

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of September 7, 2016

The following activity, as more fully described in the attached litigation report, has occurred since the report dated August 3, 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)	Aug 12 Aug 26 Aug 29 Aug 30 Aug 31	NextEra/PSEG file answer; EDF answers Eversource and Algonquin motions to dismiss NextEra/PSEG file motion to lodge/status update Algonquin answers NextEra/PSEG Aug 12 answer Algonquin answers NextEra/PSEG Aug 26 motion FERC dismisses Complaint, without prejudice, as not ripe for FERC review
2	Base ROE Complaint IV (2016) (EL16-64)	Aug 4 Aug 19	EEI submits motion to intervene out-of-time and protest EMCOS, CT PURA, MMWEC, NHEC answer EEI's Aug 4 motion
3	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Aug 30	4th settlement conference held; Settlement Judge Dring issues status report recommending settlement judge procedures be continued; 5th settlement conference scheduled for Nov 18

II. Rate, ICR, FCA, Cost Recovery Filings



5	FCA11 De-List Bids Filing (ER16-2215)	Aug 5 Aug 29	Eversource intervenes FERC accepts filing
5	FCA10 Results Filing (ER16-1041)	Aug 11	FERC issues tolling order affording it additional time to consider Dominion, UWUA Local 464 requests for rehearing of <i>FCA10 Results Filing Order</i>

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



* 6	Dual-Fuel Audit NCPC Calculation Revisions (ER16-2529)	Sep 1	ISO-NE and NEPOOL jointly file changes; comment date Sep 22
* 6	FCM Enhancements (ER16-2451)	Aug 19 Aug 22- Sep 9	ISO-NE and NEPOOL jointly file FCM Enhancements; comment date Sep 9 ConEd, Emera Energy Services, Entergy, Eversource, Exelon, National Grid, NRG intervene
7	Waiver Request: DER FCM Qualification Reqs (Genbright) (ER16-2283)	Aug 12 Aug 16	National Grid intervenes ISO-NE protests waiver request; National Grid asserts waiver may concern capacity for which National Grid has asserted title and which National Grid is entitled to seek to qualify
7	CSO Terminations: Enerwise (ER16-2137)	Aug 19 Aug 23	ISO-NE supplements filing FERC accepts termination of a portion of Enerwise's CSOs
7	FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126)	Aug 8 Aug 30	ISO-NE answers NEPGA/Dominion protests FERC conditionally accepts compliance filing; directs further Tariff changes to be filed on or before Oct 31, 2016
8	Waiver Request: RTEG Resource Type/De-List (ISO-NE) (ER16-1904)	Aug 8 Sep 7	FERC grants ISO-NE waiver request, eff. Jun 21, 2016 CPower requests rehearing of Aug 8 order

10	2013/14 Winter Reliability Program Remand Proceeding (ER13-2266)	Aug 8	FERC issues order on remand; directs ISO-NE to obtain from Program participants the basis for their bids and to file by Dec 6, 2016, a compilation of that information, an IMM analysis of that information, and its recommendation as to the bids' reasonableness
----	--	-------	--

IV. OATT Amendments / TOAs / Coordination Agreements

10	IRS Normalization Requirements changes to OATT Attachment F (ER16-2378)	Aug 5 Aug 8-24	PTO AC submits changes to OATT Attachment F Exelon, National Grid, NRG, VELCO intervene
----	---	-------------------	--

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

* 10	Schedule 21-UI: IRS Normalization ADIT Changes (ER16-2454)	Aug 22	UI files changes; comment date Sep 10
* 10	Schedule 21-CMP: IRS Normalization ADIT Changes (ER16-2386)	Aug 5 Aug 17-24	CMP files changes National Grid, NRG intervene
11	Schedule 22 LGIA: Exelon West Medway II (ER16-2024)	Aug 15	FERC accepts LGIA, eff. Jun 14, 2016
11	Schedule 21-NEP Deepwater Wind Indemnification Agreement (ER16-2012)	Aug 16	FERC accepts agreement, eff. May 10, 2016
11	Schedule 21-NEP: Granite Ridge Prior Service Agreement Termination (ER16-1921)	Aug 19	FERC accept notice of termination, eff. Aug 31, 2015
11	Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)	Aug 15 Aug 16 Aug 26	Settlement Judge Hurt issues status report recommending settlement judge procedures be continued 2nd settlement conference held; 3rd scheduled for Oct 5 FERC accepts updated version of ISO-NE OATT Attachment F, eff. Jun 1, 2016
12	Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.)	Aug 31	ReEnergy moves to intervene out-of-time

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 13	Capital Projects Report - 2016 Q2 (ER16-2415)	Aug 12 Aug 22 Sep 2	ISO files Q2 Report NEPOOL intervenes and files comments supporting Q2 Report Eversource intervenes
* 14	IMM Quarterly Markets Reports - 2016 Spring (ZZ16-4)	Aug 26	IMM files 2016 Spring Report
* 14	ISO-NE FERC Form 3Q (2015/Q2) (not docketed)	Aug 26	ISO submits quarterly financial report for 2016 Q2

14	ISO-NE FERC Form 714 (not docketed)	Aug 12	ISO-NE submits revised FERC Form 714
----	--	--------	--------------------------------------

IX. Membership Filings

*	15 September 2016 Membership Filing (ER16-2535)	Sep 1	Memberships: Alphataraxia Nickel; Life Energy; Termination: Cape Wind; comment date Sep 22
	15 August 2016 Membership Filing (ER16-2321)	Aug 26	FERC accepts (i) the memberships of: CES Retail Energy Supply; Energy GPS; Gravity Renewables; Inertia Power III; (ii) the terminations of: Dynegy Resources Management, Energy America, Provider Power CT; and (iii) ENGIE Resources, LLC change in name
	15 July 2016 Membership Filing (ER16-2104)	Aug 16	FERC accepts (i) the memberships of Cumulus Master Fund, Jeff Jones, and National Gas & Electric; (ii) the termination of EnergyConnect; and (iii) CleanChoice Energy's name change

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

*	15 Revised Reliability Standard: COM- 001-3 (RD16-9)	Aug 15	FERC files revised COM-001 Standard for approval; comment date Sep 14
	15 Retirement of NPCC Regional Reliability Standard PRC-002- NPCC-001 (RD16-8)	Aug 16	FERC approves retirement of Standard and definitions, eff. Aug 16
*	16 New Reliability Standards: PRC-027- 1 and PER-006-1 (RM16-22)	Sep 2	FERC files PRC-027-1 and PER-006-1 Standards for approval

XI. Misc. - of Regional Interest

*	20 203 Application: CPV Towantic (EC16-167)	Aug 16	CPV Towantic seeks authorization for a change in its upstream ownership to now include Ullico Infrastructure Master Fund, L.P.
	20 203 Application: Belmont/NSTAR (EC16-145)	Aug 16	Belmont Municipal Light Department intervenes out-of-time
	20 203 Application: GDF Suez Energy Resources/Atlas Power (Dynegy/ECP) (EC16-93)	Aug 4 Aug 9	Atlas Power answers Public Citizen Jul 29 protest Public Citizen answers Atlas' Aug 4 answer
*	21 D&E Agreement Termination Notice: NSTAR/Exelon West Medway (ER16-2467)	Aug 24 Aug 25	NSTAR files notice of cancellation; comment date Sep 14 Exelon intervenes
*	21 IA Amendment - CMP-Brookfield White Pine Hydro (ER16-2416)	Aug 12	CMP files IA Amendment
	21 D&E Agreement: CL&P/PSEG Power Conn. (ER16-2261)	Aug 29	FERC accepts Agreement, eff. Jul 5, 2016
	22 Use Rights Transfer Agreement: NSTAR/HQUS (ER16-2189)	Aug 19	FERC accepts agreement for the transfer to HQUS, for up to 3 years, of Use Rights on the Phase I/II HVDC line, eff. Jan 1, 2018
	22 Emera MPD OATT Changes (ER15-1429; EL16-13; ER12- 1650) (consol.)	Aug 31	ReEnergy Biomass Operations LLC intervenes out-of-time
*	23 FERC Enforcement Action: Saracen Energy Midwest, LP (IN16-7)	Aug 22	FERC approves Agreement resolving OE investigation of Saracen's violation of SPP OATT; Saracen agrees to pay \$25,000 civil penalty

