

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of August 3, 2016

The following activity, as more fully described in the attached litigation report, has occurred since the report dated July 1, 2016 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints/Section 206 Proceedings

1	NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Potential Gas Pipeline-Related Price Suppression (EL16-93)	Jul 1 Jul 1, 5 Jul 5-Aug 2 Jul 7 Jul 26- 28	Algonquin requests 14-day extension of time to file comments Eversource, Algonquin oppose ISO-NE motion to dismiss Nearly 50 parties intervene FERC extends comment period to and including Jul 28 ISO-NE, NEPOOL, Algonquin, CT PURA/CT OCC, CLF, EDF, Eversource, National Grid, NEPGA, NH OCA, Talen Companies respond to, protest, and/or comment on Complaint
2	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Jul 21 Jul 28	Judge Dring schedules 4th settlement conference for Aug 30 July 28 settlement conference cancelled
4	206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)	Jul 22	FERC accepts uncontested offer of settlement that resolves the issues set for hearing in this proceeding

II. Rate, ICR, FCA, Cost Recovery Filings

* 5	FCA11 De-List Bids Filing (ER16-2215)	Jul 15 Jul 19 - Aug 2	ISO-NE submits filing describing Permanent and Retirement De-List Bids that were submitted on or prior to the Existing Capacity Retirement Deadline for FCA11; comment date Aug 5 NEPOOL, Exelon intervene
5	FCA10 Results Filing (ER16-1041)	Jul 15, 18	Dominion, UWUA Local 464 request rehearing of <i>FCA10 Results Filing Order</i>
* 5	2016/17 Power Year Transmission Rate Filing (ER09-1532; RT04-2)	Jul 29	PTO AC submits informational filing identifying adjustments to regional transmission service charges for the Jun 1, 2016 to May 31, 2017 period; this filing will not be noticed for public comment

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

* 6	Waiver Request: DER FCM Qualification Reqs (Genbright) (ER16-2283)	Jul 26 Jul 28-29	Genbright requests limited waiver of FCM qualification requirements (site control and one line diagram requirements for battery and solar projects under five megawatts that are classified as Generators); comment date Aug 16 ConEd, NEPOOL intervene
* 6	CSO Terminations: Enerwise (ER16-2137)	Jul 1 Jul 8	ISO-NE files to terminate a portion of Enerwise's CSOs for Resource Nos. 16687, 37996, 38122, 38123, 38132, and 38136 NEPOOL intervenes
6	FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126)	Jul 7-22 Jul 22	Calpine, Emera, Entergy, Eversource, FirstLight, National Grid, NESCOE, NRG intervene Dominion, NEPGA file protests
7	Waiver Request: RTEG Resource Type/De-List (ISO-NE) (ER16-1904)	Jul 15 Jul 22	ISO-NE answers and opposes CPower request for limited modifications to ISO-NE's initial waiver requests CPower answers ISO-NE's Jul 15 answer

7	Sub-Hourly Settlement Changes (ER16-1838)	Jul 26	FERC accepts changes that reduce to five minutes the Real-Time Energy and Reserves Markets settlement interval, eff. Mar 1, 2017
7	FCM Resource Retirement Reforms (ER16-551)	Jul 27	FERC accepts compliance filing (10% materiality threshold), eff. Mar 1, 2016

IV. OATT Amendments / TOAs / Coordination Agreements

9	Reactive Power Compensation Revisions (ER16-1789)	Jul 13	FERC accepts revisions, eff. Jul 26, 2016
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V. Financial Assurance/Billing Policy Amendments

9	Financial Statement Reporting Requirement Changes (ER16-1874)	Jul 12	FERC accepts changes, eff. Aug 5, 2016
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VI. Schedule 20/21/22/23 Changes

10	Schedule 21-NEP: Deerfield Wind Reimbursement Agreement (ER16-1745)	Jul 6	FERC accepts Reimbursement Agreement, eff. Apr 28, 2016
10	Schedule 21-EM: Rate Adjustments for Anticipated Changes Compliance Filing (ER16-1301)	Jul 11	Emera Maine submits compliance filing; comment date Aug 1
10	Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)	Jul 29	Eversource submits compliance filing updated version of ISO-NE OATT Attachment F to reflect all currently effective changes, comment date Aug 19
11	Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.)	Jul 12 Jul 13 Jul 14	Emera Maine moves for adoption of protective order Chief Judge Cintron adopts requested protective order Settlement Judge Dring recommends continuation of settlement judge procedures
		Jul 22	Chief Judge Cintron continues settlement judge procedures
* 12	Schedule 21-FG&E Annual Informational Filing (ER09-1498)	Jul 25	FG&E submits annual update to its Revenue Requirement recovered through the ISO Tariff and Schedule 21-FG&E for the Jun 1, 2016 – May 31, 2017 period

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 13	LFTR Implementation: 31 st Quarterly Status Report (ER07-476)	Jul 15	ISO-NE files its 31st quarterly report
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IX. Membership Filings

* 13	August 2016 Membership Filing (ER16-2321)	Jul 29	Memberships: CES Retail Energy Supply; Energy GPS; Gravity Renewables; Inertia Power III; Terminations: Dynegy Resources Management, Energy America, Provider Power CT; change in name: ENGIE Resources, LLC
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X. Misc. - ERO Rules, Filings; Reliability Standards

14	Retirement of NPCC Regional Reliability Standard PRC-002-NPCC-001 (RD16-8)	Jul 11	Dominion intervenes
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14	NOPR: Revised Reliability Standard: BAL-002-2 (RM16-7)	Jul 20-25	APS, IESO, NaturEner USA, Canadian Electricity Assoc., Idaho Power, TVA, NRECA, NERC, Bonneville, EEI file comments; AESO, CAISO, ERCOT, IESO, MISO, PJM, SPP, joint comments
15	Order 824: NERC Database Availability to FERC (RM15-25)	Jul 7	FERC clarifies that Order 824 effective date was Jul 12, 2016; compliance date to be announced
* 15	Order 829: New Reliability Standard Addressing Supply Chain Risk Management (RM15-14-002)	Jul 21	FERC issues final rule, eff. Sep 27, 2016; new standard must be filed by Sep 27, 2017
16	Order 822-A: Revised CIP Reliability Standards (RM15-14)	Jul 21	FERC denies rehearing of Order 822
16	NOPR: New Reliability Standard: TPL-007-1 (RM15-11)	Jul 18-20	D. Bardin and FRS submit comments

XI. Misc. - of Regional Interest



* 19	203 Application: Belmont/NSTAR (EC16-145)	Jul 8	NSTAR requests authorization to acquire, from the Town of Belmont, limited jurisdictional transmission facilities associated with the construction of a new Belmont 115 kV/13.8 kV substation
19	203 Application: GDF Suez Energy Resources/Atlas Power (Dynergy/ECP) (EC16-93)	Jul 8 Jul 29	Dynegy files additional data in response to FERC request for additional information Public Citizen protests application
19	203 Application: Passadumkeag Wind Park (Southern Renewable Energy / Quantum) (EC16-86)	Jul 6	Passadumkeag notifies FERC that the sale of 100% of its membership interests was consummated on Jun 30
19	PURPA Complaint v. VT PSB (North Hartland) (EL16-74)	Jul 5 Jul 12 Jul 15 Jul 29	North Hartland answer protests and comments Ampersand Energy Partners files comments VT PSB opposes North Hartland and Ampersand comments FERC issues notice of intent not to act
20	PURPA Complaint v. CT PURA (Allco/Windham Solar) (EL16-69 et al.)	Jul 21	FERC issues notice of intent not to act <u>but</u> also issues a declaratory ruling
* 20	E&P Agreement: CMP/FPL Wyman (ER16-2369)	Aug 3	CMP files Agreement in connection with establishment of FPL Wyman's interconnection of its proposed 16.7 MW battery storage project; comment date Aug 24
* 21	Facilities Use Agreement: National Grid/Deepwater Block Island Wind (ER16-2328)	Jul 29	National Grid files agreement; comment date Aug 19
* 21	D&E Agreement: CL&P/PSEG Power Conn. (ER16-2261)	Jul 21	Eversource files Agreement; comment date Aug 11
* 21	Use Rights Transfer Agreement: NSTAR/HQUS (ER16-2189)	Jul 13 Aug 3	NSTAR files Agreement for the transfer to HQUS, for up to 3 years, of Use Rights on the Phase I/II HVDC line National Grid intervenes
21	D&E Agreement Amendment: NSTAR/Exelon West Medway (ER16-1809)	Jul 14	FERC accepts amendment, eff. May 31, 2016

22	Emera MPD OATT Changes (ER15-1429; EL16-13; ER12-1650) (consol.)	Jul 5 Jul 18 Jul 26 Aug 1 Aug 2	Emera Maine requests rehearing of Jun 2 order; submits compliance filing Maine Customer Group protests Jul 5 compliance filing Settlement Judge Johnson issues status report recommending settlement judge procedures be continued Emera Maine answers Maine Customer Group Jul 18 protest FERC issues tolling order to afford it additional time to consider Emera Maine request for rehearing of Jun 2 order
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XII. Misc. - Administrative & Rulemaking Proceedings	▼
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25	Competitive Transmission Development Rates (AD16-18)	Aug 3	FERC issues notice inviting post-technical conference comments on questions listed in the attachment to the notice; due date Sep 2
25	Reactive Supply Compensation in RTO/ISO Markets (AD16-17)	Jul 28- Aug 1	15 parties file comments, including by NYISO, PJM, the PJM IMM, AWEA, EEI, EPSA, EDF Renewables, Talen, Essential Power, and Exelon
* 27	NOPR: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)	Jul 21	FERC issues NOPR; comment date [45 days after the <i>Data NOPR</i> 's publication in the <i>Federal Register</i> , which as of the date of this report has not happened; technical conference scheduled for Aug 11
27	Review of Generator IAs & Procedures / AWEA Petition for LGIA/LGIP Rulemaking (RM16-12; RM15-21)	Jul 2	AWEA files post-tech. conf. comments
28	<i>Order 828</i> : Small Generator Ride Through Requirements (RM16-8)	Jul 21	FERC issues final rule requiring small generators to ride through abnormal frequency and voltage events and not disconnect during such events; eff. Oct 5, 2016; compliance filing (combined with <i>Order 827</i> compliance changes) due Oct 5
29	<i>Order 827</i> : Reactive Power Reqs. for Non-Synchronous Generation (RM16-1)	Jul 18 Jul 21	CAISO requests clarification and/or rehearing of <i>Order 827</i> Compliance filings due Oct 5 (with <i>Order 828</i> compliance changes)
30	NOPR: Connected Entity Data Collection (RM15-23)	Jul 21	FERC withdraws <i>Connected Entity NOPR</i> and terminates proceeding; superseding <i>Data Collection NOPR</i> concurrently issued in RM16-17

XIII. Natural Gas Proceedings	▼
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31	Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)	Jul 13 Jul 15 Jul 18 Jul 20 Jul 22 Jul 26 Aug 1	<i>Empire</i> : presiding judge issues status report <i>Tuscarora</i> : parties submit offer of settlement <i>Iroquois</i> : settlement judge issues status report <i>Tuscarora</i> : settlement judge terminates settlement procedures <i>Empire</i> : parties submit stipulation and settlement agreement <i>Empire</i> : parties supplement Jul 22 filing <i>Tuscarora</i> : Judge Sterner certifies settlement to the Commission
31	Natural Gas-Related Enforcement Actions (BP (IN13-15)) Total Gas & Power (IN12-17)	Jul 11 Jul 12	FERC issues <i>Opinion 549</i> order affirming <i>BP Initial Decision</i> and assessing BP a \$20.16 million civil penalty and directing BP to disgorge \$207,169 plus interest in unjust profits Total files answer in response to <i>TGPNA Show Cause Order</i>
* 32	Natural Gas-Related Enforcement Actions: Staff Notices of Alleged Violations (David Silva and National Energy)	Aug 3	Staff issues notices of preliminary determination that Silva and National Energy each violated the FERC's Prohibition of Natural Gas Market Manipulation by fraudulently trading physical basis at Texas Eastern M3 (both) and Henry Hub (National Energy)

