

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of November 2, 2016

The following activity, as more fully described in the attached litigation report, has occurred since the report dated October 12, 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	NEPGA PER Adjustment Complaint (EL16-120)	Oct 12-20 Oct 20-21	Calpine, ConEd, Dominion, HQ US, Eversource, Exelon, National Grid, NRG, PSEG intervene ISO, NEPOOL answer Complaint; NESCOE, RESA oppose the Complaint; Entergy, NextEra Verso file comments supporting Complaint
1	NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Potential Gas Pipeline-Related Price Suppression (EL16-93)	Oct 27	FERC denies rehearing of Aug 30 order dismissing Complaint
2	Base ROE Complaint IV (2016) (EL16-64)	Oct 20 Oct 26	TOs, EEI request rehearing of <i>Base ROE Complaint IV Order</i> Settlement Judge Long schedules 1st settlement conf. for Nov 8
3	Dominion Energy Manchester Street FCA10 Complaint (EL16-38)	Oct 20	FERC denies rehearing of <i>Manchester Street FCA10 Order</i>

II. Rate, ICR, FCA, Cost Recovery Filings



* 6	2017 NESCOE Budget (ER17-140)	Oct 19 Oct 28-Nov 3	ISO files budget for funding NESCOE's 2017 operations NEPOOL, National Grid intervene
* 6	2017 ISO-NE Administrative Costs and Capital Budgets (ER17-116)	Oct 17 Oct 28-Nov 3	ISO files 2017 administrative costs and capital budgets NEPOOL, National Grid intervene
7	FCA10 Results Filing (ER16-1041)	Oct 27	FERC denies rehearing of <i>FCA10 Results Order</i>
* 7	Schedule 2 Base CC Rate (ER12-229)	Oct 28	ISO submits information filing regarding current Base CC Rate and its conclusion that the current Base CC Rate should be continued

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



* 7	Effective Date Update: MR1 §§ 2.7(a) & (g) (ER17-96)	Oct 14 Oct 17-28	ISO updates effective date for inclusion of Dispatch Zone in Market Rule 1 §§ 2.7(a) & (g); comment date Nov 4 NEPOOL, Exelon, National Grid intervene
8	Resource Dispatchability Changes (ER17-68)	Oct 28- Nov 2	Eversource protests changes; Exelon, Entergy, HQ US, Kimberly-Clark, National Grid, NRG intervene
8	Dual-Fuel Audit NCPC Calculation Revisions (ER16-2529)	Oct 21 Nov 1	FERC accepts changes, eff. Nov 1 Changes become effective
8	FCM Enhancements (ER16-2451)	Oct 14 Oct 18	NYPSC files an answer supporting NYISO's Oct 12 answer FERC accepts FCM Enhancements, eff. Oct 19, 2016
9	FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126)	Oct 25	ISO and NEPOOL jointly file compliance changes; comment date Nov 15

IV. OATT Amendments / TOAs / Coordination Agreements

- | | | | |
|----|--|-----------|------------------------------|
| 11 | <i>Orders 827/828 Compliance Filing: New England (ER16-2695)</i> | Oct 18-19 | National Grid, NRG intervene |
|----|--|-----------|------------------------------|

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- | | | | |
|----|---|------------------|--|
| 12 | Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023) | Oct 14 | Settlement Judge Hurt issues status report recommending that settlement proceedings continue; 4th settlement conf. scheduled for Nov 9 |
| 13 | Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.) | Oct 25
Oct 27 | 2nd settlement conf. held
Settlement Judge Dring schedules 3rd settlement conf. for Nov 22 |

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- | | | | |
|------|--|----------------------------|--|
| * 13 | Capital Projects Report - 2016 Q3 (ER17-122) | Oct 17
Oct 27
Oct 28 | ISO files Q2 Report
National Grid intervenes
NEPOOL intervenes and files comments supporting Q3 Report |
| * 14 | LFTR Implementation: 32 nd Quarterly Status Report (ER07-476) | Oct 14 | ISO files its 32nd quarterly report |

IX. Membership Filings

- | | | | |
|------|--|--------|---|
| * 14 | November 2016 Membership Filing (ER17-229) | Oct 31 | NEPOOL requests the FERC accept (i) the memberships of Aspiry Energy, King Forest Industries and Titan Gas; (ii) the termination of the Participant status of CES Retail Energy Supply; Ameresco DR and Quantum Utility Generation; and (iii) the name changes of Stored Solar J&WE, LLC and EmpireCo Limited Partnership |
| 15 | October 2016 Membership Filing (ER16-2721) | Oct 31 | FERC accepts the Oct 1 memberships of Bloom Energy, Cricket Valley Energy Center, NTE Connecticut, Rhode Island State Energy Center, SWEB Development USA, and Farhad Aminpour |

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

- | | | | |
|----|--|--------|---|
| 15 | Revised Reliability Standard: COM-001-3 (RD16-9) | Oct 28 | FERC approves COM-001-3 Changes, eff. Oct 1, 2017 |
| 17 | <i>Order 830: New Rel. Standard: TPL-007-1 (RM15-11)</i> | Oct 24 | EEI, FRS, JINSA request rehearing of <i>Order 830</i> |

XI. Misc. - of Regional Interest

- | | | | |
|----|---|--------|--|
| 18 | CFTC RTO/ISO Exemption Amendment (2016-11385) | Oct 24 | CFTC issues order amending its Mar 28, 2013 order to specifically exempt transactions covered under that Order from private actions pursuant to CEA Section 22 |
|----|---|--------|--|

* 18	203 Application: Noble Americas Energy Solutions/Calpine (EC17-8)	Oct 12	Noble Americas and Calpine request authorization for Calpine acquisition of 100% of the equity interests in Noble Americas Energy Solutions
19	203 Application: Belmont/NSTAR (EC16-145)	Oct 25	FERC authorizes NSTAR acquisition of Belmont transmission facilities
* 19	PURPA Complaint: Allco v. MA Agencies (EL17-6 et al.)	Oct 19	Allco files petition for FERC enforcement of PURPA against MA Agencies; comment date Nov 9
19	PURPA Complaint: Allco Finance Ltd. and Windham Solar v. CT PURA (EL16-115 et al.)	Oct 17 Oct 25	CT PURA, CT OCC protest Complaint Allco/Windham answers Oct 17 protest
* 20	EMM Contract (ER17-290)	Oct 31	ISO files new contract for EMM services with Potomac Economics; comment date Nov 21
* 20	Orders 827/828 Compliance Filing: Maine Public District (ER17-137)	Oct 19	Emera Maine submits Maine Public District Order Nos. 827/828 compliance filing; comment date Nov 9
20	E&P Agreement: CL&P/Beacon Falls (ER16-2700)	Oct 27	FERC accepts Agreement, eff. Sep 29
20	Agreements Cancellation: National Grid/Wheelabrator Saugus (ER16-2575)	Oct 11	FERC accepts National Grid notice of cancellation
20	D&E Agreement Termination Notice: NSTAR/Exelon West Medway (ER16-2467)	Oct 27	FERC accepts notice of cancellation, eff. Aug 14
20	Emera MPD OATT Changes (ER15-1429; EL16-13; ER12-1650) (consol.)	Oct 25	4th settlement conf. held; 5th settlement conf. scheduled for Nov 22

XII. Misc. - Administrative & Rulemaking Proceedings

* 23	Utilization of Electric Storage Resources IN RTO/ISO Markets (AD16-25)	Nov 1	FERC issues supplemental notice of Nov 9 technical conf.
* 25	RTO/ISO Common Metrics Report (AD14-15)	Oct 18	FERC staff issues Report reviewing RTO/ISO performance metrics as well as non-RTO/ISO utilities for the 2014-14 period
25	NOPR: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)	Nov 2	FERC issues notice of 2nd technical workshop on Dec 7, 2016

XIII. Natural Gas Proceedings

29	Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)	Oct 17	Algonquin Gas Transmission, National Grid Electric Distribution Companies and Sequent Energy Management and Tenaska Marketing Ventures file answers to ConEd and O&R requests for clarification of Aug 31 order
30	Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)	Oct 20	<i>Iroquois</i> : Commission approves settlement <i>Empire</i> : Commission conditionally approves settlement
31	New England Pipeline Proceedings (AIM Project) (CP14-96)		FERC issues order amending certificate of public convenience and necessity (amending initial rates to reflect an overall increase in the cost of construction of the AIM facilities)

XIV. State Proceedings & Federal Legislative Proceedings

No Activity Reported

XV. Federal Courts

34	FCA9 Results (16-1068)	Oct 25	FERC's order in FCA8 Results appeal triggers Dec 9 deadline for submission of motions to govern future proceedings
34	NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)	Oct 31	NEPGA files Reply Brief
35	FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)	Oct 25	Respondent, Joint Intervenor for Respondent, Petitioner, Intervenor for Petitioner file Final Briefs; Joint Petitioners file Final Reply Brief
36	FCA8 Results (14-1244, 14-1246 (consolidated))	Oct 25	Court dismisses petitions for review for lack of jurisdiction

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: November 3, 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 November 2, 2016. If you have questions, please contact us.¹

I. Complaints/Section 206 Proceedings
--

- **NEPGA PER Complaint (EL16-120)**

On September 30, NEPGA filed a complaint asking the FERC (i) to find the ISO Tariff's Peak Energy Rent (“PER”) Adjustment provisions unjust & unreasonable; (ii) to direct the ISO to file revisions to the PER Adjustment sections of the Tariff that return the PER Adjustment to a just & reasonable level; (iii) to establish a refund effective date of September 30, 2016; and (iv) to issue an order granting the complaint by November 29, 2016. Comments on the PER Complaint were due on or before October 20.

In its answer, the ISO took no position on whether the FERC should grant the relief requested, but suggested that, should the FERC grant relief, the FERC “reject NEPGA’s primary remedy in favor of a more appropriate, well-reasoned solution”. NEPOOL submitted comments providing the FERC with additional information regarding stakeholder consideration of the remedies sought by NEPGA in its Complaint, including NEPOOL’s previous consideration of, and failure to support, increases to the PER strike price consistent with those proposed by NEPGA, and urged the FERC to reject, without prejudice, any Tariff remedy sought by NEPGA that has not first been evaluated and considered fully within the NEPOOL Participant Processes. Comments opposing the Complaint were also filed by NESCOE and the Retail Energy Supply Association (“RESA”). Comments supporting the Complaint were filed by Entergy, NextEra and Verso. Doc-less interventions only were filed by Calpine, ConEd, Dominion, HQ US, Eversource, Exelon, National Grid, NRG, and PSEG. This matter is pending before the FERC. 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).