XII. Misc. - Administrative & Rulemaking Proceedings

24	Competitive Transmission Development Rates (AD16-18)	Aug 5 Aug 8 Aug 11 Aug 15	Utility Trade Associations request extension of time (to and including Oct 3, 2016) to comment Delaware Public Service Commission files comments PJM IMM intervenes FERC grants extension of time, to and including Oct 3, to file post-technical conference comments
25	Reactive Supply Compensation in RTO/ISO Markets (AD16-17)	Aug 19	EDF Renewables files reply comments
25	PURPA Implementation (AD16-16)	Sep 6	FERC invites post-technical conference comments; comment date Nov 7, 2017
26	NOPR: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)	Aug 11	FERC holds technical conference
25	NOPR: Regulations Implementing FAST Act and Amending CEII Regulations (RM16-15)	Aug 18-19 Aug 30	Over 20 parties submit comments PJM replies to ISO-NE/SPP Aug 19 comments
27	Order 828: Small Generator Ride Through Requirements (RM16-8)	Aug 8	FERC extends due date for single <i>Order Nos. 827/828</i> compliance filing to Oct 14, 2016
28	Order 827: Reactive Power Reqs. for Non-Synchronous Generation (RM16-1)	Aug 8 Aug 11	FERC extends due date for single <i>Order Nos. 827/828</i> compliance filing to Oct 14, 2016 FERC issues tolling order to afford it additional time to consider CAISO request for clarification and/or rehearing

XIII. Natural Gas Proceedings

29	Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)	Aug 31	FERC rejects Algonquin's request for a waiver that would have exempted gas-fired generators from capacity release bidding requirements but accepts Algonquin's proposal to exempt from bidding an EDC's capacity release to an asset manager who is required to use the released capacity to carry out the EDC's obligations under the state-regulated electric reliability program
30	Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)	Aug 11 Aug 15 Aug 18 Aug 25 Aug 29	<i>Empire</i> : FERC staff and Talisman Energy support settlement <i>Columbia</i> : Judge Dring certifies settlement to the Commission <i>Iroquois</i> : parties submit stipulation and settlement agreement <i>Empire</i> : Judge Cianci certifies settlement to the Commission <i>Iroquois</i> : FERC Staff, LDCs, other parties support settlement
30	Natural Gas-Related Enforcement Actions (BP (IN13-15)) (David Silva IN16-6) (NET (IN16-5))	Aug 10 Sep 1	BP requests rehearing of <i>BP Penalties Order</i> assessing BP a \$20.16 million civil penalty and directing BP to disgorge \$207,169 plus interest in unjust profits FERC approves Agreements resolving Silva and NET Market Manipulation investigations; Silva agrees to a one-year ban from FERC-jurisdictional natural gas markets and \$40,000 civil penalty ; NET agrees to \$1.16 million civil penalty and disgorgement of \$305,781

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

XV. Federal Courts



34	Base ROE Complaints II & III (2012 & 2014) (15-1212)	Aug 15	Parties file 4th 90-day status report
36	FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)	Aug 15 Sep 6	FERC files Respondent Brief NESCOE/NECPUC/CT PURA/CT OCC file Intervenor for Respondent Brief
36	FCA8 Results (14-1244, 14-1246 (consolidated))	Aug 16 Aug 23 Aug 24 Sep 6	Public Citizen files letter advising of additional authority FERC opposes Public Citizen Aug 16 letter EPSA opposes Public Citizen Aug 16 letter Oral Argument held before Judges Brown, Srinivasan and Wilkins

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: September 8, 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 September 7, 2016. If you have questions, please contact us.¹

I. Complaints/Section 206 Proceedings
--

- **NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Gas Pipeline-Related Market Price Suppression (EL16-93)**

On August 31, the FERC dismissed, as not ripe for FERC review, the June 24, 2016 complaint filed by NextEra Energy Resources (“NextEra”) and the PSEG Companies (“PSEG”, and together with NextEra, “Complainants”).² As previously reported, the complaint sought a FERC order that would have (i) directed 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) established a post-filing technical conference to address the proposed changes/issues. Complainants further sought to have the Tariff changes effective for FCA11.

A number of responses to the Complaint were filed. 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. 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). Additional 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.

On August 31, the FERC dismissed the Complaint, finding Complainants’ allegations speculative and the Complaint lacking sufficient evidence of harm.³ The FERC found that, as a result of recent events,⁴ the

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

² *NextEra Energy Resources, LLC and PSEG Companies v. ISO New England Inc.*, 156 FERC ¶ 61,150 (Aug. 31, 2016).

³ *Id.* at P 16.

⁴ Notably, the Massachusetts SJC decision essentially prohibiting the MA DPU from approving cost recovery for the precedent agreements absent a legislative remedy, which is unlikely to occur this year; the Aug. 22, 2016 withdrawal of Eversource’s and National Grid EDCs’ petitions for MA DPU approval of the Access Northeast Project-related long-term contracts; and the FERC’s order in Docket No. RP16-618 rejecting an aspect of Algonquin’s proposal to establish a blanket exemption from bidding for capacity releases by EDCs contracting under a state-regulated electric reliability program (or their agents or asset managers) to natural gas-fired electric generators serving ISO-NE (*see* Section XIII).

EDCs are unable to recover costs from ratepayers or release capacity on the Access Northeast Project under the proposed capacity release exemption. In addition, the size and scope of the Access Northeast Project was as yet unknown.⁵ Accordingly, the FERC found that it did not have “before it the concrete facts necessary to determine whether the tariff will be unjust and unreasonable,” and that Complainants failed to meet the requirements of section 206(a) of the Federal Power Act (“FPA”).⁶

Unless the August 31 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), Jamie Blackburn (202-218-3905; jblackburn@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

This 4th ROE Complaint remains pending before the FERC. As previously reported, EMCOS⁷ 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 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.

Since the last Report, on August 4, the Edison Electric Institute (“EEI”) submitted a motion to intervene out-of-time and protest “for the limited purpose of addressing the broad industry-wide ramifications of a threshold legal and policy issue presented by this Complaint.” Without taking a position on the merits of the Complaint, EEI asserted that the “the endless cycle of ROE litigation in New England” and the FERC’s review of successive ROE complaints “creates uncertainty that now threatens needed infrastructure investments” without evidence that successive complaints will produce major changes to the Base ROE. EEI stated that this ROE complaint “demonstrates the now critical need for a new approach that it is consistent with the statutory limitation on refunds, preserves just and reasonable rates, promotes efficient use of resources by all parties, and provides the certainty needed to support capital investment in the development of transmission infrastructure.” On August 19, EMCOS, CT PURA, MMWEC, and NHEC answered the EEI motion, urging the FERC to deny or reject the motion.

This matter remains 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).

⁵ Algonquin’s project is currently in the Commission’s pre-filing process, and Algonquin expects to make its section 7 certificate application in the fourth quarter of 2016. See Docket No. PF16-1-000.

⁶ *Id.* at P 15.

⁷ “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.

- **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).⁸ The FERC directed the ISO to submit a compliance filing 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).⁹ That compliance filing was submitted on July 1 in Docket ER16-2126 (*see* Section III below). 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”).¹⁰ The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”.¹¹ 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.¹² Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.¹³ The FERC-established refund date is January 4, 2016.¹⁴ 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. Four settlement conferences have thus far been held: January 19, March 24, April 28, and August 30. Judge Dring issued his latest status report on August 30 indicating that the parties are making progress toward settlement and recommending that the settlement procedures be continued. The August 30 notice also indicated that a 5th (telephonic) settlement conference is scheduled for November 18, 2016. The Transmission Committee is being kept apprised of settlement efforts.

⁸ *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*.

⁹ *Id.* at PP 22-23.

¹⁰ *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).

¹¹ *Id.* at P 8.

¹² *Id.* at P 11.

¹³ *Id.*

¹⁴ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

- **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.”¹⁵ 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.”¹⁶ Finding that “concerns with continued use of vertical demand curves weigh more heavily than they did a year ago”,¹⁷ and that “the general challenges cited by ISO-NE [explaining the delay in developing zonal sloped demand curves] do not justify further delay”,¹⁸ the FERC directed that Tariff changes be filed, following a request for extension granted, by April 15, 2016.¹⁹ Interventions in EL16-15 were due January 19, 2016 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).