XIV. State Proceedings & Federal Legislative Proceedings	▼
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No Activity Reported

XV. Federal Courts



35	FCA9 Results (16-1068)	Jul 25	Petitioners file unopposed motion for stay of briefing in this appeal until 45 days after the Court rules on the FCA8 Results appeal
		Jul 27	Court grants Petitioners' motion
35	NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)	Jul 18	NEPGA submits Petitioner Brief
		Jul 25	Entergy indicates that it will not file an Intervenor for Petitioner Joint Brief
36	Order 1000 Compliance Filings (15-1139, 15-1141**) (consol.)	Jul 13	FERC files supplemental authority
		Jul 22	LS Power and NextEra respond to FERC's Jul 13 submission
37	FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)	Jul 7	PSEG submits Intervenor for Petitioner Brief

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: August 4, 2016

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures through August 3, 2016. If you have questions, please contact us.¹

I. Complaints/Section 206 Proceedings
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- **NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Gas Pipeline-Related Market Price Suppression (EL16-93)**

As previously reported, on June 24, 2016, NextEra Energy Resources (“NextEra”) and the PSEG Companies (“PSEG”, and together with NextEra, “Complainants”) filed a complaint seeking a FERC order, by August 23, 2016, that (i) directs the ISO to file within 90 days of that order Tariff changes to fully mitigate the price suppressive effect of subsidized gas pipeline capacity, and (ii) establishes a post-filing technical conference to address the proposed changes/issues. Complainants further seek a FERC order on the Tariff changes by, and effectiveness of the Tariff changes as of, January 31, 2017 (permitting effectiveness of such Tariff changes for FCA11). Following an Algonquin request to extend the comment period granted by the FERC, responses to and comments on the Complaint were due on or before July 28.

On June 28, the ISO requested that the FERC dismiss the Complaint (“because it is not ripe for adjudication and is premature and speculative”) and deny the request for fast-track processing. The ISO also requested that, until the FERC acts on those requests, the FERC issue an order (by July 1, 2016) suspending the answer date to the Complaint. On June 29, NextEra/PSEG filed a notice that they intended to answer the ISO’s motion to dismiss by July 1. The ISO answered that notice on June 30. NextEra/PSEG answered and opposed the ISO motion to dismiss on June 30. Answers opposing the ISO’s motion to dismiss were also filed by Eversource (July 1) and Algonquin Gas Transmission (“Algonquin”) (July 5). As of the date of this report, the FERC has not acted on the ISO’s request.

Comments, Responses and Protests, both opposing and supporting the Complaint, were filed by the following parties: ISO-NE, NEPOOL, Algonquin, CT PURA/CT OCC, CLF, Environmental Defense Fund (“EDF”), Eversource, National Grid, NEPGA, NH OCA, and the Talen Companies. *Interventions* were filed by more than 50 parties. 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).

- **Base ROE Complaint IV (2016) (EL16-64)**

As previously reported, EMCOS² filed a complaint, on April 29, 2016, 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

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”).

reasonableness (which sets the incentives cap) is no higher than 11.24%. EMCOS identified three main considerations requiring submission of this Complaint: (1) the continuing decline of the market cost of equity capital, which makes 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." On May 24, EMCOS filed an errata to correct the Direct Testimony of Dr. Jonathan Lesser, to make related corrections to the Direct Testimony of Dr. Lon Peters, and to reflect non-substantive corrections to the April 29 Complaint. The TOs responded to the Complaint on June 3. Also on June 3, the CT PURA and MPUC submitted comments on the Complaint. Doc-less interventions were filed by NEPOOL, Acadia Center, Associated Industries of Massachusetts ("AIM"), CT AG, CT OCC, IECG, Maine Office of Public Advocate ("MOPA"), MA AG, MA DPU, MMWEC, NH OCA, RI PUC, and VT DPS. On June 20, EMCOS answered the TOs' June 3 response. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

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

As previously reported, the FERC issued an order on May 2, 2016 (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 Forward Capacity Auction ("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 Dominion requested rehearing of the *Manchester Street FCA10 Order* on June 1, 2016. On June 27, the FERC issued a tolling order affording it additional time to consider the Dominion rehearing request, which remains pending before the FERC. 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").⁵ The FERC also found that the RNS and LNS rates themselves "appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful" because (i) "the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates" and "could result in an over-recovery of costs" due to the "the timing and synchronization of

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.

³ *Dominion Energy Mktg., Inc. and Dominion Energy Manchester St., Inc. v. ISO New England Inc.*, 155 FERC ¶ 61,121 (May 2, 2016) ("*Manchester Street FCA10 Order*"), *reh'g requested*.

⁴ *Id.* at PP 22-23.

⁵ *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 RNS and LNS rates”.⁶ 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.⁷ Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.⁸ The FERC-established refund date is January 4, 2016.⁹ 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, 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. Settlement conferences have thus far been held on January 19, March 24, and April 12. On June 10, Judge Dring issued a status report indicating that the parties are making progress toward settlement and recommending that the settlement procedures be continued. On June 21, Judge Dring scheduled a 4th settlement conference for August 30 (the previously scheduled July 28 settlement conference was cancelled). 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.”¹⁰ 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.”¹¹ Finding that “concerns with continued use of vertical demand curves weigh more heavily than they did a year ago”,¹² and that “the general challenges cited by ISO-NE [explaining the delay in developing zonal sloped demand curves] do not justify further delay”,¹³ the FERC directed that Tariff changes be filed, following a request for extension granted, by April 15, 2016.¹⁴ Interventions in EL16-15 were due January 19 and 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, filed on April 15, and accepted on June 28 (*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).

⁶ *Id.* at P 8.

⁷ *Id.* at P 11.

⁸ *Id.*

⁹ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

¹⁰ *ISO New England Inc. et al.*, 153 FERC ¶ 61,338 (Dec. 28, 2015).

¹¹ *Id.* at P 11.

¹² *Id.* at P 15.

¹³ *Id.* at P 14.

¹⁴ *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)**

On July 22, the FERC accepted an offer of settlement¹⁵ filed by New Hampshire Transmission (“NHT”) to resolve the issues set for hearing in this proceeding.¹⁶ As previously reported, the Settlement results in a \$6.5 million refund of NHT’s 2012-2014 SeaLink expenditures in the form of a credit in favor of RNS customers against NHT’s 2016/17 RNS revenue requirement. The July 22 order terminates these proceedings. 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)¹⁷ and third (EL14-86)¹⁸ complaints regarding the TOs’ 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;¹⁹ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²⁰ 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.”²¹ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²² 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

¹⁵ *NH Trans., LLC*, 156 FERC ¶ 61,065 (Jul. 22, 2016).

¹⁶ As previously reported, the FERC instituted a Section 206 proceeding in Docket EL15-85 to examine whether NHT’s recovery of SeaLink project development costs through the RNS formula rate is just and reasonable. *ISO New England Inc. Participating Trans. Owners Admin. Comm. and NH Trans., LLC*, 152 FERC ¶ 61,121 (Aug. 12, 2015) (“August 12 Order”).

¹⁷ 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%.

¹⁸ The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General (“MA AG”), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the “2014 ROE Complainants”), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

¹⁹ *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).

²⁰ *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).

²¹ *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).

²² *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).

the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.²³ 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. Briefs on exceptions were filed by the TOs, Complainant-Aligned Parties ("CAPs"), EMCOS, and FERC Trial Staff on April 21, 2016; briefs opposing exceptions, on 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 *2012/14 ROE 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

- **FCA11 De-List Bids Filing (ER16-2215)**

Pursuant to Market Rule 1 § 13.8.1(a), the ISO submitted on July 15 a filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the FCA11 Existing Capacity Retirement Deadline. The ISO reported that the Existing Capacity Retirement Deadline for FCA11 was March 18, 2016 and it received two Retirement De-List Bids for resources located in the NEMASS Boston and Maine Load Zones, with an aggregate MWs of capacity of 27.262 MWs. Because each bid was not greater than 20 MW, and because the two suppliers are not Affiliates, the IMM was not required to perform a review of the bids. As required under §13.8.1(a) of Market Rule 1, the specific underlying information was filed confidentially. Comments on this filing are due on or before August 5. Thus far, doc-less interventions were filed by NEPOOL and Exelon. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Requests for rehearing of the FERC's June 16, 2016 order accepting the results of the tenth FCA ("FCA10"),²⁴ filed by Dominion and UWUA Local 464, remain pending. Dominion requested rehearing in order to preserve its rights while its request for rehearing of the *Manchester Street FCA10 Order* is pending (See Section I above). As it did there, Dominion asked the FERC to direct the ISO to award the 21 MWs of incremental capacity at Manchester Street Station a Capacity Supply Obligation for 2019-2020 Capacity Commitment Period and six subsequent Capacity Commitment Periods at the FCA 10 Capacity Clearing Price of \$7.03/kW-month. For its part, UWUA Local 464 raises the same arguments it raised in the FCA8 and FCA9 proceedings, and argues, additionally, that in the FCA 10 proceeding, because there was no independent analysis of retiring unit's actual costs, and inclusion of such unit's capacity in the FCA at those costs, there is no assurance that the auction was workably competitive and the results just and reasonable. The requests for rehearing are pending before the FERC, with FERC action required on or before August 15, 2016, or the requests will be deemed denied. 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).

- **2016/17 Power Year Transmission Rate Filing (ER09-1532; RT04-2)**

On July 29, 2016, the Participating Transmission Owners ("PTOs") Administrative Committee ("PTO AC") submitted a filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2016 through May 31, 2017. The filing reflected the charges to be assessed under annual transmission formula rates, reflecting actual 2015 cost data, Forecasted Annual Transmission Revenue Requirements associated with projected PTF additions for the 2016 Forecast Period, and the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of \$103.30 /kW-year effective June 1, 2016, an increase of \$4.60 /kW-year from the charges

²³ *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*").

²⁴ *ISO New England Inc.*, 155 FERC ¶ 61,273 (June 16, 2016) ("*FCA10 Results Order*").

that went into effect on June 1, 2015. In addition, the annual update to the Schedule 1 formula rate results in a charge of \$1.80 kW-year, a \$0.19/kW-year increase over the Schedule 1 charge that last went into effect on June 1, 2015. This filing was reviewed at the July 12 Transmission Committee meeting. The filing will not be noticed for public comment. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **Waiver Request: DER FCM Qualification Reqs (Genbright) (ER16-2283)**

On July 26, Genbright requested a limited waiver of FCM qualification requirements (site control and one line diagram requirements for battery and solar projects under five megawatts that are classified as Generators) to facilitate the qualification of an aggregation of Distributed Energy Resources (“DERs”), including solar and battery storage, for FCA11. Genbright states that, “although the ISO-NE Tariff does facilitate the aggregation of multiple DER projects to be part of a single Demand Resource, the ISO-NE Tariff does not include rules that facilitate the aggregation of small scale DERs when they are classified as Generators.” Genbright goes on to state that “this administrative burden can create an unintended barrier to entry for an aggregation of DERs to qualify in ISO-NE FCM markets.” Comments on Genbright’s waiver request are due on or before August 16. Thus far, doc-less interventions have been filed by NEPOOL and ConEd. 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).

