 order is challenged, this proceeding will be concluded. SRE 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).

- **203 Application: Essential Power (EC16-82)**

On February 29, 2016, Essential Power and Nautilus Generation, LLC (“Nautilus”) requested FERC authorization for the sale of 100% of the direct membership interests in Essential Power Investments, LLC from IFM Global Infrastructure Fund to Nautilus (which does not yet have any Related Persons in the Pool). On March 21, Public Citizen intervened and requested a copy of the transaction’s Purchase and Sale Agreement, subject to protective agreement and non-disclosure certificate. No other party intervened or submitted comments. On March 28, Essential Power and Nautilus opposed Public Citizen’s request. On April 25, the FERC issued an order directing the disclosure of a copy of the Purchase and Sale Agreement to Public Citizen pursuant to the Protective Agreement previously submitted by Public Citizen.⁶⁸ Public Citizen may file additional comments based upon the Purchase and Sale Agreement on or before May 18, which is 21 days after it received the Purchase

⁶⁶ *N. Amer. Elec. Rel. Corp.*, 153 FERC ¶ 61,130 (Nov. 4, 2015) (“November 4 Order”).

⁶⁷ *Passadumkeag Windpark, LLC*, 155 FERC ¶ 62,050 (Apr. 20, 2016).

⁶⁸ *Essential Power, LLC et al.*, 155 FERC ¶ 61,095 (Apr. 25, 2016).

and Sale Agreement from Essential Power. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On March 9, 2016, the FERC authorized the sale of 100% of the partnership interests in ReEnergy Sterling CT Limited Partnership (“ReEnergy Sterling”) to Empire Tire of Edgewater 2, LLC (“Empire Tire”).⁶⁹ When consummated, ReEnergy Sterling will no longer be a Related Person to ReEnergy Stratton, Dartmouth Power or TrailStone Power. ReEnergy Sterling and Empire Tire 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).

- **CL&P Petition for Declaratory Order (Dominion Outage Dispute Governing Document) (EL16-45)**

On March 7, CL&P filed a petition for declaratory order asking the FERC to determine whether a dispute between CL&P and Dominion, arising out of a May 25, 2014 CL&P transmission outage, is governed by a Support Agreement (from 1974, as amended in 2000) or an LGIA (from March 2010) to which CL&P and Dominion are a party. CL&P stated that resolution of the dispute would control both the procedural conduct and the substantive law to be applied in resolution of the dispute. Direct and consequential damages may exceed \$30 million. Dominion filed a protest to this petition on April 7. CL&P answered that protest on April 21. On May 2, Dominion answered CL&P’s April 21 answer. CL&P answered Dominion’s answer on May 4. The ISO filed a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Maine Power Express Project (ER16-1619)**

On May 2, Maine Power Express, LLC (“MPX”) requested authority to sell transmission rights at negotiated rates on an approximately 315-mile High-Voltage Direct Current (“HVDC”) 1,000 MW proposed transmission project (the “MPX Project”). MPX stated that the MPX Project will originate at a new AC/DC converter station located in Haynesville, Maine, and consist of two underground or submarine cable systems that will terminate at a new DC/AC converter station in Boston that will connect with the transmission system at Eversource’s 345 kV K Street substation. MPX estimates the capital cost of the MPX Project will be \$2.4 billion and will be operational in 2021. Comments on this filing are due on or before May 23, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA Cancellation: Superseded 1993 NSTAR/NEA Interconnection Agreement (ER16-1477)**

On May 20, NSTAR filed a notice of cancellation of a 1993 Interconnection Agreement (“IA”) between NSTAR and NEA. NSTAR stated that the IA was recently superseded by a three-party LGIA entered into as a result of NEA’s request to increase the facility’s Capacity Network Resource Interconnection Service and Network Resource Interconnection Service. The 2016 LGIA provides that NSTAR and NEA have agreed to terminate the 1993 IA as of the effective date of the 2016 LGIA, or April 12, 2016. Comments, if any, on this filing are due on or before May 11, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement Cancellation: NSTAR/NRG Canal 3 (ER16-1473)**

Also on May 20, NSTAR filed a notice of cancellation of a Design and Engineering Agreement (“D&E Agreement”) between NSTAR and NRG Canal 3 Development LLC (previously designated as service agreement IA-NSTAR-33). NSTAR stated that the D&E Agreement set forth the terms and conditions under which NSTAR undertook certain design and engineering activities on the Interconnection Facilities for NRG’s 342 MW Sandwich, MA facility, prior to execution of an LGIA under Schedule 22 of the ISO-NE Tariff. By its terms, the D&E Agreement terminated as of the Effective Date of a recently executed a three-party LGIA, or March 24, 2016. NSTAR requested a March 24, 2016 effective date for the notice of

⁶⁹ *ReEnergy Sterling CT Limited Partnership*, 154 FERC ¶ 62,167 (Mar. 9, 2016).

termination. Comments on this filing are due on or before May 11, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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.⁷⁰ 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).