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

On October 27, the FERC dismissed Algonquin Gas Transmission’s request for rehearing of the FERC’s August 31 order² dismissing the complaint filed by NextEra Energy Resources (“NextEra”) and 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), *reh’g dismissed*, 157 FERC ¶ 61,059 (Oct. 27, 2016).

PSEG Companies (“PSEG”, and together with NextEra, “Complainants”).³ As previously reported, the Complaint sought a FERC order that would have (i) directed the ISO to file Tariff changes, effective for FCA11, 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. However, the FERC dismissed the Complaint, finding Complainants’ allegations speculative and the Complaint lacking sufficient evidence of harm.⁴ The FERC found that, as a result of recent events,⁵ the electric distribution companies were 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.⁶ 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”).⁷

On September 30, Algonquin Gas Transmission requested rehearing of the August 31 order. Algonquin stated: “The Commission should grant rehearing, address the merits of the Complaint and dismiss it based on the arguments laid out in Algonquin’s responsive pleadings—namely, that the Commission should not intrude on state jurisdiction; that the Complaint is deficient and cannot be cured; and that the Complaint is an anti-competitive use of the Commission’s processes.” Eversource Energy Service Company filed a motion supporting Algonquin’s request. In dismissing the Algonquin request, the FERC stated that “While Algonquin would have preferred a dismissal on the merits, rather than a procedural dismissal, mere disagreement with the Commission’s rationale for a substantively favorable decision does not establish aggrievement.”⁸ Any challenge to the Rehearing Order must be filed in federal court on or before December 27, 2016. Otherwise, the FERC proceeding is now 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)**

On September 20, the FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint.⁹ As previously reported, EMCOS¹⁰ filed the 4th ROE complaint on April 29, 2016. The Complaint asks the FERC to reduce the TOs’ current 10.57% return

³ *NextEra Energy Resources, LLC and PSEG Companies v. ISO New England Inc.*, 157 FERC ¶ 61,059 (Oct. 27, 2016).

⁴ *Id.* at P 16.

⁵ 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).

⁶ 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.

⁷ *NextEra et. al. v. ISO New England Inc.*, 156 FERC ¶ 61,150 at P 15.

⁸ *Id.* at P 6.

⁹ *Belmont Mun. Light Dept. et al. v. Central Me. Power Co. et al.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) (“*Base ROE Complaint IV Order*”).

¹⁰ “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.

on equity (“Base ROE”) to 8.93% and to 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.”

In setting the complaint for hearing and settlement judge procedures, the FERC found that the Complaint “raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order.”¹¹ The FERC also found “unpersuasive the assertions of New England TOs and EEI that the Commission should dismiss the Complaint because the New England TOs’ base ROE continues to fall within the zone of reasonableness. The Commission has repeatedly rejected the assertion that every ROE within the zone of reasonableness must be treated as an equally just and reasonable ROE.”¹² Further, the FERC rejected arguments as to the propriety of allowing a fourth complaint against the TOs’ ROE after three previous complaints have been filed since 2011. As it did when it allowed Complaints II and III to go forward, the FERC found that Complaint IV was properly set for hearing as it is based on newer, more current data than prior Complaints subsequent hearings.¹³ The FERC is “initiating an entirely new proceeding, based on an entirely separate factual record, that may or may not reach the same conclusions as those reached in the earlier ROE proceeding.”¹⁴ The FERC estimated that, if this case does not settle and goes to hearing, the Commission’s ultimate decision would be issued on or before June 30, 2018.¹⁵ Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The requests for rehearing are pending, with FERC action required on or before November 21 or the requests will be deemed denied.

Settlement Judge Procedures. On October 4, Chief Judge Cintron designated Judge Jennifer Long, the FERC’s newest ALJ, as the Settlement Judge. On October 26, Judge Long issued an order scheduling the first settlement conference for November 8, 2016, with confidential summaries stating a party’s views regarding settlement to be submitted no later than November 3, 2016. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

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

On October 20, the FERC denied Dominion’s request for rehearing of the *Manchester Street FCA10 Order*.¹⁶ As previously reported, the FERC issued the *Manchester Street FCA10 Order* on May 2, 2016 (i) finding the ISO 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 (ii) 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).¹⁷ The FERC

¹¹ *Base ROE Complaint IV Order* at P 37.

¹² *Id.* at P 38.

¹³ Complaint IV was filed 21 months after the July 31, 2014 filing of Complaint III, nearly nine months after the July 2, 2015 close of the Complaint III evidentiary hearing record, and six months after the end of the Complaint III refund period.

¹⁴ *Base ROE Complaint IV Order* at P 40.

¹⁵ *Id.* at P 44.

¹⁶ *Dominion Energy Mktg., Inc. and Dominion Energy Manchester St., Inc. v. ISO New England Inc.*, 157 FERC ¶ 61,041 (Oct. 21, 2016) (“*Manchester Street FCA10 Rehearing Order*”),

¹⁷ *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 denied*, 157 FERC ¶ 61,041 (Oct. 21, 2016).

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).¹⁸ That compliance filing was submitted on July 1 in Docket ER16-2126 and subsequently conditionally accepted (*see* Section III below). Dominion requested rehearing of the *Manchester Street FCA10 Order* on June 1, 2016, arguing that the ISO violated the Tariff and asserting that the FERC mistakenly denied its requested relief by mistakenly assuming that Dominion's request would require resettling FCA 10 and that Dominion failed to timely challenge its disqualification. However, in denying rehearing, the FERC found (i) that the ISO did not violate its filed rate (although the filed rate was admittedly unjust and unreasonable), (ii) that it properly exercised its broad remedial discretion to decline to direct resettlement of the market, and (iii) that it had appropriately considered Dominion's failure to timely challenge its disqualification.¹⁹ 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)**

Settlement discussions in this proceeding are on-going. 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”).²⁰ 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”.²¹ 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.²² Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.²³ The FERC-established refund date is January 4, 2016.²⁴ 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. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

¹⁸ *Id.* at PP 22-23.

¹⁹ *Manchester Street FCA10 Rehearing Order* at PP 3-10.

²⁰ *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).

²¹ *Id.* at P 8.

²² *Id.* at P 11.

²³ *Id.*

²⁴ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

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

As previously reported, the FERC, in response to second (EL13-33)²⁵ and third (EL14-86)²⁶ 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;²⁷ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²⁸ and, because of "common issues of law and fact", consolidated the two proceedings for purposes of hearing and decision, with the FERC finding it "appropriate for the parties to litigate a separate ROE for each refund period."²⁹ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.³⁰ 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.³¹ 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).

²⁵ 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%.

²⁶ 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.

²⁷ *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).

²⁸ *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).

²⁹ *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).

³⁰ *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).

³¹ *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").

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

- **2017 NESCOE Budget (ER17-140)**

This proceeding was initiated by the ISO's October 19 filing of the budget for funding NESCOE's 2017 operations. The 2017 Operating Expense Budget for NESCOE is \$2,258,001. The amount to be recovered reflects true-ups from 2015 overcollections of \$674,276. Accordingly, if accepted, the NESCOE budget will result in a charge of \$0.00678 per kilowatt of Monthly Network Load. The 2017 NESCOE budget was supported by the Participants Committee at its October 14, 2016 meeting. Comments and any interventions are due on or before November 9. Thus far, doc-les interventions have been filed by NEPOOL and National Grid. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2017 ISO-NE Administrative Costs and Capital Budgets (ER17-116)**

On October 17, the ISO filed for recovery of its 2017 administrative costs (the "2017 Revenue Requirement") and submitted its capital budget and supporting materials for calendar year 2017 ("2017 Capital Budget", and together with the 2017 Revenue Requirement, the "2017 ISO Budgets"). The 2017 ISO Budgets were filed together pursuant to the Settlement Agreement entered into to resolve challenges to the 2013 ISO Budgets. In the October 17 filing, the ISO reported that the 2017 Revenue Requirement (allowing the ISO to maintain the *status quo* and to fund established initiatives), after true-up for 2015, is \$192.7 million. Of that total, the ISO's administrative costs (i.e., the 2017 Core Operating Budget) comprise \$158.9 million; depreciation and amortization of regulatory assets, \$33.7 million; and 2015 true-up, \$400,000.

The ISO further reported that the 2017 Capital Budget is \$28 million and is comprised of the following (with 2017 projected costs and target completion dates, if available, in parentheses):

▶ Non-Project Capital Expenditures	(\$4.1 million)	▶ Capitalized Interest	(\$500,000)
▶ Price Responsive Demand (Q2 2018)	(\$4 million)	▶ FCM Tracking System Technical Architecture Upgrade (Q4 2017)	(\$500,000)
▶ FCM PFP (Jun 2018)	(\$3 million)	▶ Operations Document Management System (Q4 2017)	(\$500,000)
▶ FCA12 (May 2018)	(\$2 million)	▶ Zonal Load Forecast (Mar 2017)	(\$500,000)
▶ Desktop Segregation Project – Cyber Security (Q4 2017)	(\$1.5 million)	▶ Storage Device Alternatives (Q3 2018)	(\$500,000)
▶ IMM Data Needs (Q4 2017)	(\$1.5 million)	▶ Updated EES Technical Architecture (Jul 2017)	(\$500,000)
▶ Situational Awareness (Q2 2018)	(\$1.1 million)	▶ Transmart Technical Architecture Update (Q2 2017)	(\$400,000)
▶ Other Emerging Work	(\$1.1 million)	▶ DARD Pumps Market Enhancements (Mar 2017)	(\$400,000)
▶ Sub-Hourly Settlements (Mar 2017)	(\$1 million)	▶ Asset Characteristics Database & User Interface Redesign (Q2 2017)	(\$400,000)
▶ Energy Manag. Platform 3.1 Upgrade and Customs Reduction (Q4 2019)	(\$1 million)	▶ Real-Time Fast Start Pricing (Mar 2017)	(\$400,000)
▶ Balance of Planning Period FA Project (Q2 2017)	(\$1 million)	▶ FCA11 (Feb 2017)	(\$300,000)
▶ 2017 Issues Resolution Project Phase I (Q2 2017)	(\$750,000)	▶ Power System Modelling Management (Aug 2017)	(\$200,000)
▶ 2017 Issues Resolution Project Phase II (Q4 2017)	(\$750,000)	▶ Case Snapshot Enhancements for Market Operator Interface PRD (Q2 2017)	(\$200,000)

