

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of December 1, 2016

The following activity, as more fully described in the attached litigation report, has occurred since the report dated November 3, 2016 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints/Section 206 Proceedings



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| 1 | NEPGA PER Adjustment Complaint (EL16-120) | Nov 4 Nov 15 | NEPGA answers NESCOE, RESA, NEPOOL pleadings NESCOE answers NEPGA Nov 4 answer |
| 1 | Base ROE Complaint IV (2016) (EL16-64) | Nov 3 Nov 8 Nov 9 Nov 10 Nov 21 | Settlement Judge Long issues status report recommending settlement procedures be continued 1st settlement conf. held Settlement Judge Long issues order scheduling Dec 20 settlement conf. and requiring joint positions statements Chief Judge Cintron issues order continuing settlement procedures FERC issues tolling order affording it additional time to consider requests for rehearing of <i>Base ROE Complaint IV Order</i> |
| 2 | 206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19) | Nov 19 | 5th settlement conf. held telephonically |

II. Rate, ICR, FCA, Cost Recovery Filings



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| * 4 | ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER17-[]) | Dec 1 | ISO-NE and NEPOOL jointly file ICR-Related Values and HQICCs for the 2017/18 ARA3, 2018/19 ARA2; and 2019/20 ARA1; comment date Dec 22 |
| * 4 | FCA11 Qualification Informational Filing (ER17-321) | Nov 10 Nov 18-28 | ISO-NE submits required informational filing for FCA11 NEPOOL, Dominion, Eversource, National Grid, NESCOE intervene |
| * 5 | ICR-Related Values and HQICCs - 2020/21 Capacity Commitment Period (ER17-320) | Nov 8 Nov 18-28 | ISO-NE and NEPOOL jointly file ICR-Related Values for the 2020/21 Capacity Commitment Period Dominion, Eversource, Exelon, National Grid, NESCOE, NRG intervene |
| 5 | 2017 NESCOE Budget (ER17-140) | Nov 8 Nov 9 | NEPOOL files comments supporting NESCOE 2017 budget Eversource intervenes |
| 5 | 2017 ISO-NE Administrative Costs and Capital Budgets (ER17-116) | Nov 7 | NEPOOL files comments supporting ISO-NE 2017 administrative costs and capital budgets; Eversource, NESCOE intervene |
| 6 | Schedule 2 Base CC Rate (ER12-229) | Nov 2, 7 Nov 18 Dec 1 | NRG, Calpine intervene NEPOOL submits comments FERC accepts filing |

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



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| * 7 | Natural Gas Index Changes (ER17-327) | Nov 10 Nov 16- Dec 1 | ISO-NE and NEPOOL jointly file changes Entergy, Eversource, Exelon, HQ US, National Grid, NRG intervene; Dominion protests the Changes |
| 7 | Effective Date Update: MR1 §§ 2.7(a) & (g) (ER17-96) | Nov 4 | Eversource intervenes |
| 7 | Resource Dispatchability Changes (ER17-68) | Nov 17 | ISO-NE and NEPOOL answer Eversource protest |

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| 7 | FCM Enhancements (ER16-2451) | Nov 17 | Indicated NYTOs request rehearing of <i>FCM Enhancements Order</i> |
| 10 | 2013/14 Winter Reliability Program Remand Proceeding (ER13-2266) | Nov 7 Nov 15 | ISO-NE requests 45-day extension of time for compliance filing FERC grants ISO-NE request; compliance filing due Jan 20, 2017 |

IV. OATT Amendments / TOAs / Coordination Agreements

No Activity to Report

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

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| * 11 | Schedule 21-CMP: Blue Sky LSA (ER17-407) | Nov 22 | ISO-NE and CMP file Blue Sky LSA; comment date Dec 13 |
| 11 | Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023) | Nov 22 Nov 23 | Eversource files offer of settlement to resolve all unresolved issues in this proceeding Chief Judge Cintron shortens date for initial comments to Dec 5; reply comments, December 10 |
| 12 | Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.) | Nov 10 Nov 16 Dec 1 | Settlement Judge Dring issues status report recommending settlement judge procedures be continued Judge Dring cancels Nov 22 settlement conf. and schedules 3rd settlement conf. for Dec 1 3rd settlement conf. held |