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”⁷¹ 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 held on March 3, 2016. On March 15, Settlement Judge Johnson issued a status report recommending that settlement judge procedures be continued. A third settlement conference was held April 26.

⁷⁰ *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

⁷¹ 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”).

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

- **MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844)**

Since the last Report, the NYPSC, PJM and NY TOs each requested that the FERC issue a final order in this proceeding. As long reported, Judge Sterner issued his 374-page initial decision on December 18, 2012, which, following hearings described in previous reports, found at its core that “it is unjust, unreasonable, and unduly discriminatory to allocate costs of Phase Angle Regulating Transformers (“PARs”) of the International Transmission Company (“ITC”) to NYISO and PJM”,⁷² 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 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. As noted, this matter remains pending before the FERC. If there are any questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

MISO Zone 4 Planning Resource Auction 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)**

As previously reported, the FERC issued an order⁷³ on January 6, 2016 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

⁷² *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

⁷³ *Coaltrain Energy, L.P. et al*, 154 FERC ¶ 61, 002 (Jan. 6, 2016) (“*Coaltrain Show Cause Order*”).

\$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)*. Respondents elected, on February 5, 2016, to invoke their statutory right under FPA § 31(d)(3)(A) to the prompt assessment of a penalty, and a “de novo trial” in federal district court to address whether the penalty, if assessed by the FERC, may be affirmed. On February 17, OE Staff responded to Respondents’ election in order to clarify FERC’s position that the only avenue that *guarantees* an opportunity for trial is an administrative hearing under FPA § 31(d)(2), and to indicate that OE would not oppose a request by Respondents to revoke their election if made before the FERC issues an order addressing the responses to the *Coaltrain Show Cause Order*. On March 4, Respondents answered the January 6 *Coaltrain Show Cause Order*. OE Staff replied to Respondents’ March 4 answers on April 1 and submitted a notice of supplemental authority on April 14. On April 28, Respondents replied to Staff’s April 1 reply and April 14 notice. On May 4, OE Staff replied to Respondents’ April 28 answer. This matter is pending before the FERC.

- **FERC Enforcement Action: Berkshire Power / Power Plant Management Services (IN16-3)**

On March 30, 2016, the FERC approved a stipulation and consent agreement between the Office of Enforcement, Berkshire Power Company (“Berkshire”) and Power Plant Management Services LLC (“PPMS”) to resolve an investigation into whether Berkshire and PPMS violated (i) 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; (ii) 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 (iii) 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).⁷⁴ Berkshire and PPMS admitted the violations. Berkshire and PPMS agreed to pay a **\$2 million civil penalty**. Berkshire also agreed to **disgorge to ISO-NE \$1,012,563 plus interest**, and to pay an additional **\$30,000 civil penalty for the Reliability Standards violations**. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 16, 2015, the FERC issued an order⁷⁵ 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 **\$2.4 million civil penalty**; (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).

On February 16, Etracom and Rosenberg answered the *Etracom Show Cause Order*, denying OE Staff’s allegations and urging the FERC to terminate this proceeding. On March 17, OE Staff replied to Etracom and Rosenberg’s answer. In addition, on March 4, Etracom requested that the FERC require the California ISO (“CAISO”) to disclose certain materials and information that Etracom asserted was relevant to allegations against it. That request was opposed by both CAISO and OE Staff on March 17 and 21, respectively. Since the last Report, on April 19, Etracom and Rosenberg replied to the CAISO and OE Staff’s motions. On April 22, OE Staff answered Etracom’s and Rosenberg’s April 19 motion. In addition, the Commission directed, and OE Staff provided, materials omitted from the investigative materials previously submitted to the Commission. On May 3,

⁷⁴ *Berkshire Power Co. LLC and Power Plant Management Srvcs. LLC*, 154 FERC ¶ 61,259 (Mar. 30, 2016).

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

Etracom and Rosenberg submitted materials in order to preserve Etracom's defenses to a civil penalty order. This matter is pending before the FERC.

- **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 CFR Part 125. The FERC indicated that the audit will cover the period July 10, 2013 through the present.