- **CSO Terminations: Enerwise (ER16-2137)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on July 1 to terminate a portion of the following CSOs held by Project Sponsor Enerwise Global Technologies Inc. (d/b/a CPower): Resource Nos. 16687, 37996, 38122, 38123, 38132, and 38136. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the applicable amount of financial assurance provided by CPower with respect to the applicable portions of the CSOs to be terminated. NEPOOL filed a doc-less intervention on July 8. Comments on this filing were due on or before July 22; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126)**

On July 1, 2016, the ISO and NEPOOL jointly filed changes, in compliance with the *Manchester Street FCA10 Order* (see Section I, EL16-38 above), that: (1) require the ISO, as part of the qualification process for an FCA, to automatically match new incremental summer generating capacity or a significant increase in summer capacity (“Significant Increase”) with excess existing winter generating capacity at the same generating resource; and (2) allow new summer incremental generating capacity that is matched with excess existing winter generating capacity at the same generating resource to elect to have the Capacity Supply Obligation (“CSO”) and Capacity Clearing Price continue to apply after the Capacity Commitment Period associated with the FCA in which its offer clears for up to six additional and consecutive Capacity Commitment Periods (the “multiyear lock-in”). The compliance changes were supported by the Participants Committee at the June 23 session of the Summer Meeting. An August 30, 2016 effective date was requested.

Comments on this filing were due on or before July 22, 2016. Protests were filed by:

- ◆ *Dominion*: objecting to the proposal (i) to limit the ability of resources to elect a multi-year lock-in at the FCA clearing price to only the new summer generating capacity and not the total annual incremental capacity and (ii) to require composite offers between qualifying new winter incremental generating capacity and excess existing summer generating capacity at the same generating resource; and
- ◆ *NEPGA*: requesting that the FERC reject the limitation of the Price Lock-In to the summer months of a CSO and direct changes that would allow a Market Participant that clears a Composite Offer of new summer capacity and winter Qualified Capacity at the same resource to elect the Price Lock-In for the entire annual CSO.

Doc-less interventions were filed by Calpine, Emera, Entergy, Eversource, FirstLight, National Grid, NESCOE, and NRG. 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).

- **Waiver Request: RTEG Resource Type/De-List (ISO-NE) (ER16-1904)**

As previously reported, the ISO requested, on June 9, a limited waiver of Tariff Sections III.13.1.4.2.5.2, III.13.1.4.3.1.2 & III.13.1.2.3.1.1 to allow Real-Time Emergency Generation Resources (“RTEGs”) either to change their resource type to Real-Time Demand Response Resources or to de-list (“Waiver Request”), particularly in connection with FCA11, but also, to the extent applicable, for FCA8, FCA9, and FCA10. The ISO requested the waiver in light of (i) a May 4, 2016 order of the United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”) reversing and remanding United States Environmental Protection Agency (“EPA”) rules that provided for a 100-hour exemption for operation of emergency engines for purposes of emergency demand response under National Emissions Standards; and (ii) an April 15, 2016 EPA Guidance Memorandum, which in anticipation of the DC Circuit order, indicated that the EPA will not develop an alternative to the rules reversed by the DC Circuit. The Waiver Request was not considered in the Participant Processes. The ISO requested that the Waiver Request become effective as of June 21, 2016, and that the FERC issue an order on the waiver request filing by August 8, 2016. Comments on the Waiver Request were due on or before June 30, 2016.

Interventions were filed by NEPOOL, Dominion, Eversource, Exelon, National Grid, NESCOE, and NRG. CPower filed the only comments in response to the ISO’s waiver request, requesting the following limited modification to the waivers requested: for the 2017/18 Capacity Commitment Period only, and in the limited circumstance where an RTEG Resource CSO holder cannot convert or shed some or all of its CSO due to market conditions, ISO Market Rule 1, Section III.13.4.2.1.3 (Adjustment for Significant Decreases in Capacity) should be waived such that demand bids entered in the Third Annual Reconfiguration Auction (“ARA3”) for remaining RTEG CSOs will be at the FCA Payment Rate and not at the FCA Starting Price. On July 15, the ISO answered and opposed CPower’s request. CPower responded to that answer on July 22. 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) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Sub-Hourly Settlement Changes (ER16-1838)**

On July 26, 2016, the FERC accepted changes to the Tariff to change to five minutes the settlement interval in the Real-Time Energy and Reserves Markets (“Sub-Hourly Settlement Changes”). The Sub-Hourly Settlement Changes will become effective March 1, 2017, as requested. Unless the July 26 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Rehearing remains pending of the FERC’s *Resource Retirement Reforms Order*.²⁵ As previously reported, the FERC conditionally accepted, effective March 1, 2016, changes to the FCM rules for resource retirements proposed by the ISO and its Internal Market Monitor (“IMM”) (the “ISO/IMM Proposal”). The FERC conditioned its acceptance of the ISO/IMM Proposal on the filing 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,”²⁶ which as noted immediately below, was filed with and accepted by the FERC. All other protests and

²⁵ *ISO New England Inc.*, 155 FERC ¶ 61,029 (Apr. 12, 2016), *reh’g requested* (“*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 Dec. 4, 2015 meeting.

²⁶ *Id.* at P 62.

comments were rejected. NEPGA, Exelon and NextEra jointly requested rehearing of the *Resource Retirement Reforms Order*. On June 13, the FERC issued a tolling order affording it additional time to consider the joint rehearing request, which remains pending before the FERC.

Compliance Filing. The FERC accepted, on July 27, revisions to the FCM Rules proposed by the ISO and IMM in response to the *Resource Retirement Reforms Order* that establish a 10% materiality threshold for the mitigation of Retirement De-List Bids and Permanent De-List Bids.²⁷ In accepting the compliance filing, the FERC concluded that “this proposal strikes an appropriate balance by ensuring that the IMM is able to prevent the exercise of market power that could cause significant harm to market participants, while protecting suppliers from potential over-mitigation of their retirement bids.”²⁸ Challenges, if any, to the *Resource Retirement Reforms Compliance Order* are due on or before August 26. 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)**

Rehearing has been requested and is pending of the FERC’s April 8, 2016 *Demand Curve Remand Order*.²⁹ 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”).³⁰ 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*,³¹ 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).³² 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, 2015, accepted on May 1, and became effective on May 2, 2015.³³ 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*. NextEra, NRG and PSEG jointly requested rehearing of the *Demand Curve Remand Order* on May 9, 2016. On June 3, NESCOE answered the NextEra/PSEG/NERG rehearing request. On June 8, 2016, the FERC issued a tolling order affording it additional time to consider the NextEra/PSEG/NERG request for rehearing, which remains pending before the FERC. If you

²⁷ *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

²⁸ *Id.* at P 16.

²⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 155 FERC ¶ 61,023 (Apr. 8, 2016), *reh’g requested* (“*Demand Curve Remand 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).

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

³¹ *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).

³² *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*”).

³³ 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.

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 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).³⁴ 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

- **Reactive Power Compensation Revisions (ER16-1789)**

On July 13, the FERC accepted changes to Schedule 2 of the OATT to support the participation of inverter-based generators (wind, solar, etc.) capable of providing VAR Service to the New England Transmission System in the Schedule 2 compensation program. The Schedule 2 Revisions were accepted as of July 26, 2016, as requested. Unless the July 13 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **Financial Statement Reporting Requirement Changes (ER16-1874)**

On July 12, the FERC accepted changes to the Financial Assurance Policy jointly filed by the ISO and NEPOOL to modify the financial statement submission requirements to voluntary submissions. Market Participants who have unsecured credit and Market Participants that meet the minimum capitalization requirements by maintaining a Tangible Net Worth of \$1 million or total assets of \$10 million must continue to submit financial statements to maintain their unsecured credit or continue to have their total assets or Tangible Net Worth assessed for purposes of the minimum capitalization requirements. Any Market Participant may be required by the ISO to submit financial statements at any time within 10 days of such request. The Financial Statement Reporting Requirement Changes were accepted effective as of August 5, 2016, as requested. Unless the July 12 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22/23 Changes

- **Schedule 22 LGIA: Exelon West Medway II (ER16-2024)**

On June 27, the ISO and NSTAR filed a non-conforming LGIA between the ISO, NSTAR and Exelon West Medway II. The LGIA is non-conforming in that it contains limited deviations from the *pro forma* LGIA necessary to recognize that the Interconnection Facilities are jointly owned and used by Exelon West Medway, LLC, and are not for the sole use of Exelon West Medway II, LLC. A June 14, 2016 effective date was requested. Comments on this filing were due on or before July 18; none were filed. This matter is

³⁴ *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

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

- **Schedule 21-NEP Deepwater Wind Indemnification Agreement (ER16-2012)**

On June 24, National Grid filed an indemnification agreement under which the Deepwater Wind Companies³⁵ will indemnify National Grid for all costs National Grid directly incurs to request expedited delivery of switchgear at certain Rhode Island substations in connection with the DW Companies' construction of an offshore wind farm pursuant to the Town of New Shoreham (Block Island) Project. A May 10, 2016 effective date was requested. Comments on this filing were due on or before July 15; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NEP: Granite Ridge Prior Service Agreement Termination (ER16-1921)**

On June 14, National Grid filed a notice of termination of a prior service agreement with Granite Ridge Energy since superseded and replaced by an LGIA between the ISO, Granite Ridge Energy, National Grid, and Eversource. An effective date of August 31, 2015, the effective date of the LGIA, was requested. Comments on this filing are due on or before July 5, 2016; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-NEP: Deerfield Wind Reimbursement Agreement (ER16-1745)**

On July 6, the FERC accepted a Transmission System Upgrade Reimbursement Agreement ("Reimbursement Agreement") between National Grid and Deerfield Wind, LLC ("Deerfield Wind"), designated as Service Agreement No. CRA-NEP-08. As previously reported, National Grid explained that the Reimbursement Agreement is designed to facilitate the performance of certain re-conductoring and related work associated with the Deerfield Wind facility. The Reimbursement Agreement was accepted effective as of April 28, 2016, as requested. Unless the July 6 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

As previously reported, the FERC conditionally accepted³⁶ Emera Maine's proposed 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. The FERC found that Emera Maine's proposal just and reasonable and sufficiently transparent "with the true-up mechanism Emera Maine agreed to implement in its answer and its proposal to fully document any adjustment in the annual charge update." Accordingly, the FERC directed Emera Maine to submit a compliance filing to provide for the application of a true-up to any adjusted values.³⁷ Emera Maine submitted that compliance filing on July 11. Comments on the July 11 compliance filing were due on or before August 1; none were filed. The compliance filing 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-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)**

On May 3, 2016, 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

³⁵ "Deepwater Wind Companies" are Deepwater Wind, LLC, Deepwater Wind Block Island, LLC, and Deepwater Wind Block Island Transmission, LLC.

³⁶ *ISO New England Inc. and Emera Maine*, 155 FERC ¶ 61,212 (May 31, 2016).

³⁷ *Id.* at P 20.

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.³⁸ 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.”³⁹ 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.⁴⁰ 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.”⁴¹ The FERC encouraged participants to make every effort to settle their dispute before hearing procedures commence.