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

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| 13 | Capital Projects Report - 2016 Q3 (ER17-122) | Nov 7 Nov 18 | Eversource intervenes FERC accepts Q3 Report |
| * 14 | IMM Quarterly Markets Reports - 2016 Summer (ZZ16-4) | Nov 15 | IMM files 2016 Summer Report |
| * 14 | ISO-NE FERC Form 3Q (2016/Q3) (not docketed) | Nov 22 | ISO submits quarterly financial report for 2016 Q3 |

IX. Membership Filings

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| * 14 | December 2016 Membership Filing (ER17-464) | Dec 1 | NEPOOL requests the FERC accept (i) the memberships of Green Power USE, Maine Power, EES9, and EES10; and (ii) the termination of the Participant status of Concord Steam and Advanced Power Services; comment date Dec 22 |
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X. Misc. - ERO Rules, Filings; Reliability Standards

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| 15 | NOPR: Revised Rel. Standards: BAL-005-1 & FAC-001-3 (RM16-13) | Nov 17-28 | NERC, EEI, Bonneville, Idaho Power, J. Appelbaum file comments |
| 16 | <i>Order 830</i> : New Rel. Standard: TPL-007-1 (RM15-11) | Nov 21 | FERC issues tolling order affording it additional time to consider EEI, FRS, JINSA requests for rehearing of <i>Order 830</i> |

XI. Misc. - of Regional Interest

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| 18 | 203 Application: Noble Americas Energy Solutions/Calpine (EC17-8) | Nov 18 Dec 1 | FERC authorizes Calpine's acquisition of Noble Americas Energy Solutions Acquisition consummated |
| 18 | 203 Application: GDF Suez Energy Resources/Atlas Power (Dynegy/ECP) (EC16-93) | Nov 2 | Applicants provide supplemental information that FERC authorization is only remaining approval required |
| 18 | PURPA Complaint: Allco v. MA Agencies (EL17-6 et al.) | Nov 2 Nov 8 Nov 9 Nov 10 Nov 17 Nov 18 Nov 23 | Mass. DPU requests extension of time to file comments MA DOER requests extension of time to file comments; FERC partially grants Mass. DPU Nov 2 request Mass. DPU requests additional time to file comments; Eversource intervenes FERC grants extension of time, to Nov 17, for responses to Complaint Mass. Agencies and Nation Grid protest Complaint Allco answers protests Mass. Agencies oppose Allco's Nov 18 answer |
| 19 | PURPA Complaint: Allco Finance Ltd. and Windham Solar v. CT PURA (EL16-115 et al.) | Nov 22 | FERC issues "Notice of Intent Not to Act and Declaratory Order" |
| * 19 | IA Cancellation: Superseded PSNH/Springfield Power IA (ER17-376) | Nov 17 | PSNH submits notice of cancellation of 2012 IA with Springfield Power (recently superseded by a 3-party SGIA); comment date Dec 8 |
| 20 | EMM Contract (ER17-290) | Nov 14-18 Nov 21 | National Grid, Eversource intervene NEPOOL files comments supporting new contract for EMM services between ISO-NE and Potomac Economics |
| 20 | Orders 827/828 Compliance Filing: Maine Public District (ER17-137) | Nov 16 | FERC accepts Emera Maine's Maine Public District Order Nos. 827/828 compliance filing |
| 20 | Emera MPD OATT Changes (ER15-1429; EL16-13; ER12-1650) (consol.) | Nov 16 Nov 16 Dec 1 | 5th settlement conf. re-scheduled for Dec 1 Settlement Judge Dring issues status report recommending Settlement procedures be continued 5th settlement conf. held |

XII. Misc. - Administrative & Rulemaking Proceedings

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| 23 | Utilization of Electric Storage Resources IN RTO/ISO Markets (AD16-25) | Nov 9 Nov 14 | Technical conf. held FERC invites post-technical conf. comments to be filed on or before Dec 14 |
| 23 | Competitive Transmission Development Rates (AD16-18) | Nov 4 | NEPOOL files its Status Report on New England's <i>Order 1000</i> implementation |
| 24 | PURPA Implementation (AD16-16) | Nov 7-15 | Over 40 parties file post-technical conf. comments |
| 24 | Enforcement Annual Report (AD07-13-010) | Nov 17 | FERC Office of Enforcement issues 2016 Annual Report |
| * 24 | NOPR: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20) | Nov 17 | FERC issues <i>Storage NOPR</i> : comment date Jan 30, 2017 |
| 25 | Order 833: Critical Energy/Electric Infrastructure Information (CEII) Procedures (RM16-15) | Nov 17 | FERC issues <i>Order 833</i> , eff. [60 days after its publication in the <i>Federal Register</i>] |