- EMS Alarm Presentation (\$100,000)
Enhancements (May 2017)

The 2017 ISO Budgets were supported by the Participants Committee at its October 14, 2016 meeting. Comments on this filing are due November 7, 2016. Thus far, doc-less interventions have been filed by NEPOOL and National Grid. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

On October 27, the FERC denied the requests for rehearing of the FERC's June 16, 2016 order accepting the results of the tenth FCA ("FCA10")³² filed by Dominion and UWUA Local 464.³³ As previously reported, Dominion requested rehearing in order to preserve its rights while its request for rehearing of the *Manchester Street FCA10 Order* was pending which, as noted in *Section I* above, was denied on October 20. The FERC denied Dominion's request for rehearing for the reasons stated in the *FCA10 Results Order* and the orders issued in EL16-38. UWUA Local 464 raised the same arguments it raised in the FCA8 and FCA9 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. The FERC found that, having already rejected UWUA's FCA8/9 arguments in response to UWUA's request for rehearing of the FCA9 Results Order, the same arguments raised in this proceeding warranted no further comment.³⁴ The FERC was unpersuaded by UWUA's additional arguments.³⁵ Any challenge to the *FCA10 Results Rehearing Order* must be filed in federal court on or before December 27, 2016. Otherwise, the FERC proceeding is now concluded. 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).

- **Schedule 2 Base CC Rate (ER12-229)**

On October 28, 2016, as required by a December 28, 2011 order in ER12-229,³⁶ the ISO submitted an informational filing presenting its evaluation of the current Base Capacity Cost ("CC") Rate.³⁷ Based on the results of its analysis, the ISO concluded that an adjustment to the current Base CC Rate of \$2.19/kVAR-year was not supported, and the current Base CC remains appropriate and should be continued. The Participants Committee supported the ISO's proposal to leave unchanged for the January 1, 2017 to January 1, 2020 period the current "Base CC Rate" as part of the October 14 Consent Agenda. As an informational filing, the October 28, 2016 filing will not be publicly noticed for comment. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **Effective Date Update: MR1 §§ 2.7(a) & (g) (ER17-96)**

On October 14, 2016, the ISO submitted a filing to update the effective date for the inclusion of "Dispatch Zone" in Market Rule 1 sections 2.7(a) and (g), from June 1, 2017 to June 1, 2018 (aligning these sections with the previously-supported and accepted one-year deferral of PRD full integration implementation

³² *ISO New England Inc.*, 155 FERC ¶ 61,273 (June 16, 2016) ("*FCA10 Results Order*"), *reh'g denied*, 157 FERC ¶ 61,060 (Oct. 27, 2016).

³³ *ISO New England Inc.*, 157 FERC ¶ 61,060 (Oct. 27, 2016) ("*FCA10 Results Rehearing Order*"),

³⁴ *FCA10 Results Rehearing Order* at P 4.

³⁵ *Id.* at P 5.

³⁶ *ISO New England Inc.*, 137 FERC ¶ 61,237 (Dec. 28, 2011).

³⁷ The Base CC Rate, a blended proxy rate, is used to calculate VAR Payments under the fixed Capacity Cost paid to Qualified Reactive Resources for the capability to provide reactive supply and voltage support ("VAR Service") to the New England Transmission System under Schedule 2 of the OATT.

to June 1, 2018). Comments on this filing are due on or before November 4, 2016. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Resource Dispatchability Changes (ER17-68)**

On October 12, 2016, the ISO and NEPOOL jointly filed changes to the Tariff that broaden the range of resources that are subject to economic dispatch in the Real-Time Energy Market and that make other ancillary changes to improve overall Energy Market price formation (the “Resource Dispatchability Changes”). More specifically, the Resource Dispatchability Changes (i) broaden the range of resources that are capable of responding to electronic Dispatch Instructions to increase or decrease output, both in response to price signals and for reliability purposes (to be effective December 12, 2016, with completed installation and dispatchability required by January 15, 2018); (ii) require capacity suppliers with dispatchable Intermittent Power Resources that participate in the FCM to offer the available energy from an intermittent resource into the Day-Ahead Energy Market (to be effective June 1, 2020); and (iii) create a way for alternative technologies that both consume and inject energy to participate as Energy Market dispatchable resources (to be effective December 1, 2018). The Resource Dispatchability Changes were supported unanimously by the Participants Committee by way of the August 5 Consent Agenda (Item #1). Comments on this filing were due on or before November 2, 2016, and were filed by the Eversource companies. In its comments, Eversource protests the Resource Dispatchability Changes asking the FERC to find that they “are not just and reasonable with respect to the QF resources ... because there is no accommodation or recognition of the PURPA rights of the QFs affected by the proposed market design changes.” Accordingly, Eversource asked the FERC to direct modifications to the Resource Dispatchability Changes to recognize QF resources’ PURPA rights. Doc-less interventions only were filed by Exelon, Entergy, HQ US, Kimberly-Clark, National Grid, and NRG. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On October 21, the FERC accepted Tariff changes revising 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 changes were accepted effective as of November 1, 2016, as requested. Unless the October 21 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On October 18, the FERC accepted 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”).³⁸ 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 accepted, effective as of October 19, 2016, as requested.

As previously reported, comments on this filing were due on or before September 9, 2016, and were filed by the New York ISO (“NYISO”), New York State Public Service Commission (“NYPSC”), City of

³⁸ *ISO New England Inc. and New England Power Pool Participants Comm. and NY Indep. Sys. Op., Inc.*, 157 FERC ¶ 61,025 (Oct. 18, 2016) (“FCM Enhancements Order”).

New York and Multiple Intervenors, and Indicated NYTOs³⁹ (collectively, “New York Commenters”). Doc-less interventions were filed by Brookfield, ConEd, Dominion, Emera Energy Services, Entergy, Eversource, Exelon, LIPA, National Grid, NESCOE, NRG, and Roseton Generating. Answers to the New York Commenters were filed by NEPOOL, the ISO, IPPNY/NEPGA, NRG, and Roseton. On October 6, Indicated NYTOs answered the NRG and Roseton Answers, reiterating and with support for its request that the FERC delay the effective date of the FCM Enhancements. On October 12, NYISO answered the protests stating that the answers “overstate the progress that the NYISO and its stakeholders have made towards resolving the issues raised”, the requested deferral is consistent with open and efficient competitive markets, and the FERC has the authority to grant the requested deferral. On October 14, the NYPSC filed an answer supporting the NYISO’s October 12 answer.

In accepting the FCM Enhancements, the FERC noted that “protestors do not challenge the justness and reasonableness of the specific tariff revisions . . . the concerns raised by NYISO are not the result of ISO-NE’s proposed tariff revisions, but result from NYISO’s treatment of generators that export capacity from within a constrained locality under its current market rules.”⁴⁰ Accordingly, the FERC was “not persuaded that the potential behavior of New York suppliers provides a sufficient basis to reject ISO-NE’s filing in this case, and deferring the effective date of an otherwise just and reasonable proposal would be inconsistent with the notice provision in section 205 of the FPA.”⁴¹ The FERC did acknowledge NYISO’s concerns about a potential flaw in its market rules, and encouraged NYISO stakeholders to timely complete discussions underway to address that flaw. The FERC directed NYISO to file, on or before November 4, 2016, an informational report addressing its progress in preparing any tariff filing so that the FERC can assess whether additional FERC action would be appropriate. Unless the *FCM Enhancements Order* is challenged, with any challenges due on or before November 17, 2016, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, on August 30, the FERC conditionally accepted the July 1, 2016 compliance filing directed by the *Manchester Street FCA10 Order*.⁴² Persuaded by Dominion and NEPGA protests in response to that compliance filing, however, the FERC directed the ISO 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.⁴³

Compliance Filing. On October 25, the ISO and NEPOOL jointly filed the directed compliance changes. Those changes were unanimously supported at the October 14 Participants Committee meeting. Comments on the compliance filing are due on or before November 15. 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)**

CPower’s request for rehearing of the *ISO RTEG Waiver Request Order* remains pending. As previously reported, 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.13.1.2.3.1.1.⁴⁴ The waiver allows Real-Time Emergency Generation

³⁹ “Indicated NYTOs” are Central Hudson Gas & Electric, Consolidated Edison Co. of New York, New York Power Authority, New York State Electric & Gas, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric.

⁴⁰ *Id.* at P 31.

⁴¹ *Id.*

⁴² *ISO New England Inc.*, 156 FERC ¶ 61,144 (Aug. 30, 2016).

⁴³ *Id.* at PP 19, 25.

⁴⁴ *ISO New England Inc.*, 156 FERC ¶ 61,096 (Aug. 8, 2016) (“*ISO RTEG Waiver Request Order*”), *reh’g requested*.

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. 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’.”⁴⁵ On September 7, CPower requested rehearing of the *ISO RTEG Waiver Request Order*. On October 7, the FERC issued a tolling order affording it additional time to consider the CPower request, which as noted above remains pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Rehearing remains pending of the FERC’s *Resource Retirement Reforms Order*.⁴⁶ As previously reported, the FERC conditionally accepted, effective March 1, 2016, changes to the FCM rules for resource retirements proposed by the ISO and its Internal Market Monitor (“IMM”) (the “ISO/IMM Proposal”). The FERC conditioned its acceptance of the ISO/IMM Proposal on the filing of Tariff revisions “establishing a materiality threshold for determining whether or not a particular proxy de-list bid will replace a Retirement Bid in an FCA,”⁴⁷ which were filed with and accepted by the FERC.⁴⁸ 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 remains pending of the FERC’s April 8, 2016 *Demand Curve Remand Order*.⁴⁹ As previously reported, the FERC conditionally accepted, on May 30, 2014, revisions to the FCM rules that establish a system-wide sloped demand curve (“Demand Curve Changes”).⁵⁰ 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

⁴⁵ *Id.* at P 19.