Settlement Judge Procedures. On May 17, Chief Judge Cintron designated Judge Patricia E. Hurt as the Settlement Judge in this proceeding. A first settlement conference was held on May 26. The parties agreed to exchange data and a second settlement conference has since been re-scheduled to August 16, 2016. Judge Hurt issued a status report on June 16 recommending, in view of the progress being made, that the settlement proceeding continue. On June 21, Chief Judge Cintron issued just such an order, continuing settlement judge procedures.

Conforming Tariff Filing. On July 29, Eversource submitted a compliance filing with an updated version of Attachment F of the ISO OATT that reflects all of the currently effective changes to Attachment F, including accepted Central Connecticut Reliability Project (“CCRP”)-related⁴² and Merger-related changes. Comments on the July 29 filing are due on or before August 19, 2016. If you have any questions concerning these proceedings, 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 et al.)**

On June 2, 2016, the FERC accepted, but established hearing and settlement judge procedures for,⁴³ March 31 filings by Emera Maine in which 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”). As previously reported, the Merger Conditions imposed a hold harmless requirement, and required a compliance filing demonstrating fulfillment of that requirement, should Emera Maine seek to recover transaction-related costs through any transmission rate. Following its recent

³⁸ *ISO New England Inc. et al.*, 155 FERC ¶ 61,136 (May 3, 2016).

³⁹ *Id.* at P 27.

⁴⁰ *Id.* at P 28.

⁴¹ *Id.* at P 29.

⁴² See *ISO New England Inc. and The Conn. Light and Power Co.*, Docket No. ER16-116, letter order, Mar. 22, 2016.

⁴³ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“June 2, Order”).

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.

In the *June 2 Order*, the FERC found that the Compliance Filings raise issues of material fact that could not be resolved based on the record, and are more appropriately addressed in the hearing and settlement judge procedures.⁴⁴ The FERC reiterated several points with respect to transaction-related cost recovery explained in prior FERC orders and provided guidance on other transaction-related cost recovery points.⁴⁵ 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.⁴⁶ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁴⁷

Settlement Judge Procedures. Chief Judge Cintron designated ALJ John Dring as the settlement judge for these proceedings on June 9. A first settlement conference was held on June 29. A second settlement conference has been scheduled for September 27. On July 12, Emera Maine moved for adoption of a Protective Order for use in connection with the settlement judge procedures. On July 13, Chief Judge Cintron adopted the requested protective order. On July 14, Settlement Judge Dring reported that the parties are making progress toward settlement and recommended that the settlement procedures be continued. On July 22, Chief Judge Cintron issued an order continuing settlement judge procedures. If you have any questions concerning these matters, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-FG&E Annual Informational Filing (ER09-1498)**

On July 25, 2016, Fitchburg Gas & Electric (“FG&E”) submitted its data and schedules used to calculate its annual transmission revenue requirement for Non-PTF Local Network Transmission Service, Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service as set forth in Schedule 21-FG&E covering the June 1, 2016 – May 31, 2017 period. FG&E reported that its annual revenue requirement reflected in FG&E’s rates effective June 1, 2016 is \$1,436,794, a roughly 1% decrease from the previous rate. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

VIII. Regional Reports

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

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

⁴⁴ *Id.* at P 24.

⁴⁵ *Id.* at PP 25-26.

⁴⁶ *Id.* at P 27.

⁴⁷ *Id.* at P 21; Ordering Paragraph (B).

- **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*⁴⁸ and *531-B*.⁴⁹ 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)
- ◆ NHT (Jan 21)
- ◆ NSTAR (Jan 21)
- ◆ United Illuminating (Jan 21); supplement (Feb 1)
- ◆ VT Transco (Feb 3)

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

- **LFTR Implementation: 31st Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the thirty-first of its Quarterly Status Reports regarding LFTR implementation on July 15, 2016. The ISO again reported its plan to focus on implementation of the monthly reconfiguration auctions (accepted in ER12-2122). The ISO reported that it has begun to develop a financial assurance design for the monthly reconfiguration auctions and anticipates discussing this design with the Budget & Finance Subcommittee during the 2016 fall and winter meetings. Thereafter, the ISO will renew efforts to address the financial assurance issues associated with LFTRs, with the intention of leveraging the previously developed financial assurance design. These status reports are not noticed for public comment and no comments have been filed.

IX. Membership Filings

- **August 2016 Membership Filing (ER16-2321)**

On July 29, NEPOOL requested that the FERC accept (i) the memberships of CES Retail Energy Supply, LLC (Related Person to ConEd Energy); Energy GPS LLC (Data-Only Member); Gravity Renewables Inc. (AR Sector Small Renewable Generation Group Seat); and Inertia Power III LP (Supplier Sector); (ii) the termination of the Participant status of Dynegy Resources Management (Dynegy Market & Trade Related Person); Energy America (Related Person to Direct Energy Participants); and Provider Power CT, LLC (Related Person to Electricity Maine, et al.); and (iii) the change in name of ENGIE Resources LLC (f/k/a ENGIE Resources Inc.). Comments on this filing are due on or before August 19, 2106.

- **July 2016 Membership Filing (ER16-2104)**

On June 30, NEPOOL requested that the FERC accept (i) the memberships of Cumulus Master Fund (Supplier Sector), Jeff Jones (End User Sector), and National Gas & Electric (Related Person to Spark Energy and Oasis Energy, Supplier Sector); (ii) the termination of the Participant status of EnergyConnect (Provisional

⁴⁸ *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

⁴⁹ *Martha Coakley, Mass. Att’y Gen. et al.*, *Opinion No. 531-B*, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

Member; Related Person to CPower, AR Sector LR Sub-Sector); and (iii) the name change of CleanChoice Energy (f/k/a Ethical Electric). This matter is pending before the FERC.

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).

- **Retirement of NPCC Regional Reliability Standard PRC-002-NPCC-001 (RD16-8)**

As previously reported, NERC and NPCC requested, on June 9, that the FERC approve the retirement of NPCC Regional Reliability Standard PRC-002-NPCC-01 (Disturbance Monitoring) and two related NPCC regional definitions, (Current Zero Time and Generating Plant), which became redundant and unnecessary for reliability with the recent approval of continent-wide Reliability Standard PRC-002-2 (Disturbance Monitoring and Reporting Requirements). Comments on this filing were due on or before July 11, 2016; none were filed. Dominion was the only entity to file a doc-less intervention. This matter is pending before the FERC.

- **Revised Reliability Standards: IRO-018-1 & TOP-010-1 (RD16-6)**

NERC's May 26 filing requesting approval of revised Reliability Standards -- IRO-018-1 (Reliability Coordinator Real-Time Reliability Monitoring and Analysis Capabilities) and TOP-010-1 (Real-Time Reliability Monitoring and Analysis Capabilities), and associated implementation plan, VRFs and VSLs (together, the "Real-Time Situational Awareness Changes") remains pending. As previously reported, NERC stated that the revised Standards are designed to improve real-time situational awareness capabilities and enhance reliable operations by requiring Reliability Coordinators, Transmission Operators, and Balancing Authorities to provide operators with awareness of monitoring and analysis capabilities, including alarm availability, so that operators may take appropriate steps to protect reliability. No comments were filed by the June 27 comment date. Again, Dominion was the only entity to file a doc-less intervention. This matter remains pending before the FERC.

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

NERC's April 20 filing, as supplemented on June 2 and 14, requesting approval of 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") remains pending. As previously reported, 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. On June 2, NERC withdrew from this proceeding the request to approve six glossary definitions, which were filed separately and approved in Docket No. RD16-7. The glossary definitions were separately filed so that they could be effective when BAL-001-2 becomes effective on July 1, 2016 (rather than at a later date when the FERC has acted on the filing in this proceeding). On June 14, NERC provided supplemental information related to the April 20 petition. As of the date of this Report, the FERC has still not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

On May 19, the FERC issued a NOPR proposing to (i) approve 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"); (ii) direct NERC to modify BAL-002-2 to address concerns related to the possible extension or delay of the periods for ACE recovery and contingency reserve restoration; and (iii) direct NERC to address a reliability

gap regarding megawatt losses above the most severe single contingency.⁵⁰ As previously reported, NERC stated that the BAL Changes consolidate six requirements in BAL-002-1 into three requirements, 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. Comments on the *BAL Changes NOPR* were due on or before July 25, 2016⁵¹ and were filed by APS, IESO, NaturEner USA, the Canadian Electricity Association, Idaho Power, TVA, NRECA, NERC, Bonneville, EEI, and jointly by the Alberta Electric System Operator ("AESO"), the California Independent System Operator ("CAISO"), Electric Reliability Council of Texas, Inc. ("ERCOT"), the Independent Electricity System Operator of Ontario, Inc. ("IESO"), Midcontinent Independent System Operator, Inc. ("MISO"), PJM Interconnection, L.L.C. ("PJM"), and Southwest Power Pool, Inc. ("SPP"). The *BAL Changes NOPR* is pending before the FERC.

- **Order 824: NERC Database Availability to FERC (RM15-25)**

On June 16, 2016, the FERC issued *Order 824*,⁵² which requires NERC to provide the FERC and FERC staff access, on a non-public and ongoing basis, to data regarding U.S. facilities provided to NERC on a mandatory basis and compiled and maintained in the following NERC databases: (i) the Transmission Availability Data System ("TADS"), (ii) the Generating Availability Data System ("GADS"), and (iii) the protection system misoperations database. The FERC stated that access to these databases will provide it with information necessary to determine the need for new or modified Reliability Standards and to better understand NERC's periodic reliability and adequacy assessments. On July 7, the FERC clarified that the effective date for *Order 824* is July 12, 2016 (the date the clarification was published in the *Federal Register*).⁵³ The compliance date will be based on issuance of the final rule in RM16-15 and will be announced in a subsequent *Federal Register* publication.

- **Order 829: New Reliability Standard Addressing Supply Chain Risk Management (RM15-14-002)**

On July 21, 2016, the FERC issued *Order 829*,⁵⁴ which directs NERC to develop a new or modified Reliability Standard that addresses supply chain risk management for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. The new or

⁵⁰ *Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event Rel. Standard*, 155 FERC ¶ 61,180 (May 19, 2016) ("*BAL Changes NOPR*").

⁵¹ The *BAL Changes NOPR* was published in the *Fed. Reg.* on May 26, 2016 (Vol. 81, No. 102) pp. 33,441-33,448.

⁵² *Availability of Certain N. Am. Elec. Rel. Corp. Databases to the Commission*, Order No. 824, 155 FERC ¶ 61,275 (June 16, 2016) ("*Order 824*").

⁵³ *Availability of Certain N. Am. Elec. Rel. Corp. Databases to the Commission*, 156 FERC ¶ 61,017 (July 7, 2016). The clarification was published in the *Fed. Reg.* on July 12, 2016 (Vol. 81, No. 133) pp. 44,998-45,008.

⁵⁴ *Revised Critical Infrastructure Protection Rel. Standards*, Order No. 829, 156 FERC ¶ 61,050 (July 21, 2016) ("*Order 829*").

modified Reliability Standard is intended to mitigate the risk of a cybersecurity incident affecting the reliable operation of the Bulk-Power System. *Order 829* will become effective September 27, 2016.⁵⁵ The FERC directed NERC to submit the new or modified Reliability Standard on or before September 27, 2017, one year from the *Order 829* effective date.