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| 26 | <i>NOPR: Primary Frequency Response - Essential Rel. Services and the Evolving BPS (RM16-6)</i> | Nov 17 | FERC issues NOPR; comment date Jan 24, 2017 |
| 26 | <i>Order 831: Price Formation Fixes - Price Caps in RTO/ISO Markets (RM16-5)</i> | Nov 17 | FERC issues <i>Order 831</i> , eff. and Tariff filing req'd [75 days after its publication in the <i>Federal Register</i>] |

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| XIII. Natural Gas Proceedings | ▼ |
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| 29 | New England Pipeline Proceedings Salem Lateral Project (CP14-522) | Nov 1 | Salem Lateral Project goes into service |
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| XIV. State Proceedings & Federal Legislative Proceedings | ▼ |
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No Activity Reported

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| XV. Federal Courts | ▼ |
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| * 32 | FCA10 Results (16-1408) | Nov 23 Nov 30 | UWUA and Robert Clark petition for review of FCA10 results filing orders Clerk orders filing by Dec 30 of Docketing Statement Form, Statement of Issues to be Raised, Petitioners' and Respondents' Appearances, and procedural motions; dispositive motions by Jan 17, 2017 |
| 32 | NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024) | Nov 14 Nov 22 Nov 28 | NEPGA files Joint Appendix NEPGA files Petitioner Final Brief and Reply Brief FERC files Respondent Final Brief; NESCOE files Intervenor for Respondent Final Brief |
| 33 | Base ROE Complaints II & III (2012 & 2014) (15-1212) | Nov 14 | Parties file 5th status report |
| 33 | Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consolidated) | Nov 22 Nov 29 | Court allocates oral argument time TOs file additional authorities |
| 34 | Allco Finance Limited v. Klee et al. 16-2946 ((2d Cir.)) | Nov 7 Nov 22 Nov 29 Nov 30 Dec 1 | Court issues order setting oral argument for Dec 8 Briefs and Amicus Briefs filed Allco files reply brief State Parties (MA, NY, OR, VT, WA, CA Air Resources) file Amicus Brief CL&P files Amicus Brief |

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: December 1, 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 December 1, 2016. If you have questions, please contact us.¹

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| I. Complaints/Section 206 Proceedings |
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- **NEPGA PER Complaint (EL16-120)**

As previously reported, 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. On November 4, NEPGA answered the NESCOE, RESA and NEPOOL comments. On November 15, NESCOE answered NEPGA’s November 4 answer. This matter remains 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).

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

On September 20, 2016, the FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint.² As previously reported, EMCOS³ filed

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 *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”).

the 4th ROE complaint on April 29, 2016. The Complaint asks the FERC to reduce the TOs' current 10.57% return 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."⁴ 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."⁵ 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.⁶ 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."⁷ 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, 2018.⁸ Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The FERC issued a tolling order on November 21, affording it additional time to consider the requests for rehearing, which remain pending.

Settlement Judge Procedures. On October 4, Chief Judge Cintron designated Judge Jennifer Long, the FERC's newest ALJ, as the Settlement Judge. A first settlement conference was held on November 8, 2016. Judge Long scheduled a second settlement conference for December 20, with joint position statements due on or before December 15. Chief Judge Cintron, following the recommendation of Judge Long, issued on November 10 an order continuing settlement judge procedures. 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).

- **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

³ "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.

⁴ *Base ROE Complaint IV Order* at P 37.

⁵ *Id.* at P 38.

⁶ 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.

⁷ *Base ROE Complaint IV Order* at P 40.

⁸ *Id.* at P 44.

regard to the formula rates” for Regional Network Service (“RNS”) and Local Network Service (“LNS”).⁹ 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”.¹⁰ 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.¹¹ Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.¹² The FERC-established refund date is January 4, 2016.¹³ 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. A 5th (telephonic) settlement conference was held on 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).