XII. Misc. - Administrative & Rulemaking Proceedings

- **Electric Storage Participation in ROT/ISO Markets (AD16-20)**

On April 11, FERC Staff issued a data request, directing the ISO to submit information on rules that affect the participation of electric storage resources in the New England Markets, "including, but not limited to, the eligibility of electric storage resources to participate in the ISO-NE markets, the qualification and performance requirements for market participants, required bid parameters, and the treatment of electric storage resources when they are receiving electricity for later injection to the grid." Pursuant to an ISO/RTO Council ("IRC") request for an extension of time partially granted by the FERC on April 21, ISO-NE's submission is due on May 23. Comments, if any, on this matter and on ISO-NE's filing are due on or before Monday, June 6, 2016.

- **Competitive Transmission Development Rates (AD16-18)**

On March 17, the FERC issued a notice of a June 27-28, 2016 workshop to discuss competitive transmission development process-related issues, including use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking issues. Further details about the agenda and speakers will be issued at a later date in supplemental notices.

- **Reactive Supply Compensation in RTO/ISO Markets (AD16-17)**

On March 17, the FERC issued a notice of a June 30, 2016 workshop to discuss compensation for Reactive Supply and Voltage Control (Reactive Supply) in RTO/ISO markets. Specifically, the workshop will explore the types of costs incurred by generators for providing Reactive Supply capability and service; whether those costs are being recovered solely as compensation for Reactive Supply or whether recovery is also through compensation for other services; and different methods by which generators receive compensation for Reactive Supply (e.g., FERC-approved revenue requirements, market-wide rates, etc.). The workshop will also explore potential adjustments in compensation based on changes in Reactive Supply capability and potential mechanisms to prevent overcompensation for Reactive Supply. A workshop agenda will be issued under separate notice. Written comments can be filed by July 28, 2016.

- **Transmission Metrics (AD15-12)**

On March 17, the FERC issued a staff report describing a range of objective and standardized metrics that could be used to help assess the effectiveness of FERC policies regarding transmission investment and to inform potential policy revisions going forward. The range of metrics considered fell into three broad categories: (1) metrics designed to evaluate key goals of Order 1000; (2) metrics designed to indicate whether appropriate levels of transmission infrastructure exist in a particular region; and (3) metrics designed to permit analysis of the impact of FERC policy changes by comparing key values before and after changes take place. The Report described Staff's methodology for applying each of the three categories of metrics, the results of that analysis, and the further research that staff believes would be needed to help ensure that each metric provides useful insight as to whether transmission investment in the US is both cost-effective and sufficient to meet the nation's needs.

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

As previously reported, the FERC directed each RTO/ISO to publicly provide information related to five price formation issues:⁷⁶ (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. The FERC indicated it would use the reports and comments to determine what further action is appropriate. The RTO/ISO reports were filed February 17 by PJM, March 4 by ISO-NE, CAISO, MISO, and NYISO (corrected on March 23), and March 7 by SPP. Comments on the reports were due on or before April 6⁷⁷ and were filed by over 25 parties, including Exelon, EEI, and EPSA.

- **Review of Generator IAs & Procedures / AWEA Petition for LGIA/LGIP Rulemaking (RM16-12; RM15-21)**

On March 29, 2016, the FERC issued a notice of a technical conference to be held May 13, 2016 to discuss select issues related to AWEA's petition in RM15-21 (summarized below) and to explore other generator interconnection issues, including interconnection of energy storage. The notice indicated that conference discussions may involve issues raised in ER16-946 (ISO-NE's Generator Interconnection Revisions filed February 16, 2016). In an April 13 supplemental notice, the FERC identified topics within the following groups of interconnection queue topics to be considered for discussion at the technical conference: the current state of generator interconnection queues, transparency and timing in the generator interconnection study process; certainty in cost estimates and construction time; other interconnection queue coordination and management issues; and interconnection of electric storage resources. On May 4, the FERC issued a second supplemental notice identifying panelists for the topical groups. ISO New England's Al McBride is scheduled to speak on panels addressing three of the topical groups. Those planning to attend may register in advance at: <https://www.ferc.gov/whats-new/registration/05-13-16-form.asp>.

AWEA Petition (RM15-21). As previously reported, the American Wind Energy Association ("AWEA") petitioned the FERC, on June 19, 2015, 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.

- **NOPR: Small Generator Ride Through Requirements (RM16-8)**

On March 17, 2016, the FERC issued a NOPR proposing to modify the *pro forma* SGIA to require small generating facilities interconnecting through the SGIA to "ride through"⁷⁸ abnormal frequency and

⁷⁶ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

⁷⁷ In the order directing the reports, the FERC provided that public comment in response to the RTOs/ISOs' reports may be submitted within 30 days of the filing of the reports. Apr. 6 is 30 days after the filing of the last of the reports, the SPP report, on Mar. 7.