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

As previously reported, the FERC, in response to second (EL13-33)²⁰ and third (EL14-86)²¹ complaints regarding the TOs’ 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;²² the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²³ and, because of “common issues of law and fact”, consolidated the two proceedings for purposes of hearing and decision,

¹⁵ *ISO New England Inc. et al.*, 153 FERC ¶ 61,338 (Dec. 28, 2015).

¹⁶ *Id.* at P 11.

¹⁷ *Id.* at P 15.

¹⁸ *Id.* at P 14.

¹⁹ *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.

²⁰ The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition (“NICC”, and together, the “2012 Complainants”), challenged the TOs’ 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

²¹ The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General (“MA AG”), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the “2014 ROE Complainants”), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

²² *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al.*, 147 FERC ¶ 61,235 (June 19, 2014) (“2012 Base ROE Initial Order”), *reh’g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

²³ *Mass. Att’y Gen. et al. -v- Bangor Hydro et al.*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh’g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

with the FERC finding it “appropriate for the parties to litigate a separate ROE for each refund period.”²⁴ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²⁵ On July 13, 2015, the TOs appealed those orders to the DC Circuit Court of Appeals (*see* Section XIV below), and that appeal remains pending.

Hearings and Trial Judge Initial Decision. Initial hearings on these matters were completed on July 2, 2015. In mid-December, Judge Sterner reopened the record for the limited purpose of having the discounted cash flow (“DCF”) calculations re-run in accordance with the FERC’s preferred approach and re-submitted. A limited hearing on that supplemental information was held on February 1, 2016. On March 22, 2016, Judge Sterner issued his 939-paragraph, 371-page Initial Decision, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.²⁶ The Decision also lowered the ROE ceilings. Judge Sterner’s decision, if upheld by the FERC, would result in refunds totaling as much as \$100 million, largely concentrated in the EL13-33 refund period. 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)**

On August 29, the FERC accepted the ISO’s July 15 filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the March 18 FCA11 Existing Capacity Retirement Deadline.²⁷ The ISO reported that 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, and because each bid was not greater than 20 MW and the two suppliers were not Affiliates, the IMM was not required to perform a review of the bids. The filing was accepted effective as of September 14, as requested. Unless the August 29 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Requests for rehearing of the FERC’s June 16, 2016 order accepting the results of the tenth FCA (“FCA10”),²⁸ 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 (“CSO”) 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 raised the same arguments it raised in the FCA8 and FCA9

²⁴ *Id.* at P 27 (for the refund period covered by EL13-33 (i.e., Dec. 27, 2012 through Mar. 27, 2014), the ROE for that particular 15-month refund period should be based on the last six months of that period; the refund period in EL14-86 and for the prospective period, on the most recent financial data in the record).

²⁵ *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al. and Mass. Att’y Gen. et al. -v- Bangor Hydro et al.*, 151 FERC ¶ 61,125 (May 14, 2015).

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

²⁷ The ISO was required to submit this filing pursuant to Market Rule 1 § 13.8.1(a).

²⁸ *ISO New England Inc.*, 155 FERC ¶ 61,273 (June 16, 2016) (“*FCA10 Results Order*”).

proceedings, and argued, additionally, that in the FCA 10 proceeding, because there was no independent analysis of retiring units' actual costs, and inclusion of such units' capacity in the FCA at those costs, there was no assurance that the auction was workably competitive and the results just and reasonable. On August 11, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. If you have any questions 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 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 was not 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

- **Dual-Fuel Audit NCPC Calculation Revisions (ER16-2529)**

On September 1, 2016, the ISO and NEPOOL jointly filed changes to the Tariff to revise how a resource's Net Commitment Period Compensation ("NCPC") is calculated when it is subject to a dual-fuel audit using a higher-priced fuel than the fuel that provided the basis for the generator's Day-Ahead Energy Market Supply Offer ("Dual-Fuel NCPC Audit Changes"). The Dual-Fuel NCPC Audit Changes were supported unanimously by the Participants Committee – Reliability Committee-recommended changes at its June 23 Summer Meeting (Consent Agenda Item #2) and Markets Committee-recommended changes at its August 5 meeting (Consent Agenda Item #2). A November 1, 2016 effective date was requested. Comments on this filing are due on or before September 22, 2016. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Enhancements (ER16-2451)**

On August 19, 2016, the ISO and NEPOOL jointly filed changes to the Tariff to increase liquidity in the FCM by increasing Market Participant opportunities to enter into reconfiguration auctions and bilateral contracts for the exchange of CSOs ("FCM Enhancements"). Specifically, the FCM Enhancements (i) modify certain FCM qualification rules to facilitate the ability of New Capacity Resources to supply capacity beginning four months after participating in their first FCA; (ii) provide Import Capacity Resources backed by one or more External Resources the opportunity (currently available to generators and demand response) to provide capacity beginning one or two years after participating in their first FCA; and (iii) establish a new form of bilateral contracting in which Market Participants can, as the Capacity Commitment Period approaches, trade CSOs for a seasonal strip of CSOs. The FCM Enhancements include several smaller improvements as well, including the elimination of a requirement that the ISO make a FERC filing in order to terminate the CSO of a resource that has voluntarily withdrawn from the FCM resource development process. The FCM Enhancements were supported unanimously by the Participants Committee at its June 23 Summer Meeting. An October 19, 2016 effective date was requested. Comments on this filing are due on or before September 9, 2016. Thus far doc-less interventions have been filed by ConEd, Emera Energy Services, Entergy, Eversource, Exelon, National Grid, and NRG. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, Genbright requested, on July 26, 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 (“DER”), including solar and battery storage, for FCA11. Genbright stated 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 went 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 were filed on August 16 by the ISO and National Grid. The ISO opposed Genbright’s request (asserting that the Genbright request does not meet the FERC’s standard for waiver requests). National Grid asserted that “Genbright’s request for waiver may concern capacity for which National Grid has asserted title and which National Grid is entitled to seek to qualify”. Doc-less interventions were filed by NEPOOL and ConEd. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On August 23, the FERC accepted the termination of a portion of the following CSOs held by Project Sponsor Enerwise Global Technologies Inc. (d/b/a CPower): Resource Nos. 16687, 37996, 38122, 38123,²⁹ 38132, and 38136. 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. Unless the August 23 order is challenged, portions of the CSOs will be terminated as described and this proceeding will be concluded. 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)**

As previously reported, the ISO and NEPOOL jointly filed, on July 1, 2016, changes in compliance with the *Manchester Street FCA10 Order* (see Section I, EL16-38 above). The changes (1) required 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) allowed 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.

Dominion and NEPGA protested the July 1 filing. *Dominion* objected to the proposed (i) limit on 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) requirement for composite offers between qualifying new winter incremental generating capacity and excess existing summer generating capacity at the same generating resource. *NEPGA* requested 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. The ISO answered the Dominion and NEPGA protests on August 8, 2016

Order Conditionally Accepting Filing and Directing Further Compliance Filing. On August 30, the FERC conditionally accepted the compliance filing,³⁰ but persuaded by the Dominion and NEPGA protests, agreed that the ISO (i) should treat new winter incremental capacity in the same manner as new summer

²⁹ On August 19, the ISO supplemented its filing to clarify that Resource No. 38123 is being partially terminated for the 2017/18, 2018/19, and 2019/20 Capacity Commitment Periods.

³⁰ *ISO New England Inc.*, 156 FERC ¶ 61,144 (Aug. 30, 2016).

incremental capacity,³¹ and (ii) allow new incremental capacity and the corresponding matched excess existing capacity at the same resource to elect the price lock-in.³² Accordingly, the FERC directed the ISO, on or before October 31, 2016, to submit a further compliance filing with Tariff language (i) requiring the ISO to automatically match new winter incremental capacity with excess existing summer qualified capacity at the same resource, and (ii) allow new incremental capacity and the corresponding matched excess existing capacity at the same resource to elect the price lock-in.³³ Revised Tariff language will be considered by the Markets Committee at its September meeting. 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)**

On August 8, the FERC granted the limited waiver requested by the ISO of Tariff Sections III.13.1.4.2.5.2, III.13.1.4.3.1.2 & III.13.1.2.3.1.1.³⁴ The waiver was granted effective June 21, 2016, as requested. As previously reported, the ISO requested the waiver in order 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, 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. In granting the waiver, the FERC rejected CPower’s request for limited modifications thereto, finding CPower’s proposed modification “beyond the scope of ISO-NE’s instant proposal,” and that it “would decrease incentives for RTEG market participants to exhaust existing remedies”. The FERC also found “speculative CPower’s characterization that applying the FCA Starting Price to the Third Annual Reconfiguration Auction, rather than the FCA Payment Rate, would essentially cause a ‘penalty’.”³⁵ On September 7, CPower requested rehearing of the *ISO RTEG Waiver Request Order*. The CPower request for rehearing is pending before the FERC, with FERC action required on or before October 7, 2016, or the request will be deemed denied. 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).