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

Judge Sterner’s findings and Initial Decision, and pleadings in response thereto, remain pending before the FERC. As previously reported, the FERC, in response to second (EL13-33)¹⁴ and third (EL14-86)¹⁵ 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;¹⁶ the second, in EL14-86, was issued

⁹ *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).

¹⁰ *Id.* at P 8.

¹¹ *Id.* at P 11.

¹² *Id.*

¹³ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

¹⁴ 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%.

¹⁵ 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.

¹⁶ *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).

on November 24, 2014, established a 15-month refund period beginning July 31, 2014,¹⁷ 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.”¹⁸ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.¹⁹ 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 2015, 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.²⁰ 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, remain pending, and will be subject to challenge, before the FERC. The *2012/14 ROE Initial Decision* and its findings can be approved or rejected, in whole or in part.

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER17-[])**

On December 1, 2016, the ISO and NEPOOL jointly filed materials that identify the Installed Capacity Requirement (“ICR”), Local Sourcing Requirements (“LSR”), Maximum Capacity Limits (“MCL”), Hydro Quebec Interconnection Capability Credits (“HQICCs”), and capacity requirement values for the System-Wide Demand Curve (collectively, the “ICR-Related Values”) for the third annual reconfiguration auction (“ARA”) for the 2017/18 Capability Year to be held March 1, 2017, the second ARA for the 2018/19 Capability Year to be held August 1, 2017, and the first ARA for the 2019/20 Capability Year to be held June 5, 2017. The ICR-Related Values were supported by the Participants Committee at its November 4, 2016 meeting. A January 30, 2017 effective date was requested. Comments on this filing are due December 22, 2016. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA11 Qualification Informational Filing (ER17-321)**

On November 8, 2016, the ISO submitted its informational filing (the “FCA11 Informational Filing”) for qualification in FCA11. The ISO is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by the ISO for the upcoming Forward Capacity Auction (“FCA”) at least 90 days prior to each auction. FCA11 is scheduled to begin February 6, 2017. The

¹⁷ *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).

¹⁸ *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).

¹⁹ *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).

²⁰ *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*”).

Informational Filing contained the ISO's determinations that three Capacity Zones, Southeastern New England ("SENE"), Northern New England ("NNE"), and Rest of Pool, will be modeled for FCA11. SENE will be modeled as import-constrained Capacity Zones; NNE will be modeled as an export-constrained Capacity Zone. The Informational Filing reported that there will be 34,505 MW of existing capacity in FCA11 competing with 5,958 MW of new capacity under a Net ICR of 34,075 MW (ICR minus HQICCs). The ISO reported also that there were a total of 1,622 MW of Static, Export, and Administrative Export De-list bids. A summary of the De-list bids accepted and those rejected for reliability purposes was included in a privileged Attachment E.

Comments on the FCA11 Informational Filing were due November 29, 2016. No comments or protests were filed. Doc-less interventions were filed by NEPOOL, Dominion, Eversource, National Grid, and NESCOE. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ICR-Related Values and HQICCs - 2020/21 Capacity Commitment Period (ER17-320)**

Also on November 8, 2016, the ISO filed ICR, LSR for SENE, MCL for NNE, HQICCs, and Marginal Reliability Impact ("MRI") Demand Curves (collectively, the "2020/21 ICR-Related Values") for the 2020/2021 Capacity Commitment Year. The values will be used in FCA11 to be held in February 2017. With a 2020/21 ICR of 35,034 MW (reflecting tie benefits of 1,950 MW) and HQICCs of 959 MW/mo., the net amount of capacity to be purchased in FCA11 to meet the ICR will be 34,075 MW. The LSR for the SENE Capacity Zone is 9,810. The Participants Committee support the 202/21 ICR-Related Values at its October 14, 2016 meeting. Comments on this filing were due December 1 and none were filed. Doc-less interventions were filed by Dominion, Eversource, Exelon, National Grid, NESCOE, and NRG. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **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. On November 8, NEPOOL submitted comments supporting the NESCOE Budget. Doc-less interventions were filed by Eversource and National Grid. This matter is pending before the FERC. 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)**

As previously reported, the ISO filed on October 17 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 Enhancements (May 2017) | (\$100,000) |