- **Order 822-A: Revised Reliability Standards: CIP-003-6, CIP-004-6, CIP-006-6, CIP-007-6, CIP-009-6, CIP-010-2, CIP-011-2 (RM15-14-001)**

On July 21, 2016, the FERC denied rehearing of *Order 822*⁵⁶ that had been requested by Resilient Societies (“FRS”) and Isologic LLC.⁵⁷ As previously reported, *Order 822* 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”). 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. *Orders 822* and *822-A* did not address supply chain risk management issues; they were address in *Order 829* (see *Order 829* above). *Order 822* became effective March 31, 2016.⁵⁸

Extension of Time for Compliance with CIP Version 5 Standards. On February 25, the FERC granted Trade Associations⁵⁹ 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*.⁶⁰ 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”.⁶¹

- **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”).⁶² In addition, the FERC proposed 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

⁵⁵ *Order 829* was published in the *Fed. Reg.* on July 29, 2016 (Vol. 81, No. 146) pp. 49,879-49,894.

⁵⁶ *Revised Critical Infrastructure Protection Rel. Standards*, Order No. 822, 154 FERC ¶ 61,037 (Jan. 21, 2016) (“*Order 822*”), *reh’g denied*, 156 FERC ¶ 61,052 (July 21, 2016).

⁵⁷ *Revised Critical Infrastructure Protection Rel. Standards*, Order No. 822-A, 156 FERC ¶ 61,052 (July 21, 2016) (“*Order 822-A*”).

⁵⁸ *Order 822* was published in the *Fed. Reg.* on Jan. 26, 2016 (Vol. 81, No. 16) pp. 4,177-4,191.

⁵⁹ “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”).

⁶⁰ *Revised Critical Infrastructure Protection Rel. Standards*, 154 FERC ¶ 61,137 (Feb. 25, 2016).

⁶¹ *Id.* at P 9.

⁶² *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

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.⁶³ 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, 2015,⁶⁴ 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 FRS' 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. NERC provided that update on June 28. In its June 28 update, NERC reiterated that the revisions to the technical white papers and related development information did not require any changes to the Requirements of the proposed Reliability Standard, but were being included in the record along with the standard drafting team's consideration of stakeholder comments. Comments on the update were due on or before July 20, 2016 and were filed by D. Bardin and FRS. This matter is pending before the FERC.

- **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, NOPR⁶⁵ 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 reliability issues associated with determinations of Available Transfer Capability ("ATC") and Available Flowgate Capability ("AFC"). MOD-001-2 will replace the six Existing MOD Standards⁶⁶ 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 sought 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 sought further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this NOPR were due August 25, 2014,⁶⁷ 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

⁶³ *Rel. Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 ("Order 779").

⁶⁴ The *TPL-007 NOPR* was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

⁶⁵ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) ("*ATC NOPR*").

⁶⁶ 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.

⁶⁷ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

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)**

The *BAL-002-1a Interpretation Remand NOPR*⁶⁸ 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, 2013,⁶⁹ 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.

XI. Misc. - of Regional Interest

- **CFTC RTO/ISO Exemption Amendment**

As previously reported, the Commodity Futures Trading Commission ("CFTC"), on May 10, 2016, issued a proposed amendment to its 2013 RTO/ISO Final Order (which generally exempted specified RTO/ISO transactions from certain provisions of the Commodity Exchange Act ("CEA") and CFTC regulations). The proposed amendment to the RTO/ISO Final Order would explicitly state that the exemption does not apply to private rights of action pursuant to CEA Section 22. If adopted, the amendment would permit private parties to bring claims under the CEA for fraud and manipulation involving financial energy products traded in the organized wholesale power markets, a right private parties do not have under the Federal Power Act. The proposed amendment could heighten the litigation risk faced by electricity companies and other entities that participate in RTO/ISO markets. Comments on the CFTC's proposed amendment were due on or before June 15, 2016,⁷⁰ and were filed by over 40 parties, including the FERC, ISO/RTO Council, EEI, EPSA, Exelon, Large Public Power Council, GDF SUEZ, and PSEG. This matter is now pending before the CFTC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁶⁸ *Elec. Rel. Org. Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

⁶⁹ 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.

⁷⁰ The CFTC Proposed Amendment was published in the *Fed. Reg.* on May 16, 2016 (Vol. 81, No. 94) pp. 30,245-30,255.

- **203 Application: Belmont/NSTAR (EC16-145)**

On July 8, 2016, NSTAR requested FERC authorization for its acquisition, from the Town of Belmont, MA, limited jurisdictional transmission facilities associated with Belmont's construction of a new 115 kV/13.8 kV substation in Belmont. The portion of the facility under construction that comprises distribution facilities will remain with Belmont. The ISO would be given operational control of the transmission facilities. Comments on this filing were due on or before July 29; 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: 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 were due on or before May 24, 2016; none were filed. On June 8, the FERC requested additional data to process the filing, which was filed on July 8. In addition, on June 15, Atlas supplemented the application by informing the FERC that Dynegy would purchase all of ECP's interests in Atlas Power prior to the closing of the Transaction. Comments on the June 15 filing were due on or before June 29; none were filed. Comments on the July 8 response were due on or before July 29. On July 29, Public Citizen filed a protest. This matter is again pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On July 6, Passadumkeag Windpark, LLC ("Passadumkeag") notified the FERC that the previously authorized⁷¹ sale of 100% of its membership interests to Southern Renewable Energy, Inc. ("SRE"), a wholly-owned subsidiary of Southern Power Company, was consummated on June 30, 2016. Reporting on this matter is now concluded. If there are any remaining 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").⁷² 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).

- **PURPA Complaint v. VT PSB (North Hartland) (EL16-74 et al.)**

As previously reported, North Hartland ("NHL") petitioned the FERC, on May 31, 2016, to pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 ("PURPA") against the Vermont Public Service Board ("VT PSB") to remedy the VT PSB's "improper implementation of PURPA"⁷³ through its creation of a rule that creates an unreasonable barrier to forming a legally enforceable obligation. NHL sought a 20-year term power purchase agreement ("PPA") with Vermont Electric Power Producers, Inc. ("VEPPI"), Vermont's Purchasing Agent, for the output of NHL's 4MW hydro facility. NHL reported that

⁷¹ *Passadumkeag Windpark, LLC*, 155 FERC ¶ 62,050 (Apr. 20, 2016).

⁷² *ReEnergy Sterling CT Limited Partnership*, 154 FERC ¶ 62,167 (Mar. 9, 2016).

⁷³ Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC's PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

VT PSB reads Rule 4.104(H) to limit the availability of either long-term rates or levelized rates to "qualifying facilities which have been found by the [VT PSB], after due hearing[,] to satisfy the substantive criteria of 30 V.S.A. §248(b)." The VT PSB issued an order on February 24, 2016 to grant a hearing to determine if NHL is eligible for a long-term, non-levelized contract. Concerns raised with the VT PSB appeared to revolve around the fact that the NHL facility already exists, rather than having a not-yet-built project that needs levelized rates to make construction of the projects viable and financially feasible. Comments answering and protesting the Petition were filed by City of Burlington, Green Mountain Power, VEC, VT DPS, VT PSB, and the Vermont Independent Power Producers Association. On July 5, NHL answered the protests and comments filed. Ampersand Energy Partners filed comments on July 12. VT PSB opposed the NHL and Ampersand comments on July 15. On July 29, the FERC issued a notice declining to initiate an enforcement action pursuant to PURPA section 210(h)(2)(A). The FERC notice means that NHL may itself bring an enforcement action against the VT PSB in an appropriate court. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **PURPA Complaint v. CT PURA (Allco/Windham Solar) (EL16-69 et al.)**

On July 21, the FERC issued a notice declining to initiate an enforcement action pursuant to PURPA section 210(h)(2)(A), but issuing a declaratory order (see below). The FERC notice means that Allco may itself bring an enforcement action against the C PURA in an appropriate court. As previously reported, Windham Solar LLC and Allco Finance Limited (together, "Allco") petitioned the FERC to pursue an enforcement action under PURPA against the Connecticut Public Utilities Regulatory Authority ("CT PURA") to remedy "Connecticut's improper implementation of PURPA".⁷⁴ Allco based its Petition on its experience trying to arrange with Eversource 30-year contracts for the sale of energy and capacity from 26 solar facilities. In a separate CT PURA-approved transaction, Allco had already sold the Renewable Energy Credits ("RECs") to Eversource. Allco sought a FERC order that it states would "invalidate (i) the requirement of a bidding process as a pre-condition to obtaining an avoided cost contract at a rate fixed at the outset for the entirety of a QF contract based upon the utility's projected future avoided costs, and (ii) the prohibition against a QF who has already sold its RECs from selling its energy and capacity pursuant to a long-term contract".

Declaratory Order. Though it declined to initiate an enforcement action, the FERC provided guidance consistent in part with Allco's complaint, declaring that, while "states have the authority to regulate RECs, states cannot impede a QF's ability to sell its output to an electric utility pursuant to PURPA. Thus, regardless of whether a QF has previously sold its RECs under a separate contract, that QF has the right to sell its output pursuant to a legally enforceable obligation." Noting that it has previously held that "requiring a QF to win a competitive solicitation as a condition to obtaining a long-term contract imposes an unreasonable obstacle to obtaining a legally enforceable obligation" and that it "likewise has determined a state regulation to be inconsistent with PURPA and the Commission's PURPA regulations "to the extent that it offers the competitive solicitation process as the only means by which a QF . . . can obtain long-term avoided cost rates"", regardless of whether a QF has participated in a request for proposal, that QF has the right to obtain a legally enforceable obligation. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **E&P Agreement: CMP/FPL Wyman (ER16-2369)**

On August 3, Central Maine Power ("CMP") filed an Engineering and Procurement Agreement ("E&P Agreement") between CMP and FPL Energy Wyman LLC ("FPL Wyman") that authorizes CMP to begin engineering and procurement of long lead-time items necessary for establishment of the interconnection of FPL Wyman's proposed 16.7 MW battery storage project to be located on Cousin's Island in Yarmouth, Maine. An effective date of July 25, 2016 was requested. Comments on this filing are due on or before

⁷⁴ Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC's PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

August 24, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Facilities Use Agreement: National Grid/Deepwater Block Island Wind (ER16-2328)**

On July 29, New England Power Company (“National Grid”) filed a Facilities Use Agreement between itself and Deepwater Block Island Wind, LLC (“Deepwater”) under which National Grid will operate and maintain, and Deepwater will use, a portion of certain interconnection facilities to be constructed and owned by The Narragansett Electric Company, in order to facilitate the construction and future commercial operation of the offshore Block Island Wind Farm (“BIWF”). The Narragansett interconnection facilities will be used to deliver power to the BIWF on a temporary basis for the purpose of installing, testing, and commissioning equipment prior to the BIWF’s commercial operation date. National Grid requested that the Agreement be accepted for filing as of July 28, 2016. Comments on this filing are due on or before August 19, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: CL&P/PSEG Power Conn. (ER16-2261)**

On July 21, Eversource, on behalf of The Connecticut Light & Power Company (“CL&P”) filed an Agreement for Engineering, Design, Permitting, Siting Services and Operations and Maintenance (the “D&E Agreement”) between CL&P and PSEG Power Connecticut LLC (“PSEG Power Conn.”). The purpose of the D&E Agreement is to set forth the terms and conditions under which CL&P will undertake necessary transmission upgrades to its transmission system in connection with PSEG’s 484 MW generating facility in Bridgeport, CT. PSEG Power Conn. will reimburse CL&P for the costs and expenses associated with its activities under the D&E Agreement. CL&P states that it will not receive any profit for its services. CL&P requested that the D&E Agreement be accepted for filing as of July 5, 2015. Comments on this filing are due on or before August 11, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Use Rights Transfer Agreement: NSTAR/HQUS (ER16-2189)**

On July 13, NSTAR filed an Agreement between NSTAR and H.Q. Energy Services (U.S.), Inc. (“HQUS”) for the Transfer of Use Rights on the Phase I/II HVDC Transmission Facilities (“Transfer Agreement”), whereby NSTAR will transfer, for up to an additional three years, its transmission capacity Use Rights on the HQ Interconnection. NSTAR requested that the Transfer Agreement be accepted for filing as of January 1, 2018. Comments on this filing were due on or before August 3, 2016; none were filed. National Grid submitted 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).