⁷⁸ "ride through" means "a Generating Facility staying connected to and synchronized with the Transmission System during system disturbances within a range of over- and under-frequency conditions, in accordance with Good Utility Practice." See *Order 2003* at P 562.

voltage events and not disconnect during such events.⁷⁹ The *pro forma* LGIA already requires large generators to have this capability, the FERC believes that small generating facilities should now be held to comparable ride through requirements, and that it would be unduly discriminatory not to also impose these requirements on small generating facilities. Comments on the *Small Generator Ride Through NOPR* are due May 23, 2016.⁸⁰

- **NOI: Primary Frequency Response - Need for Reforms Related to Provision and Compensation (RM16-6)**

On February 18, 2016, the FERC issued a Notice of Inquiry (“NOI”) seeking comment on the need for reforms to its rules and regulations regarding the provision and compensation of primary frequency response.⁸¹ In light of the nation’s changing resource mix and other factors, and considering the significance of primary frequency response to the reliable operation of the Bulk-Power System, the FERC seeks comment on (i) whether amendments to the *pro forma* LGIA and SGIA are warranted to require all new generation resources to have frequency response capabilities as a precondition of interconnection; (ii) the performance of existing resources and whether primary frequency response requirements for these resources are warranted; and (iii) the requirement to provide and compensate for primary frequency response.⁸² Comments on the *Frequency Response NOI* were due on or before April 25, 2016⁸³ and were filed by over 50 parties, including: ISO-NE (with NYISO, PJM, SPP, and IESO), APPA/LPPA/TAPS, EDP Renewables, EEI, ELCON, Energy Storage Association (“ESA”), EPRI, ESPA/NEPGA/IPPNY/Western Power Trading Forum, NARUC, NEI, and NERC. The *Frequency Response NOI* is pending before the FERC.

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

On January 21, 2016, 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).⁸⁴ 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* were due on or before April 4, 2016⁸⁵ and were filed by 44 parties, including ISO-NE, the ISO-NE IMM, Potomac Economics (the ISO-NE EMM), ISO/RTO Council, NESCOE, Direct Energy Business, Dominion, Exelon, and a number of trade associations. Since the last Report, the Ohio PUC filed comments out of time; the PJM Providers group, an answer; and the PJM Independent Market Monitor (Monitoring Analytics, LLC), reply comments. The *Price Cap NOPR* is pending before the FERC.

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

On November 19, 2015, the FERC issued a NOPR proposing to eliminate the exemptions for wind generators from the requirement to provide reactive power.⁸⁶ As a result, all newly interconnecting

⁷⁹ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, 154 FERC ¶ 61,222 (Mar. 17, 2016) (“*Small Generator Ride Through NOPR*”).

⁸⁰ The *Small Generator Ride Through NOPR* was published in the *Fed. Reg.* on Mar. 23, 2016 (Vol. 81, No. 56) pp. 15,481-15,485.

⁸¹ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) (“*Frequency Response NOI*”).

⁸² *Frequency Response NOI* at P 2.

⁸³ The *Frequency Response NOI* was published in the *Fed. Reg.* on Feb. 24, 2016 (Vol. 81, No. 36) pp. 9,182-9,192.

⁸⁴ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,038 (Jan. 21, 2016) (“*Price Cap NOPR*”).

⁸⁵ The *Price Cap NOPR* was published in the *Fed. Reg.* on Feb. 4, 2016 (Vol. 81, No. 23) pp. 5,951-5,965.

⁸⁶ *Reactive Power Requirements for Non-Synchronous Generation*, 153 FERC ¶ 61,175 (Nov. 19, 2015) (“*Reactive Power NOPR*”).

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, 2016⁸⁷ 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 filed supplemental comments on February 5. Since the last Report, NextEra filed supplemental comments. The *Reactive Power NOPR* is pending before the FERC.

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

On September 17, 2015, the FERC issued a NOPR proposing to revise its regulations to require that each RTO/ISO (i) settle (a) energy transactions in its real-time markets at the same time interval it dispatches energy and (b) operating reserves transactions in its real-time markets at the same time interval it prices operating reserves; and (ii) trigger shortage pricing for any dispatch interval during which a shortage of energy or operating reserves occurs.⁸⁸ 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, 2015.⁸⁹ 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. Golden Spread Electric Cooperative submitted limited reply comments. The *Settlement Intervals/Shortage Pricing NOPR* 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.⁹⁰ 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 NOPR* was distributed with the additional materials for the October 2, 2015 Participants Committee meeting.