The 2017 ISO Budgets were supported by the Participants Committee at its October 14, 2016 meeting. On November 7, NEPOOL filed comments supporting the 2017 ISO Budgets. Doc-less interventions were filed by Eversource, NESCOE and National Grid. This matter is pending before the FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Schedule 2 Base CC Rate (ER12-229-001)**

On October 28, 2016, as required by a December 28, 2011 order in ER12-229,²¹ the ISO submitted an informational filing presenting its evaluation of the current Base Capacity Cost (“CC”) Rate.²² 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 the current “Base CC Rate” as part of the October 14 Consent Agenda. NEPOOL filed comments in response to the informational filing supporting the ISO’s decision to not change the Base CC Rate at this time, “with the expectation that ISO will monitor changes to the New England bulk power system that might call for an earlier re-examination of the rate than the “no later than” date of July 1, 2021.” Doc-less interventions were filed by Calpine and NRG. On December 1, 2016, the FERC accepted this filing. Unless the December 1 order is challenged, activity in this sub-docket will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

²¹ *ISO New England Inc.*, 137 FERC ¶ 61,237 (Dec. 28, 2011).

²² 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.

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

- **Natural Gas Index Changes (ER17-327)**

On November 10, 2016, the ISO and NEPOOL jointly filed changes to the Tariff to replace the Algonquin Citygates location with a newer hub established by ICE – the AGT-CG (Non-G) hub – as the source for natural gas prices to be used in the calculation of the Peak Energy Rent Strike Price, the Import Capacity Resource offer threshold price, and the Forward Reserve threshold price (“Natural Gas Index Changes”). NEPOOL supplemented the filing with a more detailed description of the stakeholder process undertaken in connection with the Changes. A January 10, 2017 effective date was requested. The Natural Gas Index Changes were supported by the Participants Committee at its October 14, 2016 meeting. Comments on this filing were due on or before December 1, 2016 and Dominion protested the Changes on that day. Doc-less interventions were filed by Entergy, Eversource, Exelon, HQ US, National Grid, NRG. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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 to June 1, 2018). Comments on this filing were due on or before November 4, 2016; none were filed. Doc-less interventions were filed by NEPOOL, Eversource, Exelon, National Grid and NRG. This matter is pending before the FERC. 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 protested 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. On November 17, the ISO and NEPOOL answered the Eversource protest. 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).

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

The FERC’s *FCM Enhancements Order*²³ is subject to a request for rehearing by Indicated NYTOs.²⁴ As previously reported, the FERC accepted on October 18 changes to the Tariff to increase liquidity in the

²³ *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*”), *reh’g requested*.

FCM by increasing Market Participant opportunities to enter into reconfiguration auctions and bilateral contracts for the exchange of CSOs (“FCM Enhancements”). Specifically, the FCM Enhancements (i) modify certain FCM qualification rules to facilitate the ability of New Capacity Resources to supply capacity beginning four months after participating in their first FCA; (ii) provide Import Capacity Resources backed by one or more External Resources the opportunity (currently available to generators and demand response) to provide capacity beginning one or two years after participating in their first FCA; and (iii) establish a new form of bilateral contracting in which Market Participants can, as the Capacity Commitment Period approaches, trade CSOs for a seasonal strip of CSOs. The FCM Enhancements include several smaller improvements as well, including the elimination of a requirement that the ISO make a FERC filing in order to terminate the CSO of a resource that has voluntarily withdrawn from the FCM resource development process. The FCM Enhancements were accepted, effective as of October 19, 2016, as requested.

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.”²⁵ 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.”²⁶ 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.

As noted above, on November 17, Indicated TOs’ requested rehearing of the *FCM Enhancements Order*, which remains pending before the FERC. 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*.²⁷ 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.²⁸

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 were due on or before November 15; none were filed. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

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

²⁴ “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.

²⁵ *Id.* at P 31.

²⁶ *Id.*

²⁷ *ISO New England Inc.*, 156 FERC ¶ 61,144 (Aug. 30, 2016).

²⁸ *Id.* at PP 19, 25.