⁴⁶ *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.

⁴⁷ *Id.* at P 62.

⁴⁸ *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

⁴⁹ *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).

⁵⁰ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”).

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*,⁵¹ 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).⁵² A compliance filing clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in was submitted, accepted, and became effective on May 2, 2015.⁵³ 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).

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

On August 8, 2016, the FERC issued its long-awaited remand order.⁵⁴ 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.⁵⁵ 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.⁵⁶ If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Orders 827/828 Compliance Filing: New England (ER16-2695)**

On September 29, 2016, the ISO, NEPOOL and PTO AC jointly filed revisions to Schedules 22 and 23 of the ISO OATT to comply with the FERC Order Nos. 827⁵⁷ and 828.⁵⁸ Schedules 22 and 23 were

⁵¹ *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).

⁵² *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*").

⁵³ 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.

⁵⁴ *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("*2013/14 Winter Reliability Program Remand Order*").

⁵⁵ *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

⁵⁶ *2013/14 Winter Reliability Program Remand Order* at P 17.

⁵⁷ *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 (June 16, 2016) ("*Order 827*"), *order on clarification and reh'g*, 157 FERC 61,003 (Oct. 3, 2016).

revised to incorporate the *pro forma* revisions set forth in *Orders 827* and *828* with variations necessary to recognize New England reactive power requirements and overall structure previously accepted under the “independent entity variation” standard and to make certain enhancements “consistent with or superior to” the *pro forma* revisions. An October 5, 2016 effective date was requested. The compliance filing changes were supported by the Participants Committee at its September 9 meeting. Comments on this filing were due on or before October 20, 2016; none were filed. Doc-less interventions were filed by National Grid and NRG. 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-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)**

This proceeding is subject to hearing and settlement judge procedures, which are on-going. As previously reported, 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.⁵⁹ The FERC accepted Eversource’s proposed “Option B” tariff revisions for filing, which would amortize costs over a three-year period, “to minimize the immediate impact on transmission customers while the issues are being resolved at hearing.”⁶⁰ 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.⁶¹ 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.”⁶² The FERC encouraged participants to make every effort to settle their dispute before hearing procedures commence.

Settlement Judge Procedures. Judge Patricia E. Hurt is the Settlement Judge in this proceeding. There have been three settlement conferences: May 26; August 16; and October 5. The next settlement conference is scheduled for November 9, 2016. On October 14, Settlement Judge Hurt issued a status report

⁵⁸ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) (“*Order 828*”).

⁵⁹ *ISO New England Inc. et al.*, 155 FERC ¶ 61,136 (May 3, 2016).

⁶⁰ *Id.* at P 27.

⁶¹ *Id.* at P 28.

⁶² *Id.* at P 29.

recommending that settlement proceedings continue. 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,⁶³ 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.

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.⁶⁴ 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.⁶⁵ 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.⁶⁶ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁶⁷

Settlement Judge Procedures. ALJ John Dring is the settlement judge for these proceedings. A first settlement conference was held on June 29; a second settlement conference, October 25. A third settlement conference is scheduled for November 22, 2016. 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 Q3 (ER17-122)**

On October 17, 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) 2016 Enterprise corrective action/preventative action ("CAPA") (\$185,000); and (ii) Interconnection Request Tracking Tool Elective Transmission Upgrade (\$102,644). One projects with a

⁶³ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) ("*June 2 Order*").

⁶⁴ *Id.* at P 24.

⁶⁵ *Id.* at PP 25-26.

⁶⁶ *Id.* at P 27.

⁶⁷ *Id.* at P 21; Ordering Paragraph (B).

significant changes was the Phasor Measurement Unit External Data Exchange (with a 2016 budget decrease of \$91,000). Comments on this filing are due on or before November 7. NEPOOL filed comments on October 28 supporting the Q3 Report. Thus far, a doc-less intervention has also been filed by National Grid. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **LFTR Implementation: 32nd Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the thirty-second of its Quarterly Status Reports regarding LFTR implementation on October 14, 2016. The ISO again reported its plan to focus on implementation of the monthly reconfiguration auctions (accepted in ER12-2122). The ISO reported that it has begun to develop a financial assurance design for the monthly reconfiguration auctions and anticipates discussions with the Budget & Finance Subcommittee on the design may continue into early 2017. Thereafter, the ISO will renew efforts to address the financial assurance issues associated with LFTRs, with the intention of leveraging the previously developed financial assurance design. These status reports are not noticed for public comment and no comments have been filed.

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

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

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

On November 2, 2015, the TOs submitted a refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*⁶⁸ and *531-B*.⁶⁹ 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).

IX. Membership Filings

- **November 2016 Membership Filing (ER17-229)**

On October 31, NEPOOL requested that the FERC accept (i) the memberships of Aspiry Energy, LLC [Related Person of Town Square Energy (Supplier Sector)]; King Forest Industries, Inc. (End User Sector, MPEU); and Titan Gas LLC (Supplier Sector); (ii) the termination of the Participant status of CES Retail Energy

⁶⁸ *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

⁶⁹ *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

Supply, LLC (ConEd Energy Related Person); Ameresco DR LLC (Ameresco CT Related Person); and Quantum Utility Generation, LLC (AR Sector).; and (iii) the name changes of Stored Solar J&WE, LLC (f/k/a Covanta Maine, LLC) and EmpireCo Limited Partnership (f/k/a ReEnergy Sterling CT Limited Partnership). Comments on this filing are due on or before November 21.

- **October 2016 Membership Filing (ER16-2721)**

On October 31, the FERC accepted the memberships of Bloom Energy (AR Sector, DG Sub-Sector, Small Group Member); Cricket Valley Energy Center (Generation Sector [Related Person to Advanced Power Services, Generation Group Seat]); NTE Connecticut (Provisional Member Group Seat); Rhode Island State Energy Center (Generation Sector [Related Person to Essential Power companies]); SWEB Development USA (AR Sector, RG Sub-Sector); and Farhad Aminpour (End User Sector, Governance Only Member).

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 October 28, the FERC approved 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”). As previously reported, 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.” The COM-001-3 Changes will become effective September October 1, 2017. Unless the October 28 order is challenged, this proceeding will be concluded.

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

As previously reported, the FERC conditionally accepted NERC’s 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, VSLs, and, with two exceptions noted below, VFRs (together, the “Real-Time Situational Awareness Changes”).⁷⁰ 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. In accepting the revised Standards, the FERC directed NERC to submit a compliance filing, on or before November 21, to modify the VRF designations for IRO-018-1 Requirement R1 and TOP-010-1 Requirements R1 and R2 to “high.”⁷¹ The *September 22 Order* was not challenged and is final and unappealable.

- **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

⁷⁰ *N. Amer. Elec. Rel. Corp.*, 156 FERC ¶ 61,207 (Sep. 2, 2016) (“*September 22 Order*”).

⁷¹ *September 22 Order* at P 2.

date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

On September 22, the FERC issued a NOPR proposing to approve 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”).⁷² 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. Comments on the *Frequency Control Changes NOPR* are due on or before November 28, 2016.⁷³

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

The *BAL Changes NOPR* remains pending before the FERC. As previously reported, the FERC issued a NOPR. on May 19, 2016, 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.⁷⁴ NERC stated that the BAL Changes consolidate six requirements in BAL-002-1 into three requirements, supported by several proposed associated NERC Glossary definitions, along with a revised Applicability section that incorporates language from the existing Standard. BAL-002-2 requires responsible entities to maintain and deploy energy reserves and to stabilize system frequency through identification of a Reportable ACE deviation and restoration of Reporting ACE to defined values after a system disturbance. BAL-002-2 will also require the responsible entity to maintain an Operating Process to ensure maintenance of Contingency Reserves to a level at least equal to the responsible entity’s Most Severe Single Contingency (“MSSC”), thereby implementing a continent-wide reserve policy to ensure that adequate Contingency Reserves will always be available to be deployed as necessary. NERC requested that responsible entities be required to comply with BAL-002-2 on the first day of the first calendar quarter that is six months after this standard is approved by the FERC. On February 12, 2016, NERC submitted supplemental information that clarified how BAL-002-2 will work in conjunction with the successor provisions to TOP-007-0 (TOP-007-0 is set to expire on April 1, 2017). On March 31, NERC provided further supplemental information to further clarify the significance of the 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, 2016⁷⁵ 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

⁷² *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Rel. Standards*, 156 FERC ¶ 61,210 (Sep. 22, 2016) (“*Frequency Control Changes NOPR*”).

⁷³ The *Frequency Control Changes NOPR* was published in the *Fed. Reg.* on Sep. 28, 2016 (Vol. 81, No. 188) pp. 66,555-66,562.

⁷⁴ *Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event Rel. Standard*, 155 FERC ¶ 61,180 (May 19, 2016) (“*BAL Changes NOPR*”).

⁷⁵ The *BAL Changes NOPR* was published in the *Fed. Reg.* on May 26, 2016 (Vol. 81, No. 102) pp. 33,441-33,448.

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

As previously reported, the FERC issued, on September 22, 2016, a final rule approving a new Reliability Standard -- TPL-007-1 (Geomagnetic Disturbance (“GMD”) Operations) -- and one new definition (Geomagnetic Disturbance Vulnerability Assessment), associated VRFs and VSLs (“*Order 830*”).⁷⁶ In addition, the FERC directed 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, (ii) to require the collection of necessary geomagnetically-induced current monitoring and magnetometer data and to make such data publicly available; and (iii) to include a one-year deadline for the development of corrective action plans and two and four-year deadlines to complete mitigation actions involving non-hardware and hardware mitigation, respectively. The FERC also directed NERC to submit a work plan and, subsequently, one or more informational filings that address specific GMD-related research areas. *Order 830* will become effective November 29, 2016.⁷⁷ Rehearing of Order 830 was requested by EEI, the Foundation for Resilient Societies (“FRS”), and the Jewish Institute for national Security Affairs (“JINSA”). The requests for rehearing are pending, with FERC action required on or before November 23 or the requests will be deemed denied.