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

Rehearing remains pending of the FERC’s *Resource Retirement Reforms Order*.³⁶ 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

³¹ *Id.* at P 19.

³² *Id.* at P 25.

³³ *Id.* at PP 19, 25.

³⁴ *ISO New England Inc.*, 156 FERC ¶ 61,096 (Aug. 8, 2016) (“*ISO RTEG Waiver Request Order*”), *reh’g requested*.

³⁵ *Id.* at P 19.

³⁶ *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.

an FCA,”³⁷ which were filed with and accepted by the FERC.³⁸ All other protests and 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. 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*.³⁹ As previously reported, the FERC conditionally accepted, on May 30, 2014, revisions to the FCM rules, jointly submitted by the ISO and NEPOOL, that establish a system-wide sloped demand curve (“Demand Curve Changes”).⁴⁰ The Demand Curve Changes defined the shape of the system-wide sloped demand curve (with key points defined by CONE and the 0.1 days/year LOLE target), extended the period during which a Market Participant may “lock-in” the capacity price for a new resource from five to seven years, establish a limited renewables resource exemption, and eliminated, at the system-wide level, the administrative pricing rules that were necessary in certain market conditions under the vertical demand curve construct. In response to challenges, the FERC denied rehearing of the *Demand Curve Order*,⁴¹ but clarified (agreeing with Exelon and Entergy) that a resource that elects to utilize the renewables minimum offer price rule exemption should not also be allowed to utilize the new resource lock-in.⁴² A compliance filing clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in was submitted on March 2, 2015, accepted on May 1, and became effective on May 2, 2015.⁴³ NextEra, NRG and PSEG petitioned the DC Circuit Court of Appeals for review of the FERC’s Demand Curve orders (March 30, 2015). Following submission of Petitioner and Intervenor for Petitioner briefs (October 5 and 20, 2015, respectively), the FERC, on November 20, 2015, requested that the Court remand the case back to the FERC for further proceedings (stating that “review of the opening briefs indicates that further consideration by the Commission is appropriate”). On December 1, 2015, the Court granted FERC’s unopposed motion, and remanded the case back to the FERC for further proceedings, which, as noted above, resulted in the *Demand Curve Remand Order*. 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 have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

³⁷ *Id.* at P 62.

³⁸ *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

³⁹ *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).

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

⁴¹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”), *reh’g denied but clarif. granted*, 150 FERC ¶ 61,065 (Jan. 30, 2015).

⁴² *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,065, at P 27 (Jan. 30, 2015) (“*Demand Curve Clarification Order*”).

⁴³ The changes become effective with FCA-10, and will not apply to the resources in FCA9, totaling 12.96 MW, that utilize both the renewable resource exemption and the price lock-in election.

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

On August 8, 2016, the FERC issued its long-awaited remand order.⁴⁴ 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), and directing the FERC to 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.⁴⁵ In the *2013/14 Winter Reliability Program Remand Order*, the FERC directed the ISO to request from Program participants the basis for their bids, including the process used to formulate the bids, and to file with the FERC, by December 6, 2016, a compilation of that information, an IMM analysis of that information, and the ISO's recommendation as to the reasonableness of the bids, so that the FERC can further consider the question of whether the Bid Results were just and reasonable.⁴⁶ If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **IRS Normalization Requirements changes to OATT Attachment F (ER16-2378)**

On August 5, 2016, the PTOs submitted revisions to modify the calculation of transmission-related Accumulated Deferred Income Taxes ("ADIT") related to accelerated depreciation in the Attachment F RNS formula rate (consistent with recent Internal Revenue Service ("IRS") guidance) ("Normalization Rules"). A June 1, 2016 effective date was requested. The Participants Committee supported the Normalization Changes at its August 5 meeting. Comments on this filing were due August 26; none were filed. Doc-less interventions were filed by Exelon, National Grid, NRG, and VELCO. This matter is pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-UI: IRS Normalization ADIT Changes (ER16-2454)**

On August 22, UI submitted revisions to Schedule 21-UI modifying the calculation of transmission-related ADIT to maintain compliance with accelerated depreciation normalization requirements, consistent with recent IRS guidance. A July 1, 2016 effective date was requested. Comments on this filing are due on or before September 12. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-CMP: IRS Normalization ADIT Changes (ER16-2386)**

On August 5, CMP submitted revisions to Schedule 21-CMP Attachment K modifying the calculation of transmission-related ADIT to maintain compliance with accelerated depreciation normalization requirements, consistent with recent IRS guidance. A June 1, 2016 effective date was requested. Comments on this filing were due on or before August 26; none were filed. Doc-less interventions were filed by National Grid and NRG. 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 *ISO New England*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("2013/14 Winter Reliability Program Remand Order").

⁴⁵ *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

⁴⁶ *2013/14 Winter Reliability Program Remand Order* at P 17.

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

On August 15, the FERC accepted 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. The LGIA was accepted effective as of June 14, 2016, as requested. Unless the August 15 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On August 16, the FERC accepted an indemnification agreement under which the Deepwater Wind Companies⁴⁷ 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. The Agreement was accepted, effective as of May 10, 2016, as requested. Unless the August 16 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On August 19, the FERC accepted National Grid's 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. The termination notice was accepted effective as of August 31, 2015, the effective date of the LGIA. Unless the August 19 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 accepted⁴⁸ 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.⁴⁹ 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 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.⁵⁰ The FERC accepted Eversource's proposed

⁴⁷ "Deepwater Wind Companies" are Deepwater Wind, LLC, Deepwater Wind Block Island, LLC, and Deepwater Wind Block Island Transmission, LLC.

⁴⁸ *ISO New England Inc. and Emera Maine*, 155 FERC ¶ 61,212 (May 31, 2016).

⁴⁹ *Id.* at P 20.

⁵⁰ *ISO New England Inc. et al.*, 155 FERC ¶ 61,136 (May 3, 2016).

“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.”⁵¹ 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.⁵² 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.”⁵³ 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; a second, August 16. Judge Hurt issued a status report on August 15 recommending, in view of the progress being made, that the settlement proceedings continue. The next settlement conference is scheduled for October 5, 2016.

Conforming Tariff Filing. On August 26, the FERC accepted an updated version of ISO OATT Attachment F reflecting all currently effective changes to Attachment F, including accepted Central Conn. Reliability Project (“CCRP”)-related⁵⁴ and Merger-related changes, filed by Eversource on July 29.

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,⁵⁵ 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 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.

⁵¹ *Id.* at P 27.

⁵² *Id.* at P 28.

⁵³ *Id.* at P 29.

⁵⁴ See *ISO New England Inc. and The Conn. Light and Power Co.*, Docket No. ER16-116, letter order, Mar. 22, 2016.

⁵⁵ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“June 2, Order”).

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.⁵⁶ 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.⁵⁷ 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.⁵⁸ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁵⁹

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.

Since the last Report, on August 31, ReEnergy Biomass Operations LLC (“ReEnergy”) moved to intervene out-of-time. If you have any questions concerning these matters, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Capital Projects Report - 2016 Q2 (ER16-2415)**

On August 12, the ISO filed its Capital Projects Report and Unamortized Cost Schedule covering the second quarter (“Q2”) of calendar year 2016 (the “Report”). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights include the following new projects: (i) Market Enhancements for Dispatchable Asset Related Demand Pumps (\$2.7 million); (ii) Energy Management System (“EMS”) Alarm Presentation Enhancements (\$175,000); and (iii) Phasor Measurement Unit External Data Exchange (\$160,000). Projects with significant changes (decreases reallocated to 2017) included: (i) Sub-Hourly Settlements (\$400,000 decrease); Zonal Load Forecast (\$300,000 decrease); (iii) Transmart Technical Architecture Update (\$225,000 decrease); and (iv) FCA11 (\$160,500 increase); and FTR Clearing Submission (\$1.8 million decrease, with \$96,400 in actual planning costs written off). Comments on this filing were due on or before September 2. NEPOOL filed comments on August 22 supporting the Q2 Report. On September 2, Eversource submitted a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **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).