- **D&E Agreement Amendment: NSTAR/Exelon West Medway (ER16-1809)**

On July 14, the FERC accepted an amendment to the Design and Engineering Agreement (“D&E Agreement”) between NSTAR and Exelon West Medway (designated as service agreement IA-NSTAR-32) that sets forth the terms and conditions under which NSTAR will undertake certain design and engineering activities on the Interconnection Facilities identified in ISO-NE studies, prior to execution of an LGIA under Schedule 22 of the ISO-NE Tariff. As previously reported, Eversource stated that NSTAR’s costs include applicable overheads and loaders in performing design and engineering activities for Exelon’s 207 MW West Medway, MA facility, and due to the complexities of the interconnection, execution of an LGIA had not yet occurred. To advance the implementation of this interconnection, the parties executed the Amendment, which expands the scope of the services provided by NSTAR under the original Agreement to include the procurement of certain equipment that will comprise the Interconnecting TO’s Interconnection Facilities under the LGIA, and includes updated cost estimates. The amended D&E Agreement was accepted for filing effective as of May 31, 2016, as requested. Unless the July 14 order is challenged, this proceeding will be concluded. 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 July 1, the FERC conditionally authorized Maine Power Express, LLC (“MPX”) 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”).⁷⁵ As previously reported, MPX stated that the MPX Project will be 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, all under the operational control of the ISO. Acknowledging the commitments by MPX in the filing, the FERC authorized the sale of the transmission rights subject to a compliance filing, 30 days after the close of the open solicitation process, disclosing the results of the capacity allocation process and demonstrating that the capacity allocation was consistent with the FERC’s Transmission Project Capacity Allocation Policy Statement⁷⁶ and the FERC’s open access policies.⁷⁷ The *MPX Order* was not challenged and is final and unappealable. 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, ER12-1650)**

As previously reported, the FERC conditionally accepted, on December 7, 2015, changes to the Maine Public District (“MPD”) Open Access Transmission Tariff (“MPD OATT”), including to the rates, terms, and conditions set forth in MPD OATT Attachment J.⁷⁸ 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 (ER15-1429). 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”⁷⁹ 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

⁷⁵ *Maine Power Express, LLC*, 156 FERC ¶ 61,002 (July 1, 2016) (“*MPX Order*”).

⁷⁶ *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013) (“*Policy Statement*”).

⁷⁷ *MPX Order* at P 22.

⁷⁸ *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

⁷⁹ 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”).

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 "Motion to Compel"). 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.

On June 2, 2016, the FERC granted Maine Customer Group's Motion to Compel, and set the remaining issues with respect to Emera Maine's 2014 and 2015 Annual Updates for hearing and settlement judge procedures.⁸⁰ The FERC also consolidated ER12-1650 with this proceeding. In addition, the FERC directed that Emera Maine to make a compliance filing, on or before July 5, that (1) revises its 2014-2015 formula rate charges to correct the errors the Maine Customer Group raised with respect to amortization of long-term debt costs and post-retirement benefits other than pensions, and (2) imputes the retired debt balance for the tax-free Maine Public bonds (\$22.6 million) into the capital structure calculation for the 2014-2015 Rate Year. Emera Maine requested rehearing of the June 2 order on July 5. On August 2, the FERC issued a tolling order affording it additional time to consider the Emera Maine request for rehearing, which remains pending before the FERC.

Compliance Filing (ER12-1650). On July 5, Emera Maine submitted the compliance filing directed in the June 2 order. On July 18, the Maine Customer Group protested the compliance filing, asserting that Emera's compliance filing was incorrect as to two of the three refund issues, and Emera should be ordered to pay immediate refunds in accordance with the corrected revised formula rate it proposed. Emera Maine answered the July 18 answer on August 1, concluding that the Maine Customer Group's July 18 answer should be denied and its July 5 compliance filing found to comply fully with the June 2 Order. The compliance filing is pending before the FERC.

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. Settlement conferences have thus far been held on January 5, March 3, and April 26, 2016. On July 26, Settlement Judge Johnson issued a status report reporting that the parties are continuing to exchange information and discuss settlement options and recommending that settlement judge procedures be continued. 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, NYISO submitted a letter supporting calls for FERC action Judge Sterner's decision. Answers were also filed by MISO/ITC, Consumers and DTE, which while also seeking prompt action, continue to advocate for the acceptance of their initial filing (and rejection of Judge Sterner's decision). 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",⁸¹ 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

⁸⁰ *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh'g requested*.

⁸¹ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) ("*MISO Initial Decision*") at P 923.

proceeding.⁸² Judge Sterner's decision 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: Coaltrain Penalties Order (IN16-4)**

On May 27, 2016, the FERC issued an order⁸³ assessing civil penalties against 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") for having violated (i) the FERC's Anti-Manipulation Rule by executing a scheme involving manipulative PJM Up-To Congestion ("UTC") trading⁸⁴ between June and September 2010; (ii) 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. The FERC 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) and directed* Coaltrain, P. Jones and Sheehan, jointly and severally, to disgorge unjust profits of **\$4,121,894** plus applicable interest. The FERC found the UTC trading conduct at issue in this proceeding similar to the behavior the FERC found fraudulent in its Chen⁸⁵ and City Power⁸⁶ orders issued last year. The FERC found that the Coaltrain Respondents knowingly and intentionally placed fraudulent trades that did not try to arbitrage price differences, but rather were placed because Respondents knew they would capture MLSA payments that would offset and exceed the transaction costs. Given Respondents' earlier reported election under FPA Section 31(d)(3)(A), the *Coaltrain Penalties Order* will not be subject to rehearing. Rather, the Respondents will be entitled to a *de novo* review by a federal district court in an action by the FERC to affirm its actions, with such action to be filed should Respondents not pay the FERC-directed penalties and disgorgement on or before July 26.

- **FERC Enforcement Action: ETRACOM Penalties Order (IN16-2)**

Etracom Penalties Order. On June 17, the FERC issued an order finding ETRACOM LLC and its principal member and primary trader, Michael Rosenberg (together, "ETRACOM"), violated the FERC's Anti-

⁸² For a summary of specific findings, please refer to any of the January to June 2013 Litigation Reports.

⁸³ *Coaltrain Energy, L.P. et al*, 155 FERC ¶ 61, 204 (May 27, 2016) ("*Coaltrain Penalties Order*").

⁸⁴ The UTC trading product is a type of spread trade that allows market participants to arbitrage the difference between day-ahead and real-time congestion prices at two different locations. When the UTC transactions discussed in this proceeding were made, PJM's market rules required market participants to reserve transmission service to successfully place them. UTC transactions became eligible to receive certain transmission credits, known as Marginal Loss Surplus Allocation ("MLSA"), if they reserved and used paid transmission service. MLSA payments were distributed on a *pro rata* basis to all customers who paid for transmission service.

⁸⁵ *Houlian Chen*, 151 FERC ¶ 61,179 (2015) ("*Chen*").

⁸⁶ *City Power Marketing, LLC*, 152 FERC ¶ 61,012 (2015) ("*City Power*").

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.⁸⁷ The FERC assessed **\$2.4 million** in civil penalties against ETRACOM and **\$100,000** against Rosenberg; and directed ETRACOM to **disgorge \$315,072** plus interest in unjust profits.⁸⁸ Given ETRACOM's earlier reported election under FPA Section 31(d)(3)(A), the *ETRACOM Penalties Order* will not be subject to rehearing. Rather, the ETRACOM will be entitled to a *de novo* review by a federal district court in an action by the FERC to affirm its actions, with such action to be filed should Respondents not pay the FERC-directed penalties and disgorgement on or after August 16.

- **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 RTO/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." Information from each of the ISO/RTOs, including ISO-NE's information, was submitted on May 16. Comments on ISO-NE's submission were due on or before June 6, 2016. Commenters addressing electric storage participation in the New England Markets included FirstLight Power Resources Management. Comments not specific to a particular region were submitted by many, among others, the Energy Storage Association, APPA, Brookfield, EEI, EPSA, NextEra, NRECA and Tesla. This matter is pending before the FERC.

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

The FERC held a technical conference on a June 27-28, 2016 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. In addition, participants had the opportunity to discuss issues relating to interregional transmission coordination, regional transmission planning and other transmission development issues. Pre-technical conference comments were filed by over 20 parties, including by NESCOE, BHE US Transmission, LSPower, and NextEra Energy Transmission. Technical conference materials are available on the FERC's e-Library. A webcast of the technical conference will also be available on-line for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>. On August 3, the FERC issued a notice inviting post-technical conference comments on questions listed in the attachment to the notice. Those comments are due on or before September 2, 2016.

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

A workshop to discuss compensation for Reactive Supply and Voltage Control (Reactive Supply) in RTO/ISO markets was held on June 30, 2016. The workshop explored the types of costs incurred by generators for providing Reactive Supply capability and service; whether those costs are being recovered

⁸⁷ *ETRACOM LLC and Michael Rosenberg*, 155 FERC ¶ 61,284 (June 17, 2016) ("*ETRACOM Penalties Order*").

⁸⁸ *Id.* at P 1.

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 also explored potential adjustments in compensation based on changes in Reactive Supply capability and potential mechanisms to prevent overcompensation for Reactive Supply. Technical conference materials are available on the FERC's e-Library. A webcast of the technical conference will also be available on-line for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>. Written comments were due on or before July 28, 2016, and were filed by, among others, NYISO, PJM, the PJM IMM, AWEA, EEI, EPSA, EDF Renewables, Talen, Essential Power, and Exelon. This matter is pending before the FERC.

- **PURPA Implementation (AD16-16)**

A workshop to discuss issues associated with the FERC's implementation of PURPA was held on June 29, 2016. The conference focused on two issues: the mandatory purchase obligation under PURPA and the determination of avoided costs for those purchases. Panelists' advanced written comments and materials from the technical conference are available on the FERC's e-Library. A webcast of the technical conference will also be available on-line for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>.

- **NOPR: Regulations Implementing FAST Act and Amending CEII Regulations (RM16-15)**

On June 16, the FERC issued a NOPR proposing to amend its regulations to implement provisions of the Fixing America's Surface Transportation ("FAST") Act that pertain to the designation, protection and sharing of Critical Electric Infrastructure Information ("CEII") and to amend its regulations that pertain to CEII.⁸⁹ Comments on the *FAST Act/CEII NOPR* are due on or before August 19, 2016.⁹⁰

- **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:⁹¹ (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

⁸⁹ Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information, 155 FERC ¶ 61,278 (June 16, 2016) ("*FAST Act/CEII NOPR*").

⁹⁰ The *FAST Act/CEII NOPR* was published in the *Fed. Reg.* on July 5, 2016 (Vol. 81, No. 128) pp. 43,557-43,567.

⁹¹ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

7 by SPP. Comments on the reports were due on or before April 6⁹² and were filed by over 25 parties, including Exelon, EEI, and EPSA. Since the last Report, an addendum to its comments was filed by Financial Marketers Coalition. This matter is pending before the FERC.