III.13.1.4.2.5.2, III.13.1.4.3.1.2 & III.13.1.2.3.1.1.²⁹ The waiver allows Real-Time Emergency Generation Resources (“RTEGs”) either to change their resource type to Real-Time Demand Response Resources or to de-list (“Waiver Request”), particularly in connection with FCA11, but also, to the extent applicable, for FCA8, FCA9, and FCA10, in light of (i) a May 4, 2016 order of the United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”) reversing and remanding United States Environmental Protection Agency (“EPA”) rules that provided for a 100-hour exemption for operation of emergency engines for purposes of emergency demand response under National Emissions Standards; and (ii) an April 15, 2016 EPA Guidance Memorandum, which in anticipation of the DC Circuit order, indicated that the EPA will not develop an alternative to the rules reversed by the DC Circuit. 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’.”³⁰ 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*.³¹ 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,”³² which were filed with and accepted by the FERC.³³ 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*.³⁴ As previously reported, the FERC conditionally accepted, on May 30, 2014, revisions to the FCM rules that establish a system-

²⁹ *ISO New England Inc.*, 156 FERC ¶ 61,096 (Aug. 8, 2016) (“*ISO RTEG Waiver Request Order*”), *reh’g requested*.

³⁰ *Id.* at P 19.

³¹ *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.

³² *Id.* at P 62.

³³ *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

³⁴ *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).

wide sloped demand curve (“Demand Curve Changes”).³⁵ The Demand Curve Changes defined the shape of the system-wide sloped demand curve (with key points defined by CONE and the 0.1 days/year LOLE target), extended the period during which a Market Participant may “lock-in” the capacity price for a new resource from five to seven years, establish a limited renewables resource exemption, and eliminated, at the system-wide level, the administrative pricing rules that were necessary in certain market conditions under the vertical demand curve construct. In response to challenges, the FERC denied rehearing of the *Demand Curve Order*,³⁶ 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).³⁷ 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, 2015.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹ On November 7, the ISO requested, and on November 15 the FERC granted, a 45-day extension of time to submit the directed filing. Accordingly, the filing is now due on or before January 20, 2017. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

³⁵ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”).

³⁶ *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).

³⁷ *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*”).

³⁸ 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.

³⁹ *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) (“*2013/14 Winter Reliability Program Remand Order*”).

⁴⁰ *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

⁴¹ *2013/14 Winter Reliability Program Remand Order* at P 17.

IV. OATT Amendments / TOAs / Coordination Agreements

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

The revisions to Schedules 22 and 23 of the ISO OATT filed jointly by the ISO, NEPOOL and PTO AC on September 29, 2016 to comply with the FERC Order Nos. 827⁴² and 828⁴³ are pending before the FERC. As previously reported, Schedules 22 and 23 were 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-CMP: Blue Sky LSA (ER17-407)**

On November 22, CMP and the ISO filed a Local Service Agreement (“LSA”) by and among CMP, Blue Sky West LLC (“Blue Sky”), and the ISO for Local Non-Firm Point-to-Point Transmission Service under Schedule 21-CMP of the ISO OATT (the “Blue Sky LSA”). An August 8, 2016 effective date was requested. Comments on the LSA are due on or before December 13, 2016. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Eversource filed on November 22 an offer of settlement to resolve the issues in this proceeding. 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.⁴⁴ 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.”⁴⁵ 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

⁴² *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).

⁴³ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) (“*Order 828*”).

⁴⁴ *ISO New England Inc. et al.*, 155 FERC ¶ 61,136 (May 3, 2016).

⁴⁵ *Id.* at P 27.

transaction-related costs are exceeded by the savings produced by the transaction.⁴⁶ 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.”⁴⁷ The FERC encouraged participants to make every effort to settle their dispute before hearing procedures commence.

Offer of Settlement. As noted above, Eversource filed an unopposed offer of settlement on November 22. As Eversource requested, comments on the offer of settlement are due on or before December 5. Reply comments, if any, will be due on December 12. 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,⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.⁵¹ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁵²

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, scheduled for November 22, 2016, was cancelled and subsequently held on December 1. Also since the last Report, Judge Dring issued a report recommending that settlement judge procedures be

⁴⁶ *Id.* at P 28.

⁴⁷ *Id.* at P 29.

⁴⁸ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*June 2 Order*”).

⁴⁹ *Id.* at P 24.

⁵⁰ *Id.* at PP 25-26.