⁸⁷ 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.

⁸⁸ *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*").

⁸⁹ 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.

⁹⁰ *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219 (Sep. 17, 2015) ("*Connected Entity Data NOPR*").

Dec 8 Technical Conference. A staff-led and Commissioner (LaFleur and Norris)-attended technical conference was held on for December 8, 2015. 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.
- ◆ 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. Comments on the *Connected Entity Data NOPR* were due on or before January 22, 2016,⁹¹ and were submitted by 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. The *Connected Entity Data NOPR* remains pending before the FERC.

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

As previously reported, the FERC issued *Order 816* on October 16, 2015.⁹² *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

⁹¹ The FERC denied a Dec. 30 request filed by a number of industry groups that it suspend the Jan. 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. *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,016 (Jan. 13, 2016).

⁹² *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Srvcs. by Public Utils.*, 153 FERC ¶ 61,065 (Oct. 16, 2015) (“*Order 816*”).

- ◆ 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, 2016.⁹³ 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) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)**

On March 31, 2016, the FERC conditionally accepted Algonquin tariff modifications and request for waiver that provided an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies ("EDCs") that are participating in state-regulated electric reliability programs.⁹⁴ The modifications were accepted subject to refund and to the outcome of the technical conference to be held within 120 days of the *Algonquin Order*. The effectiveness of the modifications was suspended until, and the modifications will become effective on, the earlier of September 1, 2016 or the date specified in a further FERC order. As previously reported, Algonquin stated that the modifications were consistent with the FERC's current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies ("LDCs") from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC's initiatives related to gas-electric coordination.

On April 15, 2016, the FERC issued a Notice of Technical Conference to be held on May 9, 2016. Among the issues to be examined at the technical conference are "concerns raised regarding the basis and need for the waiver." Speaker presentations will be made by Richard J. Kruse, Spectra Energy/Algonquin Gas Transmission; James Daly, Eversource; Tim Brennan and Stephen McCauley, National Grid; John Rudiak (Connecticut Natural Gas) speaking on behalf of the New England Local Distribution Companies; John Coyle (Partner, Duncan & Allen) speaking on behalf of the MA AG; Craig Adams, Calpine Corporation; Joe Dalton, ENGIE Gas & LNG LLC, Kathy Barrón, Exelon Corporation; Vince Morrissette, Repsol; and Tom Lockett, Tenaska Marketing Ventures.

⁹³ *Order 816* was published in the *Fed. Reg.* on Oct. 30, 2015 (Vol. 80, No. 210) pp. 67,056-67,123.

⁹⁴ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016) ("*Algonquin Order*").

- **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);⁹⁵
- ◆ Empire Pipeline, Inc. (Docket No. RP16-300);⁹⁶
- ◆ Iroquois Gas Transmission System, LP (Docket No. RP16-301);⁹⁷ and
- ◆ Tuscarora Gas Transmission Company (Docket No. RP16-299);⁹⁸

Acting Chief Administrative Law Judge Carmen Cintron subsequently designated Administrative Law Judges to preside over the Track II hearings in the respective proceedings and orders. Pre-hearing conferences were held in each proceeding that established dates for the commencement of discovery, hearing and initial decisions in each proceeding, as follows:

| Case | Settlement Judge | Settlement Conference | Presiding Judge | Discovery Began | Hearings Commence | Initial Decision |
|----------------------------|------------------|-------------------------|------------------------|-----------------|-------------------|------------------|
| Columbia Gulf (RP16-302) | Philip C. Baten | Jun 2 (May 12-informal) | John P. Dring | Apr 5 | Nov 15 | Feb 28, 2017 |
| Empire Pipeline (RP16-300) | H. Peter Young | May 12 | Michael J. Cianci, Jr. | Apr 6 | Nov 8 | Feb 28, 2017 |
| Iroquois Gas (RP16-301) | Steven A. Glazer | May 18 (2nd conf.) | David H. Coffman | Apr 5 | Nov 15 | Feb 28, 2017 |
| Tuscarora Gas (RP16-299) | Jennifer Whang | May 19 | Dawn E.B. Scholz | Apr 5 | Dec 14 | Mar 30, 2017 |

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

- **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.”⁹⁹ Requests for rehearing of *ANR Order* were

⁹⁵ *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,027 (2016), *reh’g denied*, 154 FERC ¶ 61,275 (Mar. 31, 2016).

⁹⁶ *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016), *reh’g denied*, 154 FERC ¶ 61,274 (Mar. 31, 2016).