⁵⁶ *Id.* at P 24.

⁵⁷ *Id.* at PP 25-26.

⁵⁸ *Id.* at P 27.

⁵⁹ *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*⁶⁰ and *531-B*.⁶¹ 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).

- **IMM Quarterly Markets Reports - 2016 Spring (ZZ16-4)**

On August 26, the Internal Market Monitor (“IMM”) filed with the FERC its report for the Spring quarter of 2016 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. A copy of the Spring Report was circulated and posted with the supplemental materials for the September 9 meeting (Agenda Item #7). These filings are not noticed for public comment by the FERC.

- **ISO-NE FERC Form 3Q (2016/Q2) (not docketed)**

On August 26, the ISO submitted its 2016/Q2 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

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

On August 12, the ISO submitted a revised Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2015. Through its Form 714 filing, the ISO reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. The August 12 filing changed column (e), Forecast of Annual Net Energy for Load, in Part III - Schedule 2 from GWh to MWh. These filings are not noticed for comment.

⁶⁰ *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

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

IX. Membership Filings

- **September 2016 Membership Filing (ER16-2535)**

On September 1, NEPOOL requested that the FERC accept (i) the memberships of Alphataraxia Nickel (Supplier Sector) and LifeEnergy (AR Sector [Related Person of Jericho Power, Wallingford Energy and New England Energy Connection]); and (ii) the termination of the Participant status of Cape Wind. Comments on this filing are due on or before September 22, 2016.

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

On August 26, the FERC accepted (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.).

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

On August 19, the FERC accepted (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 Member; Related Person to CPower, AR Sector LR Sub-Sector); and (iii) the name change of CleanChoice Energy (f/k/a Ethical Electric).

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

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

- **Revised Reliability Standard: COM-001-3 (RD16-9)**

On August 15, NERC requested that the FERC approve proposed Reliability Standard COM-001-3 (Communications), its associated Implementation Plan, Violation Risk Factors (“VRFs”) and Violation Severity Levels (“VSLs”) (associated with new Requirements R12 and R13) (“COM-001-3 Changes”). The COM-001-3 Changes were developed in response to the FERC’s directive in Order 808 that NERC address “concerns regarding ensuring the adequacy of internal communications capability whenever internal communications could directly affect the reliable operation of the Bulk-Power System.” An effective date that is the first day of the first calendar quarter that is 9 months after the effective date of a FERC order approving COM-001-3 Changes was requested. Comments on this filing are due on or before September 14.

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

On August 16, the FERC approved 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). The retirements became effective August 16, 2016. Unless the August 16 order is challenged, this proceeding will be concluded.

- **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.

- **New Reliability Standards: PRC-027-1 and PER-006-1 (RM16-22)**

On September 2, 2016, NERC filed for approval (i) two new Reliability Standards -- PRC-027-1 (Coordination of Protection Systems for Performance During Faults) and PER-006-1 (Specific Training for Personnel), (ii) associated Glossary definitions, (iii) an implementation plan, (iv) VRFs and VSLs, and (v) the retirement of PRC-001-1.1(ii) (together, the "Protection System Changes"). NERC stated that the purpose of the Protection System Changes is to: (1) maintain the coordination of Protection Systems installed to detect and isolate Faults on Bulk Electric System ("BES") Elements, such that those Protection Systems operate in the intended sequence during Faults; and (2) require registered entities to provide training to their relevant personnel on Protection Systems and Remedial Action Schemes ("RAS") to help ensure that the BES is reliably operated. NERC requested that the new Standards and definitions become effective on the first day of the first calendar quarter that is 24 months following the effective date of the FERC's order approving the Standards. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **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.⁶² 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

⁶² *Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event Rel. Standard*, 155 FERC ¶ 61,180 (May 19, 2016) ("BAL Changes NOPR").

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, 2016⁶³ 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*,⁶⁴ 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*).⁶⁵ 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*,⁶⁶ 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 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, 2016.⁶⁷ 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.

- **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

⁶³ The *BAL Changes NOPR* was published in the *Fed. Reg.* on May 26, 2016 (Vol. 81, No. 102) pp. 33,441-33,448.

⁶⁴ *Availability of Certain N. Am. Elec. Rel. Corp. Databases to the Commission*, Order No. 824, 155 FERC ¶ 61,275 (June 16, 2016) (“*Order 824*”).

⁶⁵ *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.

⁶⁶ *Revised Critical Infrastructure Protection Rel. Standards*, Order No. 829, 156 FERC ¶ 61,050 (July 21, 2016) (“*Order 829*”).

⁶⁷ *Order 829* was published in the *Fed. Reg.* on July 29, 2016 (Vol. 81, No. 146) pp. 49,879-49,894.

Disturbance Vulnerability Assessment), associated VRFs and VSLs (together, the “GMD Operations Changes”).⁶⁸ 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 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.⁶⁹ 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, 2015,⁷⁰ 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, NOPR⁷¹ 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 Standards⁷² 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

⁶⁸ *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

⁶⁹ *Rel. Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 (“*Order 779*”).

⁷⁰ The *TPL-007 NOPR* was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

⁷¹ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) (“*ATC NOPR*”).

⁷² 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.

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, 2014,⁷³ and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, NAESB supplemented its comments with a report on its efforts to develop WEQ Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the *ATC NOPR* remains pending before the FERC.

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

The *BAL-002-1a Interpretation Remand NOPR*⁷⁴ 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, 2013,⁷⁵ 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 (2016-11385)**

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

⁷³ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁷⁴ *Elec. Rel. Org. Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

⁷⁵ 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.

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, 2016,⁷⁶ 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 remains pending before the CFTC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: CPV Towantic (EC16-167)**

On August 16, 2016, CPV Towantic requested FERC authorization for transaction that will result Ullico Infrastructure Master Fund, L.P. acquiring a 13.7% indirect upstream ownership interest in CPV Towantic. Comments on this filing were due on or before September 7; none were filed. Eversource filed a doc-less intervention on August 23. 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: 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. Since the last Report, Belmont Municipal Light Department filed a motion to intervene out-of-time. This matter remains 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 (Dynergy/ECP) (EC16-93)**

On March 25, 2016, Atlas Power Finance, a subsidiary of Atlas Power (a newly-formed joint venture between Dynergy and ECP III), Dynergy Inc. ("Dynergy"), Energy Capital Partners III, LLC ("ECP") and GDF Suez requested FERC authorization of Atlas Power's acquisition of GDF Suez Energy Resources. In addition, Dynergy 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 Dynergy common stock representing approximately 10% of the outstanding shares of Dynergy. 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 Dynergy 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. Atlas answer Public Citizen's protest on August 4, and Public Citizen answered Atlas' answer on August 9. This matter remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On March 9, 2016, the FERC authorized the sale of 100% of the partnership interests in ReEnergy Sterling CT Limited Partnership ("ReEnergy Sterling") to Empire Tire of Edgewater 2, LLC ("Empire Tire").⁷⁷ 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).

⁷⁶ The CFTC Proposed Amendment was published in the *Fed. Reg.* on May 16, 2016 (Vol. 81, No. 94) pp. 30,245-30,255.

⁷⁷ *ReEnergy Sterling CT Limited Partnership*, 154 FERC ¶ 62,167 (Mar. 9, 2016).

- **D&E Agreement Termination Notice: NSTAR/Exelon West Medway (ER16-2467)**

On August 24, NSTAR filed a notice of cancellation of a Design and Engineering Agreement (“D&E Agreement”) between NSTAR and Exelon West Medway (designated as service agreement IA-NSTAR-32). The D&E Agreement, which set forth the terms and conditions under which NSTAR would undertake certain design and engineering activities on the Interconnection Facilities, was superseded by the non-conforming LGIA between the ISO, NSTAR and Exelon West Medway II filed and accepted in ER16-2024. NSTAR requested that the notice become effective as of June 14, 2016, the effective date of the LGIA. Comments on this filing are due on or before September 14. Thus far, Exelon filed a doc-less intervention. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA Amendment - CMP-Brookfield White Pine Hydro (ER16-2416)**

On August 12, Central Maine Power (“CMP”) filed an amendment to its Continuing Site/ Interconnection Agreement with Brookfield White Pine Hydro LLC (“Amended IA”). The Amended IA is principally is to reflect that certain generating facilities subject to the current IA (namely, “Androscoggin Lower”, “Bates Upper”, “Bates Lower”, “Hill Mill”, “Continental Mill” and “Lewiston Canal”) are no longer owned by Brookfield, are no longer generating electricity, and therefore no longer require interconnection service pursuant to the CSIA. CMP requested an August 1, 2016 effective date for the Amended IA. Comments on this filing were due on or before September 2; 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).