⁵¹ *Id.* at P 27.

⁵² *Id.* at P 21; Ordering Paragraph (B).

continued. 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 November 18, the FERC accepted the ISO's 2016 second quarter ("Q2") Capital Projects Report and Unamortized Cost Schedule (the "Report"). The ISO filed the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights included 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 significant changes was the Phasor Measurement Unit External Data Exchange (with a 2016 budget decrease of \$91,000). Unless the order accepting the Q3 Report is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

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

- **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*⁵³ and *531-B*.⁵⁴ 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).

⁵³ *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁵⁴ *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

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

On November 15, the Internal Market Monitor (“IMM”) filed with the FERC its report for the Summer quarter of 2016 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC.

- **ISO-NE FERC Form 3Q (2016/Q3) (not docketed)**

On November 17, the ISO submitted its 2016/Q3 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

IX. Membership Filings

- **December 2016 Membership Filing (ER17-464)**

On December 1, NEPOOL requested that the FERC accept (i) the memberships of Green Power USA [AR Sector, Renewable Generation Sub-Sector, Small RG Group Seat]; Maine Power LLC [MPEU, Related Person of Jeff Jones]; Emera Energy Services Subsidiary Nos. 9 (“EES9”) and 10 (“EES10”) [Related Persons of Emera Maine, Transmission Sector]; and (ii) the termination of the Participant status of Concord Steam Corporation (AR Small RG Group Member) and Advanced Power Services [Generation Sector Group Seat]. Comments on this filing are due on or before December 22.

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

On October 31, NEPOOL requested that the FERC accept (i) the memberships of Aspurity 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 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). This matter is pending before the FERC.

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

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

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

NERC filed on November 7 the revised VRF designations that the FERC directed NERC to submit in its *September 22 Order* approving the Revised IRO-018-1 and TOP-010-1 Standards.⁵⁵ The compliance filing modifies the VRF designations for IRO-018-1 Requirement R1 and TOP-010-1 Requirements R1 and R2 to “high.”⁵⁶ As previously reported, the FERC otherwise 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 VFRs (together, the “Real-Time Situational Awareness Changes”). Comments on the compliance filing are due on or before December 7.

- **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

⁵⁵ *N. Amer. Elec. Rel. Corp.*, 156 FERC ¶ 61,207 (Sep. 2, 2016) (“*September 22 Order*”).

⁵⁶ *September 22 Order* at P 2.

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

- **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”).⁵⁷ 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* were due on or before November 28, 2016,⁵⁸ and were filed by NERC, EEI, Bonneville, Idaho Power and J. Appelbaum. The *Frequency Control Changes NOPR* is now pending before the FERC.

- **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.⁵⁹ 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

⁵⁷ *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Rel. Standards*, 156 FERC ¶ 61,210 (Sep. 22, 2016) (“*Frequency Control Changes NOPR*”).

⁵⁸ The *Frequency Control Changes NOPR* was published in the *Fed. Reg.* on Sep. 28, 2016 (Vol. 81, No. 188) pp. 66,555-66,562.

⁵⁹ *Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event Rel. Standard*, 155 FERC ¶ 61,180 (May 19, 2016) (“*BAL Changes NOPR*”).

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, 2016⁶⁰ and were filed by APS, IESO, NaturEner USA, the Canadian Electricity Association, Idaho Power, TVA, NRECA, NERC, Bonneville, EEI, and jointly by the Alberta Electric System Operator (“AESO”), the California Independent System Operator (“CAISO”), Electric Reliability Council of Texas, Inc. (“ERCOT”), the Independent Electricity System Operator of Ontario, Inc. (“IESO”), Midcontinent Independent System Operator, Inc. (“MISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”). The *BAL Changes NOPR* is pending before the FERC.

- **Order 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*”).⁶¹ 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, 2016.⁶² Rehearing of *Order 830* was requested by EEI, the Foundation for Resilient Societies (“FRS”), and the Jewish Institute for national Security Affairs (“JINSA”). On November 21, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending before the FERC.

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

The *ATC NOPR* remains pending before the FERC. As previously reported, the FERC’s June 19, 2014, NOPR⁶³ 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 Standards⁶⁴ 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.

⁶⁰ The *BAL Changes NOPR* was published in the *Fed. Reg.* on May 26, 2016 (Vol. 81, No. 102) pp. 33,441-33,448.