- **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, NOPR⁷⁸ 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 Standards⁷⁹ to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2’s effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC sought comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also sought further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this NOPR were due August 25, 2014,⁸⁰ 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.

⁷⁶ *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

⁷⁷ *Order 830* was published in the *Fed. Reg.* on Sep. 30, 2016 (Vol. 81, No. 190) pp. 67,120-67,140.

⁷⁸ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) (“*ATC NOPR*”).

⁷⁹ 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.

⁸⁰ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

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

The *BAL-002-1a Interpretation Remand NOPR*⁸¹ 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, 2013,⁸² 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.

XI. Misc. - of Regional Interest

- **CFTC RTO/ISO Exemption Amendment (2016-11385)**

On October 24, the Commodity Futures Trading Commission ("CFTC") issued a final order in response to an application from Southwest Power Pool, Inc. ("SPP") to exempt specified transactions from certain provisions of the Commodity Exchange Act ("CEA") and Commission regulations ("*CFTC SPP Order*").⁸³ Importantly for New England, the *CFTC SPP Order* also amends the CFTC's March 28, 2013 order (which generally exempted specified RTO/ISO transactions from certain provisions of the CEA and CFTC regulations) by specifically exempting the transactions covered under that Order from private actions pursuant to CEA Section 22 (a 180° turn from what the CFTC had signaled in its May 10, 2016 draft order that it was contemplating). Accordingly, private parties are not permitted to bring claims under either the CEA or the FPA for fraud and manipulation involving financial energy products traded in the organized wholesale power markets. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application: Noble Americas Energy Solutions/Calpine (EC17-8)**

On October 12, 2016, Noble Americas Energy Solutions and Calpine Energy Services Holdco II LLC ("Calpine") requested FERC authorization for transaction that will result in Calpine acquiring a 100% of the equity interests in Noble Americas Energy Solutions. Comments on this filing were due on or before November 2; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁸¹ *Elec. Rel. Org. Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

⁸² 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.

⁸³ *Final Order Regarding Southwest Power Pool, Inc. Application To Exempt Specified Transactions; Amendment to the Final Order Exempting Specified Transactions of Certain Independent System Operators and Regional Transmission Organizations*, published in the *Fed. Reg.* on Oct. 24, 2016 (Vol. 81, No. 205 pp. 73,062-73,087).

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

On October 25, the FERC authorized NSTAR's acquisition of limited jurisdictional transmission facilities associated with the Town of Belmont's construction of a new 115 kV/13.8 kV substation in Belmont.⁸⁴ Operational control of the transmission facilities will be given to the ISO. The portion of the facility under construction that comprises distribution facilities will remain with Belmont. NSTAR must notify the FERC within 10 days of the date that the acquisition has been consummated. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

The March 25, 2016 request by Atlas Power Finance, a subsidiary of Atlas Power (a newly-formed joint venture between Dynegy and ECP III), Dynegy Inc. ("Dynegy"), Energy Capital Partners III, LLC ("ECP") and GDF Suez, for authorization to acquire of GDF Suez Energy Resources remains pending. Also pending, in a separate proceeding (EC16-94), is the Dynegy and ECP III request that the FERC approve the purchase by an ECP affiliate, Terawatt Holdings, LP ("Terawatt"), of newly-issued Dynegy common stock representing approximately 10% of the outstanding shares of Dynegy. Comments on both those filings were due on or before May 24, 2016; none were filed. On June 8, the FERC requested additional data to process the filing, which was filed on July 8. In addition, on June 15, Atlas supplemented the application by informing the FERC that Dynegy would purchase all of ECP's interests in Atlas Power prior to the closing of the Transaction. Comments on the June 15 filing were due on or before June 29; none were filed. Comments on the July 8 response were due on or before July 29. On July 29, Public Citizen filed a protest. Atlas answered 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).

- **PURPA Complaint: Allco v. MA Agencies (EL17-6 et al.)**

On October 19, 2016, Allco Renewable Energy Limited and Allco Finance Limited (together, "Allco") petitioned the FERC to pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 ("PURPA") against the Massachusetts Department of Public Utilities ("MA DPU") and the Massachusetts Department of Energy Resources ("MA DOER", and together with MA DPU, the "Massachusetts Agencies").⁸⁵ Allco states that this petition is the result of Massachusetts' implementation of Massachusetts state law, Section 83A, which it asserts compels wholesale transactions with non-QFs, requires QFs to participate in a bidding process to obtain a contract, unlawfully regulates wholesale sales, violates Massachusetts' ongoing obligation to implement PURPA, and perpetuates Massachusetts Utilities' refusal to enter into long-term contracts. Allco seeks FERC action enforcing PURPA against the Massachusetts Agencies to invalidate and permanently enjoin Section 83A, and to declare void *ab initio* any wholesale power contracts executed under Section 83A. Comments on this Complaint are due on or before November 9, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **PURPA Complaint: Allco Finance Ltd. and Windham Solar v. CT PURA (EL16-115 et al.)**

On September 12, 2016, as amended on September 26, Windham Solar LLC and Allco Finance Limited (together, "Allco") petitioned the FERC to pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 ("PURPA") against the Connecticut Public Utilities Regulatory Authority ("CT PURA"). This petition is Allco's third petition for enforcement filed against Connecticut within the past year. Allco states that this petition is the result of the final decision by CT PURA, on August 24, 2016, denying Windham's petition for a power purchase agreement ("PPA") for various solar facilities that are 1 to 2 megawatts in size. Allco seeks a FERC order declaring invalid, and to enforce PURPA against CT PURA to invalidate and permanently enjoin, Connecticut's rules, which prevented Allco from securing the PPAs.

⁸⁴ *NSTAR Elec. Co.*, 157 FERC ¶ 62,059 (Oct. 25, 2016).

⁸⁵ Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC's PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

On October 17, CT PURA and CT OCC filed a joint protest to the Complaint, which Allco answered on October 25. Other parties to the proceeding include Eversource and Southern California Edison Company, which intervened doc-lessly. 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).

- **EMM Contract (ER17-290)**

In a new matter since the last report, the ISO filed on October 31, pursuant to Section 9.4.5 of the Participants Agreement, a copy of its new 3-year contract with Potomac Economics, Ltd. to continue as the ISO's External Market Monitor ("EMM"). In its filing, the ISO notes that the new agreement is closely modeled on the existing agreement between Potomac and the ISO, including all of the functions laid out for the EMM in Section 9.4.3 of the Participants Agreement. The new EMMU contract term will run from January 1, 2017 through December 31, 2019. Comments on the filing are due November 21, 2016. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Orders 827/828 Compliance Filing: Maine Public District (ER17-137)**

On October 19, Emera Maine submitted for filing changes to the LGIA and SGIA of its Open Access Transmission Tariff for Maine Public District (the "MPD OATT") in response the requirements of *Orders* 827 and 828. A December 14, 2016 effective date was requested. Comments on this filing are due on or before November 9, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **E&P Agreement: CL&P/Beacon Falls (ER16-2700)**

On October 27, the FERC accepted an Engineering, Design and Procurement Services ("E&P Agreement") between CL&P and Beacon Falls Energy Park, LLC ("Beacon Falls") that sets forth the terms and conditions under which CL&P will provide design and/or engineering necessary to complete a cost estimate for the modification of CL&P's Beacon Falls substation and to interconnect the proposed 63.3 megawatt fuel cell project's switchyard. CL&P stated that it and Beacon Falls are in the process of completing a Standard Large Generator Interconnection Agreement ("LGIA") under Schedule 22 of the ISO's Tariff. The Agreement was accepted effective as of September 29, 2016, as requested. Unless the October 27 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).

- **Agreements Cancellation: National Grid/Wheelabrator Saugus (ER16-2575)**

On October 11, the FERC accepted National Grid's notice of cancellation of two agreements with Wheelabrator Saugus that were superseded and replaced by an LGIA between National Grid and Wheelabrator Saugus (the "Saugus LGIA"), accepted in ER16-760. The notice was accepted effective as of November 9, 2016, as requested. Unless the October 11 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).

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

On October 27, the FERC accepted NSTAR's 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. Unless the October 27 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.⁸⁶ 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”⁸⁷ 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.⁸⁸ The FERC also consolidated ER12-1650 with this proceeding. In addition, the FERC directed that Emera Maine to make a compliance filing, on or before July 5, that (1) revises its 2014-2015 formula rate charges to correct the errors the Maine Customer Group raised with respect to amortization of long-term debt costs and post-retirement benefits other than pensions, and (2) imputes the retired debt balance for the tax-free Maine Public bonds (\$22.6 million) into the capital structure calculation for the 2014-2015 Rate Year. Emera Maine requested rehearing of the June 2 order on July 5. On August 2, the FERC issued a tolling order affording it additional time to consider the Emera Maine request for rehearing, which remains pending before the FERC.

Compliance Filing (ER12-1650). Emera Maine’s July 5, 2016, submitted in response to the June 2 Order described above, remains pending before the FERC. The compliance filing was contested by the Maine Customer Group, which asserted that Emera’s compliance filing was incorrect as to two of the three refund

⁸⁶ *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

⁸⁷ 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”).

⁸⁸ *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh’g requested*.

issues, and Emera should be ordered to pay immediate refunds in accordance with the corrected revised formula rate it proposed. Emera Maine answered the Maine Customer Group's July 18 answer on August 1, contending that the Group's answer should be denied and Emera Maine's compliance filing found to comply fully with the June 2 Order. 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 is holding the hearing in abeyance pending the outcome of settlement judge procedures. As previously reported, Chief Judge Cintron substituted ALJ Dring in place of ALJ Johnson in mid-September as the settlement judge for these proceedings. Settlement conferences before Judge Johnson were held on January 5, March 3, and April 26, 2016 and on October 25 before Judge Dring. A fifth settlement conference is scheduled for November 22. 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)**

As previously reported, the FERC issued in late September *Opinion 550*⁸⁹, which found that the Midcontinent Independent System Operator, Inc. ("MISO") and International Transmission Company ("ITC") had not demonstrated that their proposal to allocate costs of ITC Phase Angle Regulating Transformers ("PARs") to entities outside of MISO, including to entities in NYISO or PJM, was just and reasonable. *Opinion 550* affirmed in part, and reversed in part, certain determinations of the Presiding Administrative Law Judge Sterner,⁹⁰ and dismissed Judge Sterner's remaining determinations as moot. Consistent with these actions, the FERC also dismissed as moot requests for rehearing of Judge Sterner's *MISO Hearing Order*. No party ultimately challenged *Opinion 550*, which is now final and unappealable. This proceeding is now concluded. If there are any questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

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

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

- **FERC Enforcement Action: Maxim Power (IN15-4)**

On September 26, the FERC approved a Stipulation and Consent Agreement⁹¹ that resolves its investigation into (and subsequent litigation in the US District Court for the District of Massachusetts⁹² regarding) whether Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Co.,

⁸⁹ *Midwest Indep. Trans. Sys. Op., Inc.*, 156 FERC ¶ 61,202 (Sep. 22, 2016) ("*Opinion 550*").