⁹⁷ *Iroquois Gas Transmission System, LP*, 154 FERC ¶ 61,028 (2016).

⁹⁸ *Tuscarora Gas Transmission Company*, 154 FERC ¶ 61,030 (2016), *reh’g denied, clarif. granted*, 154 FERC ¶ 61,273 (Mar. 31, 2016).

⁹⁹ *ANR Storage Co.*, 153 FERC ¶ 61,052 (Oct. 15, 2015) (“*ANR Order*”), *reh’g requested*.

filed by ANR and the Joint Intervenor Group.¹⁰⁰ 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.

- **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, 2015, 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 (“Anti-Manipulation Rule”) and section 4A of the Natural Gas Act (“NGA”).¹⁰¹ 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.

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁰² in which it directed Total Gas & Power North America, Inc. (“TGPNA”) and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen (“Tran”) and Aaron Hall (collectively, “Respondents”) to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC’s Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA’s parent company, Total, S.A. (“Total”), and TGPNA’s affiliate, Total Gas & Power, Ltd. (“TGPL”), to show cause why they should not be held liable for TGPNA’s, Hall’s, and Tran’s conduct, and be held jointly and severally liable for their disgorgement and civil

¹⁰⁰ “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”).

¹⁰¹ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

¹⁰² *Total Gas & Power North America, Inc. et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

penalties based on Total's and TGPL's significant control and authority over TGPNA's daily operations. Respondents have 30 days (or by May 31) within which to file an answer to the FERC's show cause allegations.

The allegations giving rise to the *Total Show Cause Order* were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents 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 alleged 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 alleged that the West Desk implemented the bidweek scheme on at least 38 occasions during the period of interest, and that Tran and 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 under construction or before the FERC:

- ***Tennessee Gas Pipeline Company Northeast Energy Direct Project (NED Project) (CP16-21)***
 - ▶ Tennessee Gas Pipeline Co. filed for Section 7(b) and 7(c) certificate Nov. 20, 2016.
 - ▶ On April 20, 2016, Tennessee's parent company, Kinder Morgan Inc., filed a letter at FERC announcing that the company would suspend further work and expenditures on the Northeast Energy Direct Project as a result of inadequate capacity commitments from prospective customers and a determination that the Project was uneconomic.
 - ▶ The first portion of the NED Project planned for 1,230,000 dekatherms /day (Dth/d) of firm capacity connecting extending from Tennessee's existing 300 Line in northern Pennsylvania to an interconnect with Tennessee's 200 Line and Iroquois Gas Transmission System, L.P. ("Iroquois") at Wright, New York. In addition, the first portion of the NED Project included approximately 41 miles of looping pipeline along Tennessee's 300 Line in Bradford and Susquehanna counties, Pennsylvania.
 - ▶ The second portion of the NED Project called for 1,332,500 Dth/day planned for approximately 188 miles of pipeline extending from Wright, New York to Dracut, Massachusetts, with five delivery laterals in Massachusetts and New Hampshire, and one pipeline loop in Connecticut.
 - ▶ Overall, the NED Project was estimated to cost \$5.2 billion.
- ***Algonquin Incremental Market Project (AIM Project) (CP14-96)***
 - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate Feb. 28, 2014.
 - ▶ 342,000 dekatherms/day (Dth/d) of firm capacity to NY, CT, RI and MA.
 - ▶ 37.6 miles of take-up, loop and lateral pipeline facilities in NY, CT, and MA and system modifications in NY, CT and RI. The system upgrades would also require the removal of some facilities.
 - ▶ 10 firm shippers: Yankee Gas, NSTAR, Connecticut Natural Gas, Southern Connecticut, Narragansett Electric, Colonial Gas, Boston Gas, Bay State, Norwich Public Utilities, and Middleborough Gas and Electric (eight LDCs and two municipal utilities).
 - ▶ Final Staff-prepared Environmental Impact Statement (EIS) issued Jan. 23, 2015.
 - ▶ Certificate of public convenience and necessity granted Mar. 3, 2015.¹⁰³ Order Denying Rehearing and Dismissing Stay Request issued Jan. 28, 2016. FERC orders appealed to DC Circuit.
 - ▶ Construction began May 2015.
 - ▶ In-service: Nov. 2016 (anticipated).

¹⁰³ Order Issuing Certificate and Approving Abandonment, *Algonquin Gas Transmission LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015), *reh'g denied*, 154 FERC ¶ 61,048 (Jan. 28, 2016).