- **NOPR: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)**

On July 21, 2016, the FERC issued a NOPR, which supersedes both its *Connected Entity NOPR* (RM15-23) and *Ownership NOPR* (RM16-3), proposing to collect certain data for analytics and surveillance purposes from market-based rate (“MBR”) sellers and entities trading virtual products or holding FTRs and to change certain aspects of the substance and format of information submitted for MBR purposes.⁹³ The *Data Collection NOPR* presents substantial revisions from what the FERC proposed in the *Connected Entity NOPR*, and responds to the comments and concerns submitted by NEPOOL in that proceeding. Among other things, the changes proposed in the *Data NOPR* include: (i) a different set of filers; (ii) a reworked and substantially narrowed definition of Connected Entity; and (iii) a different submission process. With respect to the MBR program, the proposals include: (i) adopting certain changes to reduce and clarify the scope of ownership information that MBR sellers must provide; (ii) reducing the information required in asset appendices; and (iii) collecting currently-required MBR information and certain new information in a consolidated and streamlined manner. The FERC also proposes to eliminate MBR sellers’ corporate organizational chart submission requirement adopted in *Order 816*. Comments on the *Data Collection NOPR* are due on or before [45 days after the *Data NOPR*’s publication in the *Federal Register*, which as of the date of this report has not happened].⁹⁴

August 11 Technical Workshop: A staff-led, technical workshop to provide a forum for interactive, detailed discussion of the elements contained in the sample data dictionary is scheduled for Thursday, August 11 (unfortunately conflicting with the first IMAPP meeting in Boston). Parties interested in actively participating in the discussion are encouraged to attend in person and all interested parties (whether attending in person or via webcast) are asked to register online at <https://www.ferc.gov/whats-new/registration/08-11-16-form.asp>. There is no registration fee. Those wishing to actively participate in the discussion by telephone during the workshop should send a request for a telephone line to RM16-17.NOPR@ferc.gov by close of business on August 5 (with the subject line: RM16–17 NOPR Workshop Teleconference Request).

- **Order 826: Civil Monetary Penalty Inflation Adjustments (RM16-16)**

On June 29, the FERC issued *Order 826*⁹⁵ to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission’s jurisdiction. The FERC was required to issue the rule on or before July 1, 2016 under The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The FERC must update each such civil monetary penalty on an annual basis every January 15 thereafter. Of particular interest is the increase in potential civil penalties for market manipulation which increase from a round number of \$1 million per violation, per day to a not-so-round number of \$1,193,970 per violation, per day.

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

On May 13, 2016, the FERC held a technical conference to discuss select issues related to AWEA’s petition in RM15-21 and to explore other generator interconnection issues, including interconnection of

⁹² 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.

⁹³ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

⁹⁴ The *Data Collection NOPR* [was published in the *Fed. Reg.* on Aug. [], 2016 (Vol. 81, No. []) pp. []].

⁹⁵ *Civil Monetary Penalty Inflation Adjustments*, Order No. 826, 155 FERC ¶ 61,320 (June 29, 2016) (“*Order 826*”).

energy storage. Discussions addressed: 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. A free copy of the webcast will be available on the FERC's website for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>. Speaker materials are posted on the FERC's eLibrary. On June 3, the FERC issued a notice inviting interested persons to file post-technical conference responses to a number of questions related to the docketed proceedings. Following a request for extension of time to file comments, the FERC extended the deadline for filing comments to and including June 30, 2016. Post-technical conference comments were filed by nearly 30 parties, including comments by AWEA, the ISO, Public Power (APPA, LPPC, NRECA), NextEra, EEI, Avangrid, and the Energy Storages Association ("ESA"), and are available on the FERC's eLibrary.

- **Order 828: Small Generator Ride Through Requirements (RM16-8)**

On July 21, the FERC issued Order 828⁹⁶ which modifies the *pro forma* SGIA to require newly interconnecting small generating facilities (< 20 MW), as large generators must under the *pro forma* LGIA, to "ride through"⁹⁷ abnormal frequency and voltage events and not disconnect during such events.⁹⁸ The specific ride through settings must be consistent with Good Utility Practice and any standards and guidelines applied by the transmission provider to other generating facilities on a comparable basis. These requirements will apply to new interconnection customers, and to existing interconnection customers, pursuant to a new interconnection request, that execute or request the unexecuted filing of an SGIA on or after October 5, 2016 (the effective date of *Order 828*).⁹⁹ Transmission Provider (including ISO-NE) compliance filings must also be submitted by October 5, 2016 and must be combined with the compliance filing required under *Order 827* (Reactive Power Requirements for Non-Synchronous Generation).¹⁰⁰ Challenges, if any, to *Order 828* are due on or before August 22, 2016.

- **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.¹⁰¹ 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.¹⁰² Comments on the *Frequency Response NOI* were due on or before April 25, 2016¹⁰³ and were filed by over 50 parties,

⁹⁶ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) ("*Order 828*").

⁹⁷ "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.

⁹⁸ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, 154 FERC ¶ 61,222 (Mar. 17, 2016) ("*Small Generator Ride Through NOPR*").

⁹⁹ *Order 828* was published in the *Fed. Reg.* on Aug. 1, 2016 (Vol. 81, No. 147) pp. 50,290-50,298.

¹⁰⁰ *Id.* at P 45.

¹⁰¹ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOI*").

¹⁰² *Frequency Response NOI* at P 2.

¹⁰³ The *Frequency Response NOI* was published in the *Fed. Reg.* on Feb. 24, 2016 (Vol. 81, No. 36) pp. 9,182-9,192.

including: ISO-NE (with NYISO, PJM, SPP, and IESO), APPA/LPPA/TAPS, EDP Renewables, EEL, ELCON, 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).¹⁰⁴ 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, 2016¹⁰⁵ 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, comments were filed by Advanced Energy Management Alliance. The *Price Cap NOPR* remains pending before the FERC.

- **Order 827: Reactive Power Requirements for Non-Synchronous Generation (RM16-1)**

On June 16, 2016, the FERC issued a final rule ("*Order 827*") eliminating the exemptions for wind generators from the requirement to provide reactive power.¹⁰⁶ As a result, all newly interconnecting generators that have not yet executed a Facilities Study Agreement as of September 21, 2016 will be required to provide dynamic reactive power within the range of 0.95 leading to 0.95 lagging at the high-side of the generator substation. To implement this requirement, the FERC revised the *pro forma* LGIA, Appendix G to the *pro forma* LGIA, and the *pro forma* SGIA. Existing non-synchronous generators making upgrades to their generating facilities that require new interconnection requests may be required to provide reactive power if a transmission provider determines through that generator's System Impact Study that a reactive power requirement is necessary to ensure safety or reliability. *Order 827* recognizes technical differences and related costs between synchronous and non-synchronous generators. Unlike the *Reactive Power NOPR*, *Order 827* does not provide a partial exemption for when the generator's output is at 10% or less of its nameplate capacity; instead, non-synchronous generators must provide reactive power at all levels of real power output. *Order 827* does not institute any reactive power compensation changes. The FERC will consider proposed variations from the *pro forma* language based on (1) Regional Entity reliability requirements; (2) variations that are "consistent with or superior to" the Final Rule; and (3) "independent entity variations" from ISOs/RTOs. Per *Order 828*, compliance filings in response to *Order 827* must be combined with *Order 828* compliance filing and are due on or before October 5, 2016. *Order 827* will become effective September 21, 2016.

- **Order 825: Price Formation Fixes - Settlement Intervals/Shortage Pricing (RM15-24)**

Also on June 16, the FERC issued *Order 825*,¹⁰⁷ which revises FERC 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; (b) operating reserves transactions in its real-time markets at the same time interval it prices operating reserves; and (c) intertie transactions in the same time interval it schedules intertie transactions; and (ii) trigger shortage pricing for any dispatch interval during which a shortage of energy or operating reserves occurs. The FERC stated that adopting these reforms will align prices with resource dispatch instructions and operating needs,

¹⁰⁴ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,038 (Jan. 21, 2016) ("*Price Cap NOPR*").

¹⁰⁵ The *Price Cap NOPR* was published in the *Fed. Reg.* on Feb. 4, 2016 (Vol. 81, No. 23) pp. 5,951-5,965.

¹⁰⁶ *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 (June 16, 2016).

¹⁰⁷ *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 825, 155 FERC ¶ 61,276 (June 16, 2016) ("*Order 825*").

providing appropriate incentives for resource performance. *Order 825* will become effective September 13, 2016.¹⁰⁸

Compliance. Each RTO/ISO is required to submit a compliance filing with the tariff changes needed to implement this Final Rule within 120 days of the Final Rule’s September 13, 2016 effective date (on or before January 11, 2017). The FERC will allow a further 12 months from the compliance filing date for the tariff changes implementing reforms to settlement intervals to be effective, and 120 days from that same compliance filing date for the tariff changes implementing shortage pricing reforms to be effective. As noted in Section III above, the ISO’s and NEPOOL’s jointly filed Sub-Hourly Settlement Changes, which change to five minutes the settlement interval in the Real-Time Energy and Reserves Markets, are currently pending before the FERC.

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

On July 21, 2016, the FERC withdrew its NOPR¹⁰⁹ and terminated this proceeding, as it concurrently issued a new, superseding NOPR in RM16-17 (summarized above).

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.¹¹⁰ 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 May 9, 2016, the FERC held a technical conference to examine “concerns raised regarding the basis and need for the waiver.” Speaker presentations were 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. Initial comments were due May 31. Almost two dozen sets of initial comments were filed, raising numerous issues both in support and in opposition to the Algonquin proposal. Reply comments were due June 10, 2016 and were filed by Algonquin Gas Transmission, Sequent Energy Management, L.P. and Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG. This matter is pending before the FERC

¹⁰⁸ *Order 825* was published in the *Fed. Reg.* on June 30, 2016 (Vol. 81, No. 126) pp. 42,882-42,910.

¹⁰⁹ *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219 (Sep. 17, 2015) (“*Connected Entity NOPR*”).

¹¹⁰ *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);¹¹¹
- ◆ Empire Pipeline, Inc. (Docket No. RP16-300);¹¹²
- ◆ Iroquois Gas Transmission System, LP (Docket No. RP16-301);¹¹³ and
- ◆ Tuscarora Gas Transmission Company (Docket No. RP16-299);¹¹⁴

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. As previously reported, pre-hearing conferences were held in each proceeding that established dates for the commencement of discovery, hearing and initial decisions in each proceeding. Chief Judge Cintron then suspended the procedural schedule in each of these proceedings based on reports from each proceeding that parties had reached a settlement in principle that would fully resolve all issues set for hearing in their respective proceedings. In the *Empire* Proceeding, on June 16, Chief Judge Cintron issued an order granting Empire's motion for interim implementation of settlement rates. Interim implementation of the settlement rates permits reduced rates to be placed into effect pending the FERC's consideration of the settlement agreement to be filed. The agreement in principle achieves a reduction in Empire's tariff rates for its Connector Line, including reducing the "Year-Round Reservation" rate from \$9.9664 to \$8.8701, the "Winter Period Reservation" rate from \$13.3838 to \$12.7729, and the "Summer Period Reservation" rate from \$7.2063 to \$6.0824.

Since the last report, offers of settlement were filed in the Tuscarora and Empire Proceedings. After comments, the Tuscarora Settlement was certified to the Commission. The Empire settlement has not yet been certified. The preparation of settlement offers are still underway in the Columbia and Iroquois proceedings.

- **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 July 11, 2016, the FERC issued *Opinion 549*¹¹⁵ affirming Judge Cintron's August 13, 2015 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").¹¹⁶ 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. The FERC agreed, finding that the "record shows that BP's trading practices during the Investigative Period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions."¹¹⁷ Accordingly,

¹¹¹ *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,027 (2016), *reh'g denied*, 154 FERC ¶ 61,275 (Mar. 31, 2016).