⁹⁰ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) ("*MISO Hearing Order*"), *reh'g denied*, 156 FERC ¶ 61,202 (Sep. 22, 2016).

⁹¹ *Maxim Power Corp. et al.*, 156 FERC ¶ 61,223 (Sep. 26, 2016).

⁹² *FERC v. Maxim Power Corp. et al.*, No. 3:15-cv-30113-MGM (D. Mass.).

LLC, and Pittsfield Generating Company, LP (collectively, “Maxim”)⁹³ violated the FERC’s Anti-Manipulation and Market Behavior Rules through a scheme to obtain payments for reliability dispatches based on the price of expensive fuel oil when Maxim in fact burned much less costly natural gas.⁹⁴ Under the Settlement, in which Maxim neither admits nor denies the alleged violations, Maxim agreed to **disgorge \$4 million** to ISO New England and pay a **\$4 million civil penalty** to the United States Treasury. The disgorgement to ISO New England will be made in two parts. Refunds will be made to current customers based on Real-Time Load Obligation. The amount of the first payment (1/3 of the total penalties, or roughly \$2.67 million) will be included in the November Non-Hourly Charges Statement. The second payment will be due and subsequently disbursed as just described approximately one year from now. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

The FERC’s audit of ISO-NE docketed in this proceeding is on-going. As previously reported, the FERC informed ISO-NE on November 24, 2015 that it would 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 July 10, 2013 period through the present.

XII. Misc. - Administrative & Rulemaking Proceedings

- **Utilization of Electric Storage Resources in RTO/ISO Markets (AD16-25)**

On November 1, the FERC issued a supplemental notice of its November 9 technical conference to discuss the utilization of electric storage resources as transmission assets compensated through transmission rates, for grid support services that are compensated in other ways, and for multiple services. The supplemental notice includes an agenda for the technical conference, including a more detailed description of the topics to be considered for discussion at the conference, with questions that speakers should be prepared to discuss grouped by topic. The notice also identifies the list of panelists for each of the three topic areas. Of note, Tom Kaslow is scheduled to present on the Utilization of Electric Storage Resources for Transmission Services panel. Those interested in attending the technical conference or viewing the webcast are encouraged to register at <https://www.ferc.gov/whats-new/registration/11-09-16-form.asp>.

⁹³ Maxim’s Related Person, Pawtucket Power Holding Company, is a member of the Generation Sector Group Seat. In addition to Pawtucket, Maxim operates units in Pittsfield, MA and Hartford, CT (Capitol District Energy Center Cogeneration Associates).

⁹⁴ As previously reported, the FERC found that Maxim engaged in three schemes in New England that violated the FERC’s Anti-Manipulation Rule. In the first, during 2012-13, Maxim received millions of dollars of inflated make-whole payments from the ISO by gaming Market Rules intended to mitigate the market power of generators needed for reliability; in the second, July-August 2010, Maxim told the ISO it needed to offer based on high oil prices because of supposed gas supply problems, and collected make-whole payments based on those high prices, but in fact burned much less expensive gas. In many cases Maxim had already purchased gas when it submitted Day-Ahead offers based on oil prices because of supposed gas supply issues; in the third, 2010- 2013, Maxim obtained inflated capacity payments by artificially raising the reported output of three of its plants by employing extraordinary measures during capacity tests that it did not use, and did not intend to use, during the ordinary operation of the plants. Based on these findings, the FERC had previously assessed civil penalties to Maxim and its affiliates totaling \$5 million (no disgorgement). *Maxim Power Corp. et al.*, 151 FERC ¶ 61,094 (May 1, 2015) (“*Maxim Penalties Order*”). At Maxim’s election, the *Maxim Penalties Order* proceeded to a *de novo* review before the federal district court in Massachusetts, which was the first to find that *de novo* review would be conducted according to the same procedures applicable to an ordinary civil action (e.g. permitting defendants to seek discovery from witnesses interviewed by FERC or presenting their own witnesses during the civil trial) rather than be limited, as FERC argued, to a review of the full record developed in the underlying FERC proceeding.

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

On April 11, FERC Staff issued a data request directing the ISO to submit information on rules that affect the participation of electric storage resources in the New England Markets, “including, but not limited to, the eligibility of electric storage resources to participate in the ISO-NE markets, the qualification and performance requirements for market participants, required bid parameters, and the treatment of electric storage resources when they are receiving electricity for later injection to the grid.” Information from each of the ISO/RTOs, including ISO-NE’s information, was submitted on May 16. Comments on ISO-NE’s submission were due on or before June 6, 2016. Commenters addressing electric storage participation in the New England Markets included FirstLight Power Resources Management. Comments not specific to a particular region were submitted by many, among others, the Energy Storage Association, APPA, Brookfield, EEI, EPSA, NextEra, NRECA and Tesla. This matter is pending before the FERC.

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

The FERC held a technical conference on a June 27-28, 2016 to discuss competitive transmission development process-related issues, including use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking issues. In addition, participants had the opportunity to discuss issues relating to interregional transmission coordination, regional transmission planning and other transmission development issues. Pre-technical conference comments were filed by over 20 parties, including by NESCOE, BHE US Transmission, LSPower, and NextEra Energy Transmission. Technical conference materials are available on the FERC’s e-Library. 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 Associations⁹⁵ and the New Jersey BPU, the deadline for comments was extended to October 3, 2016. Comments were filed by over 60 parties, including: ISO-NE, Avangrid, AWEA, BHE US Transmission, EDF Renewables, EEI, ELCON, Eversource, Exelon, LSP Transmission Holdings, MMWEC, National Grid, NESCOE, NextEra, and PSEG.

- **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. 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. EDF Renewables filed reply comments on August 19. Since the last Report, the PJM IMM filed comments answering and objecting to AWAE’s July 28 comments suggesting that wind units should receive cost of service compensation for reactive capability apart from how the rules apply to other types of generators. 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. 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 (“QP”); and (2) minimum standards for PURPA-purchase contracts and should be filed on

⁹⁵ The “Utility Trade Associations” are APPA, EEI, Large Public Power Council, National Rural Electric Cooperative Association (“NRECA”), and Transmission Access Policy Study Group (“TAPS”).

or before November 7, 2016. Since the last Report, comments were filed by Industrial Energy Consumers of America.

- **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:⁹⁶ (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 6⁹⁷ and were filed by over 25 parties, including Exelon, EEI, and EPSA. This matter is pending before the FERC.

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

On October 18, 2016, FERC staff issued a report reviewing RTO/ISO performance metrics as well as metrics for non-RTO/ISO utilities for the 2010-14 period. The Report has not been noticed for public comment.

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

As previously reported, the FERC issued a July 21, 2016 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.⁹⁸ 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* were due on or before September 19, 2016⁹⁹ and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

Technical Workshops. On November 2, 2016, the FERC issued a notice that its second technical workshop will be held on December 7, 2016. The first technical workshop was held on August 11 and focused on the *Data Collection NOPR*’s draft data dictionary. The second technical workshop that will focus on the submittal process, with case studies serving as a platform for discussion of (i) the steps to submit data; (ii) data review and validation processes; and (iii) the notifications to be provided through the data validation and receipt process. Staff will also provide a high-level update on proposed technical refinements to the data dictionary based on input received during the first workshop and additional outreach. All interested are

⁹⁶ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

⁹⁷ 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 was 30 days after the filing of the last of the reports, the SPP report, on Mar. 7.

⁹⁸ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

⁹⁹ The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

encourage to participate and register online (whether attending in person or via webcast) at <https://www.ferc.gov/whats-new/registration/12-07-16-form.asp>.

- **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.¹⁰⁰ Comments on the *FAST Act/CEII NOPR* were due on or before August 19, 2016,¹⁰¹ 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 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). On September 12, ISO-NE/SPP responded to PJM’s comments, and reiterated their request that the FERC ease the burden of sharing planning and operational information among Commission-regulated entities for purposes of ensuring interregional reliability and effective long-term planning. This matter is pending before the FERC.

- **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. Speaker materials are posted on the FERC’s eLibrary. Post-technical conference comments were invited and 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 828¹⁰² 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”¹⁰³ abnormal frequency and voltage events and not disconnect during such events.¹⁰⁴ 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

¹⁰⁰ 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*”).

¹⁰¹ The *FAST Act/CEII NOPR* was published in the *Fed. Reg.* on July 5, 2016 (Vol. 81, No. 128) pp. 43,557-43,567.

¹⁰² *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) (“*Order 828*”).

¹⁰³ “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.

¹⁰⁴ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, 154 FERC ¶ 61,222 (Mar. 17, 2016) (“*Small Generator Ride Through NOPR*”).

(the effective date of *Order 828*).¹⁰⁵ 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).¹⁰⁶ New England's combined *Orders 827/828* compliance filing was submitted on September 29 and is pending before the FERC (see Section IV.)

- **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.¹⁰⁷ 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.¹⁰⁸ Comments on the *Frequency Response NOI* were due on or before April 25, 2016¹⁰⁹ 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.

- **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).¹¹⁰ 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, 2016¹¹¹ 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 *Order 827* eliminating the exemptions for wind generators from the requirement to provide reactive power. 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

¹⁰⁵ *Order 828* was published in the *Fed. Reg.* on Aug. 1, 2016 (Vol. 81, No. 147) pp. 50,290-50,298.