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

On August 3, 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 were due on or before August 24, 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).

- **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 were due on or before August 19, 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).

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

On August 29, the FERC accepted an Agreement for Engineering, Design, Permitting, Siting Services and Operations and Maintenance (the “D&E Agreement”) between The Connecticut Light & Power Company (“CL&P”) and PSEG Power Connecticut LLC (“PSEG Power Conn.”). As previously reported, 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. The D&E Agreement was accepted for filing effective as of July 5, 2016, as requested. Unless the August 29 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).

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

On August 19, the FERC accepted 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. The Transfer Agreement was accepted for filing effective as of January 1, 2018, as requested. Unless the August 19 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).

- **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 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

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”).

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

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. And, since the last Report, ReEnergy Biomass Operations LLC submitted a motion to intervene out-of-time. The compliance filing remains 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 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: Saracen Energy Midwest, LP (IN16-7)**

On August 22, the FERC approved a stipulation and consent agreement ("Saracen Agreement") resolving an investigation into whether Saracen violated the Southwest Power Pool ("SPP") OATT by submitting bids for Transmission Congestion Rights at Electronically Equivalent Settlement Locations.⁸³ Saracen submitted the bids at issue for auctions in September and October 2014, and March and April 2015. As discussed in the Saracen Agreement, post-bidding, SPP notified Saracen's trader that the Relevant Bids violated the OATT, and were removed from the Relevant Auction. Because SPP identified and removed the Relevant Bids, they never cleared and the market was not harmed. In the Saracen Agreement, Saracen neither

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

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

⁸³ *Saracen Energy Midwest, LP*, 156 FERC ¶ 61,122 (Aug. 22, 2016).

admits nor denies the violations, and agrees to pay a \$25,000 civil penalty and to implement measures designed to ensure compliance in the future, including submitting an annual compliance report.⁸⁴ The FERC added that “when an ISO, RTO or market monitor informs a market participant that its conduct violates the tariff, the market participant should act quickly to address the issue. For market participants that do not comply with the Tariff, the Commission will take appropriate action to ensure compliance”.⁸⁵

- **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 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

⁸⁴ *Id.* at P 2.

⁸⁵ *Id.* at P 17.

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. Following requests by Utility Trade Associations⁸⁶ and the New Jersey BPU, comments are now due on or before October 3, 2016. In the meantime, the Delaware Public Service Commission filed comments on August 8.

- **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 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. On August 19, EDF Renewables filed reply comments. This matter remains 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>. On September 6, the FERC issued a notice inviting post-technical conference comments to be filed. Such comments may address (1) the use of the "one-mile rule" to determine the size of an entity seeking certification as a small power production qualifying facility (QF); and (2) minimum standards for PURPA-purchase contracts and should be filed on or before November 7, 2016.

- **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.⁸⁷ Comments on the *FAST Act/CEII NOPR* were due on or before August 19, 2016,⁸⁸ and were filed by over 20 parties including joint comments by ISO-NE/SPP, APPA, INGA, MISO, NERC, NRC, and NRECA. In its comments with SPP, the ISO requested that the FERC, as part of efforts in this proceeding, ease through a blanket rule the burden of CEII information sharing among RTOs, ISOs, and other FERC-regulated entities (sharing undertaken for purposes of ensuring interregional reliability and effective long-term planning). The ISO-NE/SPP request raised some concerns for PJM, which in reply comments suggested that "a voluntary collaborative approach would be preferable to the ... language proposed by ISO-NE and SPP." To the extent changes/reforms

⁸⁶ The "Utility Trade Associations" are APPA, EEI, Large Public Power Council, National Rural Electric Cooperative Association ("NRECA"), and Transmission Access Policy Study Group ("TAPS").

⁸⁷ 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*").

⁸⁸ The *FAST Act/CEII NOPR* was published in the *Fed. Reg.* on July 5, 2016 (Vol. 81, No. 128) pp. 43,557-43,567.

to the CEII information sharing process may be warranted, PJM suggested that the FERC task the EIPC to further study and report back on this issue (as it applies to the Eastern Interconnection). This matter is pending before the FERC.

- **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:⁸⁹ (1) pricing of fast-start resources; (2) commitments to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency. The FERC directed each RTO/ISO to file a report that provides an update on its current practices in the identified topic areas, that provides the status of its efforts (if any) to address each of the five issues, and that fully responds to the questions. The FERC indicated it would use the reports and comments to determine what further action is appropriate. The RTO/ISO reports were filed February 17 by PJM, March 4 by ISO-NE, CAISO, MISO, and NYISO (corrected on March 23), and March 7 by SPP. Comments on the reports were due on or before April 6⁹⁰ and were filed by over 25 parties, including Exelon, EEI, and EPSA. 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.⁹¹ 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 September 19, 2016.⁹²

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 was held on Thursday, August 11.

- **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 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

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

⁹⁰ 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.

⁹¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

⁹² The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

<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 828⁹³ 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"⁹⁴ abnormal frequency and voltage events and not disconnect during such events.⁹⁵ 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*).⁹⁶ Transmission Provider (including ISO-NE) compliance filings must also be submitted by October 14, 2016 and must be combined in a single filing with the compliance filing required under *Order 827* (Reactive Power Requirements for Non-Synchronous Generation).⁹⁷

- **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.⁹⁸ 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.⁹⁹ Comments on the *Frequency Response NOI* were due on or before April 25, 2016¹⁰⁰ and were filed by over 50 parties, including: ISO-NE (with NYISO, PJM, SPP, and IESO), APPA/LPPA/TAPS, EDP Renewables, EEI, ELCON, ESA, EPRI, ESPA/NEPGA/IPPNY/Western Power Trading Forum, NARUC, NEI, and NERC. The *Frequency Response NOI* is pending before the FERC.

⁹³ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) ("*Order 828*").

⁹⁴ "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.

⁹⁵ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, 154 FERC ¶ 61,222 (Mar. 17, 2016) ("*Small Generator Ride Through NOPR*").

⁹⁶ *Order 828* was published in the *Fed. Reg.* on Aug. 1, 2016 (Vol. 81, No. 147) pp. 50,290-50,298.

⁹⁷ *Id.* at P 45.

⁹⁸ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOI*").

⁹⁹ *Frequency Response NOI* at P 2.

¹⁰⁰ The *Frequency Response NOI* was published in the *Fed. Reg.* on Feb. 24, 2016 (Vol. 81, No. 36) pp. 9,182-9,192.

- **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).¹⁰¹ 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, 2016¹⁰² 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.¹⁰³ 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. On July 18, CAISO requested clarification and/or rehearing of *Order 827*. In particular CAISO asked the FERC to clarify "that a repowering of an existing facility that requires new inverters and an interconnection study constitutes a newly interconnecting facility under Order No. 827". On August 11, the FERC issued a tolling order affording it additional time to consider CAISO's request, which remains pending before the FERC.

Per *Order 828*, as extended by the FERC's August 8 notice, compliance filings in response to *Order 827* must be combined in a single filing with *Order 828* compliance filings and are due on or before October 14, 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*,¹⁰⁴ 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,

¹⁰¹ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,038 (Jan. 21, 2016) ("*Price Cap NOPR*").

¹⁰² The *Price Cap NOPR* was published in the *Fed. Reg.* on Feb. 4, 2016 (Vol. 81, No. 23) pp. 5,951-5,965.

¹⁰³ *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 (June 16, 2016).

¹⁰⁴ *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, 2016.¹⁰⁵

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 previously noted, the ISO’s and NEPOOL’s jointly filed Sub-Hourly Settlement Changes, which changed to five minutes the settlement interval in the Real-Time Energy and Reserves Markets, was filed and accepted by the FERC.

XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) 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.¹⁰⁶ 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.” 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.

On August 31, 2016, the FERC issued an Order in which it rejected Algonquin’s request for a waiver that would have exempted gas-fired generators from capacity release bidding requirements but accepted Algonquin’s proposal to exempt from bidding an EDC’s capacity release to an asset manager who is required to use the released capacity to carry out the EDC’s obligations under the state-regulated electric reliability program.¹⁰⁷ The Commission explained that its capacity release regulations seek to balance the interests of the releasing shipper in releasing capacity to a replacement shipper of its choosing while still ensuring that allocative efficiency is enhanced by ensuring the capacity is used for its highest valued use.¹⁰⁸ Algonquin’s proposal, whereby any gas-fired generator to whom EDCs release capacity would be a pre-arranged replacement shipper, failed to meet the standard of “improving the competitive structure of the natural gas industry” as formulated by the Commission in granting bidding exemptions for state-regulated retail access programs.¹⁰⁹ Furthermore, proponents of the exemption did not shown why such a broad exemption was necessary in order for EDCs to have a sufficient

¹⁰⁵ *Order 825* was published in the *Fed. Reg.* on June 30, 2016 (Vol. 81, No. 126) pp. 42,882-42,910.

¹⁰⁶ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

¹⁰⁷ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) (“*Algonquin Order*”)

¹⁰⁸ *Id.* at P 27.

¹⁰⁹ *Id.* at P 34.

ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.¹¹⁰

- **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.

Since the last report, offers of settlement were filed in the Iroquois and Columbia Gulf proceedings. Prior to that, offers of settlement were also filed in the Tuscarora and Empire Proceedings and, after comments, the Columbia Gulf, Tuscarora and Empire settlements were certified to the Commission.

- **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:

David Silva (IN16-6). On September 1, the FERC approved a stipulation and consent agreement (“Silva Agreement”) resolving an investigation into whether Silva violated the FERC’s Anti-Manipulation Rule by manipulating physical natural gas prices in January 2012 in order to benefit his related financial positions.¹¹⁵ To resolve the investigation, Silva stipulated and agreed to the facts set forth in the Silva Agreement, though neither admitting nor denying that his trading violated FERC rules, regulations, or policies. Silva agreed to a one-year ban from participation in any FERC-jurisdictional natural gas markets and to pay a civil penalty of \$40,000.¹¹⁶

National Energy & Trade, LP (IN16-5). Also on September 1, the FERC approved a stipulation and consent agreement (“NET Agreement”) resolving an investigation into whether National Energy & Trade, LP (“NET”) violated the FERC’s Anti-Manipulation Rule by manipulating physical natural gas prices between January 1, 2011 and September 30, 2015 at the Houston Ship Channel, Tetco M3, Transco Zone 6 (New York),

¹¹⁰ Id. at P 35

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 *In re David Silva*, 156 FERC ¶ 61,155 (Sep. 1, 2016).

¹¹⁶ Id. at P 15.

and Henry Hub in order to benefit its related financial positions.¹¹⁷ NET neither admitted nor denied the allegations and agreed to a \$1,155,225.91 civil penalty and disgorgement of \$305,780.50.¹¹⁸

BP (IN13-15). On July 11, 2016, the FERC issued *Opinion 549*¹¹⁹ 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").¹²⁰ 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."¹²¹ Accordingly, 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.¹²² BP was directed to pay the civil penalty and disgorgement amount within 60 days of the *BP Penalties Order*. On August 10, BP requested rehearing of the *BP Penalties Order*. That request is pending, with FERC action required on or before September 9 or BP's request will be deemed denied.

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹²³ 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. Respondents filed their answer on July 12, 2016. OE Staff's reply is due on or before September 26, 2016.

¹¹⁷ *National Energy & Trade, L.P.*, 156 FERC ¶ 61,154 (Sep. 1, 2016).

¹¹⁸ *Id.* at P 24.

¹¹⁹ *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹²⁰ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹²¹ *BP Penalties Order* at P 3.

¹²² *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).

¹²³ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

The allegations giving rise to the *Total Show Cause Order* were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bidweek designed to move indexed market prices in a way that benefited the company's related positions. Staff alleged that the West Desk implemented the bidweek scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

- **New England Pipeline Proceedings**

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

- ***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, 2015.¹²⁴ 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.
 - ▶ Three firm shippers: Conn. Natural Gas, Southern Conn. Gas, and Yankee Gas.

¹²⁴ 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).

- ▶ 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, 2016.¹²⁵
 - ▶ 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, 2015.¹²⁶
 - ▶ Construction began in May 2015.
 - ▶ In-Service: November 2016 (anticipated).

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report.

¹²⁵ *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).

¹²⁶ 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: ER15-1137¹²⁷

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;¹²⁸ EL14-52;129 EL15-25¹³⁰

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; EL14-86¹³¹

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

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

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

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

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

¹³¹ 147 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 August 15, the parties filed their fourth 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; ER13-196¹³²

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

As previously reported, NETOs¹³³ 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: EL11-66¹³⁴

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,¹³⁵ 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"¹³⁶ and the TOs¹³⁷ 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.

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

¹³³ "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.

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

¹³⁵ "EMCOS" are Taunton, Reading, Hingham, and Braintree.

¹³⁶ "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.

¹³⁷ 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: EL14-7,¹³⁸ EL15-23¹³⁹
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. FERC's Respondent Brief was filed on August 15. A Joint Intervenor for Respondent Brief was filed on September 6 by NESCOE, NECPUC, CT PURA, and CT OCC. Remaining submissions are to be submitted as follows: 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: ER14-1409¹⁴⁰
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 Connecticut¹⁴¹ and Public Citizen taking the opposing view) has now been completed. The parties filed a joint appendix (reflecting all filings and issuances in ER14-1409) on December 16, 2015. Final Petitioner briefs and reply briefs were filed by Public Citizen on December 17; by Connecticut, on December 22. The FERC's final brief was filed on December 23, 2015, as was the final brief of Joint Intervenors for Respondent (EPSA, GenOn Energy Management, HQUS, NRG, and NEPGA). Since the last Report, on August 16, Public Citizen filed a letter advising the Court of additional authority supporting its arguments. That letter was opposed by FERC and EPSA on August 23 and 24, respectively. Oral argument was held before Judges Brown, Srinivasan and Wilkins on September 6, 2016. This matter is pending before the Court.

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

Entergy¹⁴² 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"

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

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

¹⁴⁰ 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).

¹⁴¹ For purposes of this proceeding, "Connecticut" means the CT AG, CT PURA and CT OCC.

¹⁴² Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

as a natural gas-fired (rather than coal-fired) plant (the “Term Sheet”)¹⁴³ is preempted by the FPA and invalid under the dormant Commerce Clause of the US Constitution. Entergy also seeks a permanent injunction requiring the NYPSC Commissioners to withdraw the Order and/or preventing the NYPSC Commissioners from continuing to treat the Order as valid and binding. This case is noteworthy given the relationship of the issues raised to the Supreme Court’s *Hughes*¹⁴⁴ 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-0577.¹⁴⁵

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.

¹⁴³ The Term Sheet provides that, in exchange for Dunkirk’s commitment to participate in the NYISO energy and capacity markets through 2025, Dunkirk will receive out-of-market payments of \$20.4 million per year from National Grid and a \$15 million one-time subsidy from a New York State agency. Entergy asserts that the contract structure will lead Dunkirk to bid below its actual costs in the capacity auction, causing the auction market to “clear” at a lower price than otherwise would have resulted, and resulting in all generators receiving lower capacity revenues than they otherwise would have received.

¹⁴⁴ *Hughes v. Talen Energy Marketing LLC*, 578 U.S. ____ (2016) (“*Hughes*”).

¹⁴⁵ 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?