¹¹² *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016), *reh'g denied*, 154 FERC ¶ 61,274 (Mar. 31, 2016).

¹¹³ *Iroquois Gas Transmission System, LP*, 154 FERC ¶ 61,028 (2016).

¹¹⁴ *Tuscarora Gas Transmission Company*, 154 FERC ¶ 61,030 (2016), *reh'g denied, clarif. granted*, 154 FERC ¶ 61,273 (Mar. 31, 2016).

¹¹⁵ *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹¹⁶ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹¹⁷ *BP Penalties Order* at P 3.

the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in “unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index.” The \$20.16 million civil penalty was at the top of the FERC’s Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP’s violation of a FERC order within 5 years of the scheme. BP’s penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP’s request for rehearing of the order establishing a hearing in this proceeding.¹¹⁸ BP was directed to pay the civil penalty and disgorgement amount within 60 days of the *BP Penalties Order*.

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹¹⁹ 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 penalties based on Total’s and TGPL’s significant control and authority over TGPNA’s daily operations. Following an extension of time granted on May 10, Respondents have until July 12, 2016 to file their answer. OE Staff’s reply will be due 75 days after Respondents’ answer is filed.

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.

Staff Notices of Alleged Violations (IN__ - __)

David Silva. On August 3, 2016, the FERC issued a notice that Staff has preliminarily determined that David Silva (“Silva”) violated the FERC’s Prohibition of Natural Gas Market Manipulation by fraudulently trading physical basis at Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of his financial basis position (by selling physical basis at Tetco M3 at arbitrarily low prices early in the morning to benefit a large short financial basis position acquired before bidweek, a large part of which he repurchased after making his physical basis sales).

National Energy & Trade, L.P. The FERC issued a second notice on August 3 that Staff has preliminarily determined that National Energy & Trade, L.P. (“National Energy”) violated the FERC’s Prohibition of Natural Gas Market Manipulation by fraudulently trading physical basis at (i) Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of its financial basis position (by selling physical basis at

¹¹⁸ *BP America Inc. et al.*, 147 FERC ¶ 61,130 (May 15, 2014) (“*BP Hearing Order*”), *reh’g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

¹¹⁹ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

Tetco M3 at arbitrarily low prices early in the morning to benefit a large short financial basis position acquired before bidweek, a large part of which it repurchased after making its physical basis sales) and (ii) at Henry Hub during the April 2014 bidweek to increase the value of its financial exposure (by trading physical basis after the close of the NYMEX solely to benefit National Energy's exposure to the Henry Hub Inside FERC index).

Recall that Notices of Alleged Violations (“NoVs”) are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff's conclusions regarding the subject's conduct.¹²⁰ NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **New England Pipeline Proceedings**

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

- ***Algonquin Incremental Market Project (AIM Project) (CP14-96)***
 - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate Feb. 28, 2014.
 - ▶ 342,000 dekatherms/day (Dth/d) of firm capacity to NY, CT, RI and MA.
 - ▶ 37.6 miles of take-up, loop and lateral pipeline facilities in NY, CT, and MA and system modifications in NY, CT and RI. The system upgrades would also require the removal of some facilities.
 - ▶ 10 firm shippers: Yankee Gas, NSTAR, Connecticut Natural Gas, Southern Connecticut, Narragansett Electric, Colonial Gas, Boston Gas, Bay State, Norwich Public Utilities, and Middleborough Gas and Electric (eight LDCs and two municipal utilities).
 - ▶ Final Staff-prepared Environmental Impact Statement (EIS) issued Jan. 23, 2015.
 - ▶ Certificate of public convenience and necessity granted Mar. 3, 2015.¹²¹ 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).
- ***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.

¹²⁰ See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh'g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

¹²¹ 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).

- ▶ 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, 2016.¹²²
 - ▶ 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.
 - ▶ On May 16, 2016, the New York Attorney General filed a complaint against Constitution at the FERC (CP13-499) seeking a stay of the December 2014 order granting the original certificates, as well as alleging violations of the order, the Natural Gas Act, and the Commission's own regulations due to acts and omissions associated with clear-cutting and other construction-related activities on the pipeline right of way in New York.
 - **Salem Lateral Project (CP14-522)**
 - ▶ Algonquin Gas Transmission filed application Jul 10, 2013.
 - ▶ 115,000 Dth/d of firm capacity.
 - ▶ 1.2 miles of pipeline to 630 MW Salem Harbor Station and other Salem, MA facilities.
 - ▶ Footprint Power sole firm customer.
 - ▶ FERC Staff-prepared EA issued Dec 2, 2014.
 - ▶ Certificate of public convenience and necessity granted May 14, 2015.¹²³
 - ▶ Construction began in May 2015.
 - ▶ In-Service: November 2016 (anticipated).

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report.

¹²² *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).

¹²³ Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

XV. Federal Courts

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

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

Underlying FERC Proceeding: ER15-1137¹²⁴

Petitioner: UWUA Local 464 and Robert Clark

Robert Clark and UWUA Local 464 (“Petitioners”) filed a petition for review of the FERC’s orders on the FCA9 Results Filing on February 24, 2016. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions were filed on March 28, 2016. The FERC filed a certified index to the record on April 11. On April 13, the Court granted NEPGA’s and CPV Towantic’s interventions. On July 25, 2016, Petitioners filed an unopposed motion requesting that the Court stay briefing of this appeal until 45 days after the Court rules on the FCA8 Results appeal (*see* 14-1244, 14-1246 (consolidated) below), which is currently scheduled for oral argument on September 6, 2016. The Court granted. On July 27, the Court granted Petitioners’ motion, ordering that this case be held in abeyance pending further order of the Court. The Court directed the parties to file motions to govern future proceedings in this case within 45 days of the disposition of the FCA8 Results appeal proceeding (14-1244).

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

Underlying FERC Proceeding: ER14-1050;¹²⁵ EL14-52;126 EL15-25¹²⁷

Petitioner: 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 July 18, NEPGA submitted its Petitioner Brief. On July 25, Entergy indicated that it would not file an Intervenor for Petitioner Joint Brief. Remaining submissions are to be filed as follows: Respondent Brief, September 23; Intervenor for Respondent Joint Brief; September 30; Petitioner Reply Brief; October 31; Intervenor for Petitioner Joint Reply Brief, October 31; Deferred Appendix, November 14; Final Briefs, November 28.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**

Underlying FERC Proceedings: EL13-33; EL14-86¹²⁸

Appellants: New England Transmission Owners

The TOs filed a petition for review of the FERC’s orders in the 2012 and 2014 ROE complaint proceedings on July 13, 2015. 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

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

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

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

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

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

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 May 16, the parties filed their third 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; ER13-196¹²⁹

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

As previously reported, NETOs¹³⁰ and NESCOE, *et al.*, filed a petition for review of the FERC's orders in the *Order 1000* Compliance Filing proceeding on May 15, 2015. Briefing has been completed. However, since the last Report, the FERC filed supplemental authority with respect to *Oklahoma Gas & Electric Co. v. FERC*, No. 14-1281 (D.C. Cir. July 1, 2016). On July 22, Counsel for LS Power and NextEra responded to the FERC's *Oklahoma Gas* authorities submission. The date for oral argument date has not been scheduled.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consolidated)**
Underlying FERC Proceeding: EL11-66¹³¹
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,¹³² 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, 2015. On August 10, 2015, 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"¹³³ and the TOs¹³⁴ filed their opening briefs. On December 8, the clerk's office sent to counsel a letter noting the use of uncommon acronyms and abbreviations in briefs filed with the court (parties are expected to limit the use of acronyms and to avoid using acronyms that are not widely known), advising counsel that they could submit within a week revised briefs eliminating any uncommon acronyms used in previously filed briefs, which the TOs did on December 15. The FERC 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. On May 18, CT PURA supplemented the deferred appendix. All briefing is complete. This matter is pending before the Court.

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

¹³⁰ "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.

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

¹³² "EMCOS" are Taunton, Reading, Hingham, and Braintree.

¹³³ "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.

¹³⁴ In this case, TOs are CMP, Emera Maine, Eversource, National Grid, NHT, UI, and Vermont Transco.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹³⁵ EL15-23¹³⁶
Petitioners: 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 June 16, NEPGA and Exelon filed Petitioners' Briefs. PSEG submitted its Intervenor for Petitioner Brief on July 7. Remaining submissions are to be submitted as follows: Respondent (FERC) Brief, August 15; Intervenor for Respondent Brief, September 6; Petitioners' Reply Brief, September 20; Intervenor for Petitioner, Reply Brief, October 4; deferred appendix, October 11; Final Briefs, October 25.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
Underlying FERC Proceeding: ER14-1409¹³⁷
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 Connecticut¹³⁸ 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 Intervenor for Respondent (EPSA, GenOn Energy Management, HQUS, NRG, and NEPGA). As reported at the Summer Meeting, oral argument has been set for September 6, 2016.

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

Entergy¹³⁹ 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 NY PSC Commissioners' order ("Order") approving an agreement to keep NRG's 435 MW Dunkirk facility in the NYISO market, "repowered" as a natural gas-fired (rather than coal-fired) plant (the "Term Sheet")¹⁴⁰ is preempted by the FPA and invalid

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

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

¹³⁷ 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).

¹³⁸ For purposes of this proceeding, "Connecticut" means the CT AG, CT PURA and CT OCC.

¹³⁹ Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

¹⁴⁰ 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

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 Supreme Court's *Hughes*¹⁴¹ decision summarized in earlier Reports.

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, briefing on how *Hughes* impacts discovery and the issue of a stay in this case was filed on May 6. Also on May 6, the Parties filed updated Civil Case Management Plans. On May 10, the trial judge issued a protective order adopting a confidentiality agreement should discovery proceed. On May 20, 2016, the NYPSC requested that the stay of discovery be continued to afford the NYSPC the opportunity to consider in a separate proceeding the impact of the *Hughes* case and other developments on the NYPSC's prior authorization of the Term Sheet, subject to reporting to this Court, advising the Court that it had contemporaneously solicited comments in in NYPSC Case 12-E-0577.¹⁴²

On June 3, the Court found this case appropriate for referral to and order the case to the Mandatory Mediation Program. The Mediator will encourage and assist the parties in reaching a resolution to their dispute, but may not compel or coerce the parties to settle. Mediation Reports are to be filed within seven days after the close of each mediation session. The deadline for completion of mediation is October 3, 2016.

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.

¹⁴¹ *Hughes v. Talen Energy Marketing LLC*, 578 U.S. ____ (2016) ("*Hughes*").

¹⁴² The NYPSC asked for comments on whether "National Grid should still be authorized to recover costs under the Term Sheet given various intervening events subsequent to the Commission's approval. In particular, NRG/Dunkirk mothballed the Dunkirk facility in January 2016, and has not taken the actions necessary to add natural gas firing capability at the Dunkirk facility by September 1, 2015, or otherwise. Meanwhile, National Grid has completed certain transmission upgrades that it previously could defer and avoid, in contemplation of the refueled Dunkirk facility being available. Moreover, on April 19, 2016, the United States Supreme Court issued a decision with respect to preemption of a State-ordered contract for the sale of electric generation capacity, which may implicate the Dunkirk/National Grid Term Sheet. *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288 (2016) (*Hughes*). For instance, would *Hughes* require modification of the Term Sheet? Similarly, would *Hughes* be considered a "Change of Law" under the provisions of the Term Sheet providing for termination?

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