¹⁰⁶ *Id.* at P 45.

¹⁰⁷ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) (“*Frequency Response NOI*”).

¹⁰⁸ *Frequency Response NOI* at P 2.

¹⁰⁹ The *Frequency Response NOI* was published in the *Fed. Reg.* on Feb. 24, 2016 (Vol. 81, No. 36) pp. 9,182-9,192.

¹¹⁰ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,038 (Jan. 21, 2016) (“*Price Cap NOPR*”).

¹¹¹ The *Price Cap NOPR* was published in the *Fed. Reg.* on Feb. 4, 2016 (Vol. 81, No. 23) pp. 5,951-5,965.

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 October 3, 2016, the FERC granted in part, and denied in part, CAISO's request.¹¹² The FERC clarified that *Order 827* does not preclude a public utility transmission provider from seeking to adopt a tariff provision defining "newly interconnecting non-synchronous generator" as including a repowering of an existing generator. However, the FERC declined to grant CAISO's request to clarify that *any* repowering of an existing generator that requires new inverters and an interconnection study constitutes a "newly interconnecting non-synchronous generator" subject to *Order 827*. Instead, the FERC required that sufficiently detailed and narrow tariff provisions defining what constitutes a repowering of an existing generator capable of providing reactive power be adopted and reviewed and approved by the FERC, either as part of an *Order 827* compliance filing or as part of a Section 205 filing.¹¹³

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 were due on or before October 14, 2016. New England's combined *Orders 827/828* compliance filing was submitted on September 29 and is pending before the FERC (*see* Section IV.) *Order 827* became effective September 21, 2016. This will conclude reporting on this rule making proceeding.

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

Also on June 16, the FERC issued *Order 825*,¹¹⁴ 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, providing appropriate incentives for resource performance. *Order 825* will become effective September 13, 2016.¹¹⁵

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.

¹¹² *Reactive Power Requirements for Non-Synchronous Generation*, 157 FERC ¶ 61,003 (Oct. 3, 2016).

¹¹³ *Id.* at P 8.

¹¹⁴ *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*").

¹¹⁵ *Order 825* was published in the *Fed. Reg.* on June 30, 2016 (Vol. 81, No. 126) pp. 42,882-42,910.

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.¹¹⁶ 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.¹¹⁷ The FERC 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.¹¹⁸ 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 FERC in granting bidding exemptions for state-regulated retail access programs.¹¹⁹ Furthermore, the FERC found that exemption proponents had not shown why such a broad exemption was necessary in order for EDCs to have a sufficient ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.¹²⁰ On September 30, 2016, ConEd and Orange & Rockland Utilities, Inc. (“O&R”) requested clarification of the *Algonquin Order Following Technical Conference*, asking the FERC to clarify certain aspects of its approval exempting from bidding an EDC’s capacity release to an asset manager. Algonquin Gas Transmission, National Grid Electric Distribution Companies, and Sequent Energy Management and Tenaska Marketing Ventures filed answers to the requests for clarification on October 17. Those requests are pending before the FERC.

On September 23, Algonquin submitted a compliance filing in response to the requirements of the *Algonquin Order Following Technical Conference*. Comments on that compliance were due on or before October 5; none were filed. The compliance filing is pending before the FERC.

¹¹⁶ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

¹¹⁷ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) (“*Algonquin Order Following Technical Conference*”)

¹¹⁸ *Id.* at P 27.

¹¹⁹ *Id.* at P 34.

¹²⁰ *Id.* at P 35

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

On January 21, 2016, 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);¹²¹
- ◆ Empire Pipeline, Inc. (Docket No. RP16-300);¹²²
- ◆ Iroquois Gas Transmission System, LP (Docket No. RP16-301);¹²³ and
- ◆ Tuscarora Gas Transmission Company (Docket No. RP16-299);¹²⁴

On September 22, 2016, the Commission approved the uncontested settlements in the Tuscarora¹²⁵ and Columbia Gulf¹²⁶ proceedings. On October 20, the Commission approved the Iroquois settlement¹²⁷ and conditionally approved the Empire Settlement.¹²⁸ Reporting on this matter has now concluded.

- **Natural Gas-Related Enforcement Actions**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines:

BP (IN13-15). On July 11, 2016, the FERC issued *Opinion 549*¹²⁹ 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").¹³⁰ 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."¹³¹ 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

¹²¹ *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,027 (2016), *reh'g denied*, 154 FERC ¶ 61,275 (Mar. 31, 2016).

¹²² *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016), *reh'g denied*, 154 FERC ¶ 61,274 (Mar. 31, 2016).

¹²³ *Iroquois Gas Transmission Sys., LP*, 154 FERC ¶ 61,028 (2016).

¹²⁴ *Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,030 (2016), *reh'g denied, clarif. granted*, 154 FERC ¶ 61,273 (Mar. 31, 2016).

¹²⁵ *Tuscarora Gas Transmission Co.*, 156 FERC ¶ 61,188 (2016).

¹²⁶ *Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,189 (2016).

¹²⁷ *Iroquois Gas Transmission System, L.P.*, 157 FERC ¶ 61,035 (Oct. 20, 2016).

¹²⁸ *Empire Pipeline, Inc.*, 157 FERC ¶ 61,034 Oct. 20, 2016). Approval of the Settlement is subject to Empire modifying the standard of review provision.

¹²⁹ *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹³⁰ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹³¹ *BP Penalties Order* at P 3.

order establishing a hearing in this proceeding.¹³² 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*. On September 8, the FERC issued a tolling order, affording it additional time to consider BP's request for rehearing of the *BP Penalties Order*, which remains pending.

On September 7, BP submitted a motion for modification of the *BP Penalties Order's* disgorgement directive because it cannot comply with the disgorgement directive as ordered. BP explained that the entity to which disgorgement was to be directed, the Texas Low Income Home Energy Assistance Program ("LIHEAP"), is not set up to receive or disburse amounts received from any person other than the Texas Legislature. In response, on September 12, the FERC stayed the disgorgement directive (until an order on BP's pending request for rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.¹³³

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹³⁴ 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 2012.¹³⁵

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 replied to Respondents' answer on September 23, 2016.

- **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.

¹³² *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).

¹³³ *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

¹³⁴ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹³⁵ 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.

- ▶ 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, 2015.¹³⁶ Order Denying Rehearing and Dismissing Stay Request issued Jan. 28, 2016. FERC orders appealed to DC Circuit. Order Amending Certificate issued October 6, 2016.¹³⁷
 - ▶ Construction began May 2015.
 - ▶ Partially in-service; expected to be fully in-service in 4th quarter 2016.
- **Atlantic Bridge Project (CP16-9)**
 - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate on Oct. 22, 2015.
 - ▶ 132,700 Dth/d of firm transportation to new and existing delivery points on the Algonquin system and 106,276 Dth/d of firm transportation service from Beverly, MA to various existing delivery points on the Maritimes & Northeast system.
 - ▶ 6.3 miles of replacement pipeline along Algonquin in NY and CT; new 7,700-horsepower compressor station in Weymouth, MA; more horsepower at existing compressor stations in CT and NY.
 - ▶ Seven firm shippers: Heritage Gas Limited, Maine Natural Gas Company, NSTAR Gas Company d/b/a Eversource Energy, Exelon Generation Company, LLC (as assignee and asset manager of Summit Natural Gas of Maine), Irving Oil Terminal Operations, Inc., New England NG Supply Limited, and Norwich Public Utilities.
 - **Connecticut Expansion Project (CP14-529)**
 - ▶ Tennessee Gas Pipeline filed for Section 7(c) certificate July 31, 2014.
 - ▶ 72,100 Dth/d of firm capacity.
 - ▶ 13.26 miles of three looping segments & facility upgrades/modifications in NY, MA & CT.
 - ▶ Three firm shippers: Conn. Natural Gas, Southern Conn. Gas, and Yankee Gas.
 - ▶ Notice of Schedule issued Sept. 1 with FERC EA to be issued Oct. 23 and 90-day Federal Authorization Decision Deadline set at Jan. 21, 2016.
 - ▶ Environmental Assessment (EA) issued on Oct. 23, 2015.
 - ▶ Certificate of public convenience and necessity granted Mar. 11, 2016.¹³⁸
 - ▶ Construction expected to begin 4th Quarter 2016.

¹³⁶ 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).

¹³⁷ *Algonquin Gas Transmission LLC*, 157 FERC ¶ 61,011 (Oct. 6, 2016). The order amends Algonquin's certificated initial reservation charges to reflect increases in the estimated construction costs of the AIM Project and West Roxbury Lateral. Specifically, the initial reservation charge for the AIM Project was increased from an estimated \$42.5748 per Dth to \$48.507 per Dth for Rate Schedule AFT-1 service and the initial reservation charge for the West Roxbury Lateral was increased from an estimated \$18.1976 per Dth to \$24.378 per Dth for Rate Schedule AFT-CL service. The proposed initial rates reflect a first-year cost of service of \$199,074,096 and \$29,253,221 for the AIM Project and West Roxbury Lateral, respectively. A commodity charge of \$0.0069 per Dth for Rate Schedule AFT-1 to recover \$603,667 in variable costs was also added.

¹³⁸ *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).

- ▶ In-service: Nov. 2017 (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.
 - ▶ 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.
 - ▶ Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays.
 - On October 13, 2016, the FERC approved Constitution’s request to proceed to remove the felled trees in Pennsylvania.
- **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, 2015.¹³⁹
 - ▶ Construction began in May 2015.
 - ▶ In-Service: November 2016 (anticipated).

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report.

XV. Federal Courts

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

¹³⁹ Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

- **FCA9 Results (16-1068)**
Underlying FERC Proceeding: ER15-1137¹⁴⁰
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). The Court’s order in the FCA8 Results appeal was issued on October 25, 2016). On July 27, the Court granted Petitioners’ motion, ordering that this case be held in abeyance pending further order of the Court and directing the parties to file motions to govern future proceedings in this case within 45 days of the disposition of the FCA8 Results appeal proceeding, or December 9, 2016.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**
Underlying FERC Proceeding: ER14-1050;¹⁴¹ EL14-52;142 EL15-25¹⁴³
Petitioner: NEPGA

As previously reported, NEPGA filed, on January 19, 2016, a petition for review of the FERC’s orders on NEPGA’s first 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. FERC filed Respondent’s Brief on September 23; NESCOE filed Intervenor for Respondent Brief on September 30; NEPGA filed its Reply Brief on October 31. Remaining submissions are to be filed as follows: Deferred Appendix, November 14; and Final Briefs, November 28. On October 4, NEPGA informed Court of its latest PER Complaint (*see* EL16-120 in Section I above), which it stated would not resolve the issues in this proceeding even if FERC ruled in its favor in that proceeding.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹⁴⁴
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 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.