- **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 & facility upgrades/modifications in NY, MA & CT.
 - ▶ Three firm shippers: Conn. Natural Gas, Southern Conn. 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.
 - ▶ Environmental Assessment (EA) issued on Oct. 23, 2015.
 - ▶ Certificate of public convenience and necessity granted Mar. 11, 2016.¹⁰⁴
 - ▶ Construction expected to begin 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 (Marcellus Shale) 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 was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays.
 - ▶ On April 22, 2016, New York State Department of Environmental Conservation denied Constitution's application for a Section 401 permit under the Clean Water Act. The decision effectively guarantees that the Constitution Pipeline project will, at best, be delayed by several years.
- **Salem Lateral Project (CP14-522)**
 - ▶ Algonquin Gas Transmission filed application Jul 10, 2013.
 - ▶ 115,000 Dth/d of firm capacity.
 - ▶ 1.2 miles of pipeline to 630 MW Salem Harbor Station and other Salem, MA facilities.
 - ▶ Footprint Power sole firm customer.

¹⁰⁴ *Tennessee Gas Pipeline Co., LLC*, 154 FERC ¶ 61,191 (Mar. 11, 2016) (order issuing certificate); *reh'g requested*. See also 154 FERC ¶ 61,263 (Mar. 30, 2016) (order denying stay); 155 FERC ¶ 61,087 (Apr. 22, 2016) (order denying stay).

- ▶ FERC Staff-prepared EA issued Dec 2, 2014.
- ▶ Certificate of public convenience and necessity granted May 14, 2015.¹⁰⁵
- ▶ Construction began in May 2015.
- ▶ In-Service: November 2016 (anticipated).

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report.

XV. Federal Courts

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

- **FCA9 Results (16-1068)**

Underlying FERC Proceeding: ER15-1137¹⁰⁶

Appellant: UWUA Local 464 and Robert Clark

On February 24, 2016, Robert Clark and UWUA Local 464 filed a petition for review of the FERC’s orders on the FCA9 Results Filing. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions were due and were filed on March 28, 2016. On March 30, the FERC filed an unopposed motion requesting that the Court’s briefing schedule provide a minimum of 60 days between filing of Petitioner’s brief and the FERC’s brief in response. On April 11, the FERC filed a certified index to the record. On April 13, the Court granted NEPGA’s and CPV Towantic’s interventions.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**

Underlying FERC Proceeding: ER14-1050;¹⁰⁷ EL14-52;¹⁰⁸ EL15-25¹⁰⁹

Appellants: NEPGA

As previously reported, NEPGA filed, on January 19, 2016, a petition for review of the FERC’s orders on NEPGA’s Peak Energy Rent (“PER”) Complaint. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions were filed. On February 24, the Court granted NEPGA’s February 18 motion to consolidate this proceeding with 16-1024. On April 4, the Court ordered intervenors to show, on or before May 4, why they should not be limited to one joint brief (8,750 word limit) on the side of the party they support, and one joint reply brief (4,375 word limit). On May 4, intervenor Dynegy filed a notice that it does not intend to file a separate brief on the merits, and reserved its right to file a notice of joinder if appropriate. No other motions were received.

¹⁰⁵ Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

¹⁰⁶ 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

¹⁰⁷ 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

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

¹⁰⁹ 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹¹⁰
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 February 16, the parties filed their second 90-day status report, again 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; ER13-196¹¹¹

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

On May 15, 2015, NETOs¹¹² 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 were filed. On July 2, the Court granted all motions to intervene. As previously reported, the States'¹¹³ brief was filed on January 11, 2016. Brief for Respondent (TOs) was filed on March 11; Brief for Intervenors supporting Respondent, April 1. Reply briefs were filed April 22 by the TOs and by the States. Final briefs are due May 20, 2016. Parties are to be notified separately of the oral argument date and composition of the merits panel.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consolidated)**
Underlying FERC Proceeding: EL11-66¹¹⁴
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,¹¹⁵ 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 briefing schedule. On December 7, 2015, (i) "Customers"¹¹⁶ and the TOs¹¹⁷ 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

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

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

¹¹² "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.

¹¹³ "States" are NESCOE and the State Agencies – CT DEEP, CT PURA, MA DPU, RI PUC, NHPUC, and the VT DPS.

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

¹¹⁵ "EMCOS" are Taunton, Reading, Hingham, and Braintree.

¹¹⁶ "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.