INDEX
Status Report of Current Regulatory and Legal Proceedings
as of September 7, 2016

I. Complaints/Section 206 Proceedings

206 Proceeding: RNS/LNS Rates and Rate Protocols	(EL16-19)	3
206 Proceeding: Zonal Sloped Demand Curves	(EL16-15)	4
Base ROE Complaints II & III (2012 & 2014) (Consolidated)	(EL13-33 and EL14-86).....	4
Base ROE Complaint IV (2016).....	(EL16-64)	2
Dominion Energy Manchester Street FCA10 Complaint	(EL16-38)	3
NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Potential Gas Pipeline-Related Price Suppression	(EL16-93)	1

II. Rate, ICR, FCA, Cost Recovery Filings

2016/17 Power Year Transmission Rate Filing	(ER09-1532; RT04-2).....	6
206 Proceeding: RNS/LNS Rates and Rate Protocols	(EL16-19)	3
Base ROE Complaints II & III (2012 and 2014) (Consolidated).....	(EL13-33 and EL14-86).....	4
Base ROE Complaint IV (2016).....	(EL16-64)	2
Dominion Energy Manchester Street FCA10 Complaint	(EL16-38)	3
FCA10 Results Filing	(ER16-1041)	5
FCA11 De-List Bids Filing	(ER16-2215).....	5
NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Potential Gas Pipeline-Related Price Suppression	(EL16-93)	1

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

2013/14 Winter Reliability Program Remand Proceeding	(ER13-2266).....	10
206 Proceeding: Zonal Sloped Demand Curves	(EL16-15)	4
CSO Terminations: Enerwise	(ER16-2137)	7
Demand Curve Changes Remand Proceedings.....	(ER14-1639)	9
Dominion Energy Manchester Street FCA10 Complaint	(EL16-38)	3
Dual-Fuel Audit NCPC Calculation Revisions.....	(ER16-2529)	6
FCM Composite Offers & Price Lock Mechanisms (FERC Compliance)	(ER16-2126)	7
FCM Resource Retirement Reforms.....	(ER16-551)	8
Waiver Request: DER FCM Qualification Reqs (Genbright).....	(ER16-2283)	7
Waiver Request: RTEG Resource Type/De-List (ISO-NE)	(ER16-1904)	8

IV. OATT Amendments/Coordination Agreements

IRS Normalization Requirements changes to OATT Attachment F.....	(ER16-2378)	10
--	-------------------	----

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Updates

Schedule 21-CMP: IRS Normalization ADIT Changes	(ER16-2386)	10
Schedule 21-EM: Bangor Hydro/Maine Public Service Merger-Related Costs Recovery ...	(ER15-1434 et al.)	12
Schedule 21-EM: Rate Adjustments for Anticipated Changes Compliance Filing	(ER16-1301)	11
Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs	(ER16-1023)	11
Schedule 21-NEP Deepwater Wind Indemnification Agreement.....	(ER16-2012)	11
Schedule 21-NEP: Granite Ridge Prior Service Agreement Termination	(ER16-1921)	11
Schedule 22 LGIA: Exelon West Medway II	(ER16-2024)	11

Schedule 21-UI: IRS Normalization ADIT Changes..... (ER16-2454) 10

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

No Activity to Report

VIII. Regional Reports

Capital Projects Report - 2016 Q2..... (ER16-2415) 13
 IMM Quarterly Markets Reports - 2016 Spring (ZZ16-4) 14
 ISO-NE FERC Form 3Q (2016/Q2)..... (not docketed) 14
 ISO-NE FERC Form 714 (not docketed) 14
Opinion 531-A Local Refund Report: FG&E (EL11-66) 13
Opinions 531-A/531-B Local Refund Reports (EL11-66) 14
Opinions 531-A/531-B Regional Refund Reports..... (EL11-66) 14

IX. Membership Filings

August 2016 Membership Filing (ER16-2321) 15
 July 2016 Membership Filing (ER16-2104) 15
 September 2016 Membership Filing..... (ER16-2535) 15

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

Compliance Filing: BES Exclusions for Local Network Configurations (RM12-6) 19
 New Rel. Standards: PRC-027-1 and PER-006-1..... (RM16-22) 16
 NOPR: BAL-002-1a Interpretation Remand (RM13-6) 19
 NOPR: New Rel. Standard: TPL-007-1 (RM15-11) 17
 NOPR: Revised Rel. Standard: BAL-002-2 (RM16-7) 16
 NOPR: Revised Rel. Standard: MOD-001-2 (RM14-7) 18
Order 829: New Reliability Standard Addressing Supply Chain Risk Management (RM15-14-002)..... 17
 Retirement of NPCC Regional Reliability Standard PRC-002-NPCC-001 (RD16-8)..... 15
 Revised Rel. Standard: COM-001-3 (RD16-9) 15
 Revised Rel. Standards: BAL-005-1 & FAC-001-3 (RM16-13) 16
 Revised Rel. Standards: IRO-018-1 & TOP-010-1 (RD16-6)..... 15

XI. Misc. Regional Interest

203 Application: Belmont/NSTAR (EC16-145) 20
 203 Application: CPV Towantic (EC16-167) 20
 203 Application: GDF Suez Energy Resources/Atlas Power (EC16-93) 20
 203 Application: ReEnergy Sterling..... (EC16-58) 20
 CFTC RTO/ISO Exemption Amendment..... 19
 D&E Agreement: CL&P/PSEG Power Conn. (ER16-2261) 21
 D&E Agreement Termination Notice: NSTAR/Exelon West Medway (ER16-2467) 21
 E&P Agreement: CMP/FPL Wyman..... (ER16-2369) 21
 Emera MPD OATT Changes..... (ER15-1429; EL16-13)..... 22
 FERC Audit of ISO-NE..... (PA16-6) 24
 FERC Enforcement Action: Formal Investigation
 (MISO Zone 4 Planning Resource Auction Offers) (IN15-10) 24
 IA Amendment - CMP-Brookfield White Pine Hydro (ER16-2416)
 MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area .. (ER11-1844) 23
 Use Rights Transfer Agreement: NSTAR/HQUS (ER16-2189) 22

XII. Misc: Administrative & Rulemaking Proceedings

Review of Generator IAs & Procedures / AWEA Petition for LGIA/LGIP Rulemaking.....	(RM16-12; RM15-21)	26
Competitive Transmission Development Rates.....	(AD16-18)	24
Electric Storage Participation in RTO/ISO Markets.....	(AD16-20)	24
NOI: Primary Frequency Response -		
Need for Reforms Related to Provision and Compensation	(RM16-6)	27
NOPR: Data Collection for Analytics & Surveillance and MBR Purposes.....	(RM16-17)	26
NOPR: Price Formation Fixes - Price Caps in RTO/ISO Markets	(RM16-5)	28
NOPR: Regulations Implementing FAST Act and Amending CEII Regulations.....	(RM16-15)	25
<i>Order 825</i> : Price Formation Fixes - Settlement Intervals/Shortage Pricing	(RM15-24)	28
<i>Order 827</i> : Reactive Power Requirements for Wind Generators	(RM16-1)	28
<i>Order 828</i> : Small Generator Ride Through Requirements	(RM16-8)	27
Price Formation in RTO/ISO Energy and Ancillary Services Markets	(AD14-14)	26
PURPA Implementation	(AD16-16)	25
Reactive Supply Compensation in RTO/ISO Markets	(AD16-17)	25

XIII. Natural Gas Proceedings

Algonquin EDC Capacity Release Bidding Requirements Exemption Request.....	(RP16-618)	29
Enforcement Action: BP Initial Decision	(IN13-15)	30
Enforcement Action: David Silva.....	(IN16-6)	30
Enforcement Action: National Energy & Trade, LP.....	(IN16-5)	30
Enforcement Action: Total Gas & Power North America, Inc.....	(IN12-17)	30
New England Pipeline Proceedings.....		32
Section 5 Investigation: Columbia.....	(RP16-302)	30
Section 5 Investigation: Empire.....	(RP16-300)	30
Section 5 Investigation: Iroquois	(RP16-301)	30
Section 5 Investigation: Tuscarora	(RP16-299)	30

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

Base ROE Complaint I (2011).....	15-1118 et al. (DC Cir.)	35
Base ROE Complaints II & III (2012 & 2014).....	15-1212 (DC Cir.)	34
<i>Energy Nuclear Fitzpatrick, LLC et al. v. Zibelman et al.</i>	5:15-cv-00230 (N.D.N.Y.)	36
FCM Pricing Rules Complaints.....	15-1071/16-1042 (DC Cir.)	36
FCA8 Results.....	14-1244 (DC Cir.)	36
FCA9 Results.....	16-1068 (DC Cir.)	34
NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings	16-1023/1024 (DC Cir.)	34
<i>Order 1000</i> Compliance Filings	15-1139 (DC Cir.)	35