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

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

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

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

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

- **Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated)**
Underlying FERC Proceedings: ER13-193; ER13-196¹⁴⁵

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

As previously reported, NETOs¹⁴⁶ 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. On October 4, the Court scheduled the case for oral argument on January 13, 2017, at 9:30 a.m. The composition of the argument panel will usually be revealed 30 days prior to the date of oral argument.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consolidated)**
Underlying FERC Proceeding: EL11-66¹⁴⁷

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,¹⁴⁸ 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"¹⁴⁹ and the TOs¹⁵⁰ 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. On October 3, the Court scheduled this case for oral argument on December 6, 2016, at 9:30 a.m. The composition of the argument panel will usually be revealed 30 days prior to the date of oral argument and, as of the date of this Report, has not been identified.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹⁵¹ EL15-23¹⁵²

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

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

¹⁴⁶ "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.

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

¹⁴⁸ "EMCOS" are Taunton, Reading, Hingham, and Braintree.

¹⁴⁹ "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.

¹⁵⁰ In this case, TOs are CMP, Emera Maine, Eversource, National Grid, NHT, UI, and Vermont Transco.

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

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

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. NEPGA filed its Reply Brief on September 20. On October 7, PSEG advised that it would not be filing a Reply Brief. On October 11, the parties filed a joint appendix. On October 25, Final Briefs for Respondent, Joint Intervenor for Respondent, Petitioner, Intervenor for Petitioner, as well as Joint Petitioners' Final Brief were filed. All briefing is complete as this matter is now before the Court.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**
Underlying FERC Proceeding: ER14-1409¹⁵³
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. Following full briefing and oral argument, the Court dismissed the petitions for review for lack of jurisdiction. The Court held that "FERC's deadlock does not constitute agency action, and the Notices describing the effects of the deadlock are not reviewable orders under the FPA."¹⁵⁴ The Court similarly found that it did not have the power under the Administrative Procedures Act ("APA") to hear the petitions. Accordingly, it found no other recourse than to dismiss the case. The Court stated that "any unfairness associated with this outcome inheres in the very text of the FPA. Accordingly, it lies with Congress, not this Court, to provide the remedy."

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

Entergy¹⁵⁵ filed, on February 27, 2015, in the United States District Court for the Northern District of New York ("NDNY"), a Complaint that seeks a declaratory judgment that the NY PSC Commissioners' order ("Order") approving an agreement to keep NRG's 435 MW Dunkirk facility in the NYISO market, "repowered" as a natural gas-fired (rather than coal-fired) plant (the "Term Sheet")¹⁵⁶ is preempted by the FPA and invalid under the dormant Commerce Clause of the US Constitution. Entergy also seeks a permanent injunction requiring the NY PSC Commissioners to withdraw the Order and/or preventing the NY PSC 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*¹⁵⁷ decision summarized in earlier Reports.

¹⁵³ 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).

¹⁵⁴ *Public Citizen, Inc. v. FERC* (D.C. Cir. No. 14-1244) (Oct 25, 2016).

¹⁵⁵ Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

¹⁵⁶ 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.

¹⁵⁷ *Hughes v. Talen Energy Marketing LLC*, 136 S. Ct. 993 (2016) ("*Hughes*").

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 NYPSC 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-0577.¹⁵⁸

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. On September 22, the deadline for completion of mediation was extended to November 1, 2016.

¹⁵⁸ 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 November 2, 2016

I. Complaints/Section 206 Proceedings

206 Proceeding: RNS/LNS Rates and Rate Protocols	(EL16-19)	4
Base ROE Complaints II & III (2012 & 2014) (Consolidated)	(EL13-33 and EL14-86).....	5
Base ROE Complaint IV (2016).....	(EL16-64)	2
Dominion Energy Manchester Street FCA10 Complaint	(EL16-38)	3
NEPGA PER Adjustment Complaint	(EL16-120)	1
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

2017 ISO-NE Administrative Costs and Capital Budgets	(ER17-116)	6
2017 NESCOE Budget	(ER17-140)	6
206 Proceeding: RNS/LNS Rates and Rate Protocols	(EL16-19)	4
Base ROE Complaints II & III (2012 and 2014) (Consolidated).....	(EL13-33 and EL14-86).....	5
Base ROE Complaint IV (2016).....	(EL16-64)	2
Dominion Energy Manchester Street FCA10 Complaint	(EL16-38)	3
FCA10 Results Filing	(ER16-1041)	7
NEPGA PER Adjustment Complaint	(EL16-120)	1
NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Potential Gas Pipeline-Related Price Suppression	(EL16-93)	1
Schedule 2 Base CC Rate	(ER12-229)	7

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

2013/14 Winter Reliability Program Remand Proceeding	(ER13-2266)	11
Demand Curve Changes Remand Proceedings.....	(ER14-1639)	10
Dominion Energy Manchester Street FCA10 Complaint	(EL16-38)	3
Dual-Fuel Audit NCPC Calculation Revisions.....	(ER16-2529)	8
Effective Date Update: MR1 §§ 2.7(a) & (g)	(ER17-96)	7
FCM Composite Offers & Price Lock Mechanisms (FERC Compliance)	(ER16-2126)	9
FCM Enhancements	(ER16-2451)	8
FCM Resource Retirement Reforms.....	(ER16-551)	10
Resource Dispatchability Changes	(ER17-68)	8
Waiver Request: RTEG Resource Type/De-List (ISO-NE)	(ER16-1904)	9

IV. OATT Amendments/Coordination Agreements

Orders 827/828 Compliance Filing	(ER16-2695)	11
--	-------------------	----

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Updates

Schedule 21-EM: Bangor Hydro/Maine Public Service Merger-Related Costs Recovery ... (ER15-1434 et al.)	13	
Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs	(ER16-1023)	12

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

No Activity to Report

VIII. Regional Reports

Capital Projects Report - 2016 Q3	(ER17-122)	13
Opinion 531-A Local Refund Report: FG&E	(EL11-66)	14
Opinions 531-A/531-B Local Refund Reports	(EL11-66)	14
Opinions 531-A/531-B Regional Refund Reports.....	(EL11-66)	14
LFTR Implementation: 32nd Quarterly Status Report	(ER07-476; RM06-08).....	14

IX. Membership Filings

November 2016 Membership Filing.....	(ER17-229)	14
October 2016 Membership Filing.....	(ER16-2721)	15

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

New Rel. Standards: PRC-027-1 and PER-006-1.....	(RM16-22)	15
NOPR: BAL-002-1a Interpretation Remand	(RM13-6)	18
NOPR: Revised Rel. Standard: BAL-002-2	(RM16-7)	16
NOPR: Revised Rel. Standards: BAL-005-1 & FAC-001-3	(RM16-13)	16
NOPR: Revised Rel. Standard: MOD-001-2	(RM14-7)	17
Order 830: New Rel. Standard: TPL-007-1	(RM15-11)	17
Revised Rel. Standard: COM-001-3.....	(RD16-9).....	15
Revised Rel. Standards: IRO-018-1 & TOP-010-1	(RD16-6).....	15

XI. Misc. Regional Interest

203 Application: Belmont/NSTAR	(EC16-145)	19
203 Application: GDF Suez Energy Resources/Atlas Power	(EC16-93)	19
203 Application: Noble Americas Energy Solutions/Calpine	(EC17-8)	18
Agreements Cancellation: National Grid/Wheelabrator Saugus.....	(ER16-2575)	20
CFTC RTO/ISO Exemption Amendment.....	18
D&E Agreement Termination Notice: NSTAR/Exelon West Medway	(ER16-2467)	20
E&P Agreement: CL&P/Beacon Falls	(ER16-2700)	20
Emera MPD OATT Changes.....	(ER15-1429; EL16-13).....	20
EMM Contract.....	(ER17-290)	20
FERC Audit of ISO-NE.....	(PA16-6)	23
FERC Enforcement Action: Formal Investigation (MISO Zone 4 Planning Resource Auction Offers)	(IN15-10)	22
FERC Enforcement Action: Maxim Power	(IN15-4)	22
MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area ..	(ER11-1844)	22
Orders 827/828 Compliance Filing: Maine Public District	(ER17-137)	20
PURPA Complaint: Allco Finance Ltd. and Windham Solar v. CT PURA	(EL16-115 et al.).....	19
PURPA Complaint: Allco v. MA Agencies	(EL17-6 et al.).....	19

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) 25
 NOPR: Price Formation Fixes - Price Caps in RTO/ISO Markets (RM16-5) 27
 NOPR: Regulations Implementing FAST Act and Amending CEII Regulations..... (RM16-15) 26
Order 825: Price Formation Fixes - Settlement Intervals/Shortage Pricing (RM15-24) 28
Order 827: Reactive Power Requirements for Wind Generators (RM16-1) 27
Order 828: Small Generator Ride Through Requirements (RM16-8) 26
 Price Formation in RTO/ISO Energy and Ancillary Services Markets (AD14-14) 25
 PURPA Implementation (AD16-16) 24
 Reactive Supply Compensation in RTO/ISO Markets (AD16-17) 24
 Utilization of Electric Storage Resources in RTO/ISO Markets (AD16-25) 23

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: Total Gas & Power North America, Inc. (IN12-17) 30
 New England Pipeline Proceedings..... 31
 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
Entergy Nuclear Fitzpatrick, LLC et al. v. Zibelman et al. 5:15-cv-00230 (N.D.N.Y.)... 36
 FCM Pricing Rules Complaints..... 15-1071/16-1042 (DC Cir.) . 35
 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
Order 1000 Compliance Filings 15-1139 (DC Cir.)..... 35