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

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 filed its brief on February 12. On March 4, briefs were filed on the issues of the ROE being too low and modification of incentive adders and by NETOs on the issue of the ROE being too high. On March 25, TOs and EMCOs filed their reply briefs. The deferred appendix was filed on April 15. Final briefs were filed April 26, 2016 by the FERC, and April 29 by TOs and Customers. All briefing is now completed. This matter is pending before the Court.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹¹⁸ EL15-23¹¹⁹
Appellants: NEPGA, Exelon

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 were 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. Following the FERC's decision in EL15-23 and Exelon's appeal of that case (16-1042), the Court granted, on March 1, 2016, Exelon's motion to consolidate this proceeding with 16-1042. Accordingly, this proceeding was returned to the court's active docket on a consolidated basis with 16-1042.

On March 28, the parties filed a motion to govern further proceedings in the consolidated cases. This matter is pending before the Court.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
Underlying FERC Proceeding: ER14-1409¹²⁰
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 Connecticut¹²¹ and Public Citizen taking the opposing view) has now been completed. The parties filed a joint appendix (reflecting all filings and issuances in ER14-1409) on December 16, 2015. 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, 2015, as was the final brief of Joint Intervenors 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 date (for oral argument) has not been set.

- **Hughes v. Talen Energy Marketing et al. (Supreme Court, 14-614/14-623)**

On April 19, a unanimous Supreme Court ruled that Maryland's incentive program, which subsidized the participation of a new power plant in the PJM energy market, was preempted by the FPA.¹²² Justice Ginsburg's

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

¹¹⁹ 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

¹²⁰ 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).

¹²¹ For purposes of this proceeding, "Connecticut" means the CT AG, CT PURA and CT OCC.

¹²² *Hughes v. Talen Energy Marketing LLC*, 578 U.S. ____ (2016) ("*Hughes*").

majority opinion, joined by six Justices, held that “Maryland’s program invades FERC’s regulatory turf” by impermissibly infringing on the FERC’s “exclusive jurisdiction over ‘rates and charges . . . received . . . for or in connection with’ interstate wholesale rates.” Elaborating, the Court noted that “FERC has approved the PJM capacity auction as the sole rate-setting mechanism for sales of capacity to PJM,” and that Maryland’s efforts to set a different rate for CPV impermissibly “intrude on FERC’s authority over interstate wholesale rates.” The Court was deliberate in distinguishing the facts and limiting its rationale, observing that it “need not and do[es] not address the permissibility of various other measures States might employ to encourage development of new or clean generation, including tax incentives, land grants, direct subsidies, construction of state-owned generation facilities, or re-regulation of the energy sector.” Further, the Court clarified that it was not calling into question contracts for differences that are entered into voluntarily by LSEs without the compulsory state action that existed in Maryland.

- **CPV Power Development, et al. v. PPL EnergyPlus, LLC, et al. (Supreme Court, 14-634, 14-694)**

Following issuance of the Court’s decision in *Hughes*, the Supreme Court, on April 25, denied the pending petitions for *certiorari* in these cases. As previously reported, on September 11, 2014, the 3rd Circuit Court of Appeals affirmed¹²³ the analogous October 11, 2013 decision of the United States District Court for the District of New Jersey declaring unconstitutional (and therefore null and void) New Jersey’s Long Term Capacity Agreement Pilot Program Act (“LCAPP”).¹²⁴

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

Entergy¹²⁵ 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”)¹²⁶ 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.

As previously reported, the Court dismissed, on March 7, 2016, a NYPSC motion to dismiss Entergy’s claim that its Order is both field- and conflict-preempted by the FPA, finding that “Entergy has timely asserted claims of harm flowing from state action to an interstate market in which it participates”. Since the last Report, on April 20, 2016, a status conference was held. The Court continued the stay of discovery for a limited time. By May 6, the parties were directed to each file a letter brief on how *Hughes* impacts discovery and the issue of a stay in this case. Parties were further directed to file either a joint or their own, updated Civil Case Management Plan by May 6 and to submit a stipulated protective order for Court approval by May 9.

¹²³ *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, (“NJ Order”).

¹²⁴ *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

¹²⁵ Plaintiffs are Entergy Nuclear FitzPatrick, LLC (“FitzPatrick”); Entergy Nuclear Power Marketing, LLC (“ENPM”); and Entergy Nuclear Operations, Inc. (“ENOI”).

¹²⁶ The Term Sheet provides that, in exchange for Dunkirk’s commitment to participate in the NYISO energy and capacity markets through 2025, Dunkirk will receive out-of-market payments of \$20.4 million per year from National Grid and a \$15 million one-time subsidy from a New York State agency. Entergy asserts that the contract structure will lead Dunkirk to bid below its actual costs in the capacity auction, causing the auction market to “clear” at a lower price than otherwise would have resulted, and resulting in all generators receiving lower capacity revenues than they otherwise would have received.

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