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

⁶² *Order 830* was published in the *Fed. Reg.* on Sep. 30, 2016 (Vol. 81, No. 190) pp. 67,120-67,140.

⁶³ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) (“*ATC NOPR*”).

⁶⁴ 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.

Comments on this NOPR were due August 25, 2014,⁶⁵ and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, NAESB supplemented its comments with a report on its efforts to develop WEQ Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the *ATC NOPR* remains pending before the FERC.

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

The *BAL-002-1a Interpretation Remand NOPR*⁶⁶ 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, 2013,⁶⁷ 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*").⁶⁸ 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).

⁶⁵ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁶⁶ *Elec. Rel. Org. Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

⁶⁷ 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.

⁶⁸ *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: Noble Americas Energy Solutions/Calpine (EC17-8)**

On November 18, the FERC authorized Calpine Energy Services Holdco II LLC's ("Calpine's") acquisition of 100% of the equity interests in Noble Americas Energy Solutions.⁶⁹ The parties consummated this transaction on December 1, 2016 and must advise the FERC of that fact on or before December 11, 2016. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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.⁷⁰ 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 (Dynergy/ECP) (EC16-93)**

The March 25, 2016 request by Atlas Power Finance, a subsidiary of Atlas Power (a newly-formed joint venture between Dynergy and ECP III), Dynergy Inc. ("Dynergy"), Energy Capital Partners III, LLC ("ECP") and GDF Suez, for authorization to acquire of GDF Suez Energy Resources remains pending. Also pending, in a separate proceeding (EC16-94), is the Dynergy and ECP III request that the FERC approve the purchase by an ECP affiliate, Terawatt Holdings, LP ("Terawatt"), of newly-issued Dynergy common stock representing approximately 10% of the outstanding shares of Dynergy. Comments on both those filings were due on or before May 24, 2016; none were filed. On June 8, the FERC requested additional data to process the filing, which was filed on July 8. In addition, on June 15, Atlas supplemented the application by informing the FERC that Dynergy would purchase all of ECP's interests in Atlas Power prior to the closing of the Transaction. Comments on the June 15 filing were due on or before June 29; none were filed. Comments on the July 8 response were due on or before July 29. On July 29, Public Citizen filed a protest. Atlas answered Public Citizen's protest on August 4, and Public Citizen answered Atlas' answer on August 9. On November 2, applicants provided supplemental information that, other than FERC authorization, there are no outstanding approvals required before the Applicants would be able to consummate the acquisition. 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").⁷¹ 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. Responses to this Complaint, following two requests for extensions by the MA DPU and partially granted by the FERC, were due and filed on November 17. Allco

⁶⁹ *Noble Americas Energy Solutions LLC and Calpine Energy Services Holdco II LLC*, 157 FERC ¶ 62,140 (Nov. 18, 2016).

⁷⁰ *NSTAR Elec. Co.*, 157 FERC ¶ 62,059 (Oct. 25, 2016).

⁷¹ 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.

responded to the Massachusetts Agencies' protest on November 18. The Massachusetts Agencies opposed that answer on November 23. The Allco Petition and the pleadings connected therewith are pending before the FERC. 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 November 22, in response to the Petition of Windham Solar LLC and Allco Finance Limited (together, "Allco") requesting the FERC pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 ("PURPA") against the Connecticut Public Utilities Regulatory Authority ("CT PURA"), the FERC issued a "Notice of Intent Not to Act and Declaratory Order".⁷² As previously reported, this petition was Allco's *third* petition for enforcement filed against Connecticut within the past year. Allco stated that this petition was 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 also sought a FERC order declaring invalid, and enforcing PURPA against CT PURA by invalidating and permanently enjoining, Connecticut's rules, which Allco asserted prevents it from securing the PPAs.

In its November 22 order, the FERC, while declining to initiate an enforcement action, issued a declaratory ruling providing its views on a number of the substantive questions raised by the parties' pleadings. For example, among others, the FERC stated:

- ▶ "regardless of whether a QF can provide firm output, that QF has the option to sell its output pursuant to a legally enforceable obligation with a forecasted avoided cost rate."
- ▶ Windham has opted to sell its output pursuant to section 292.304(d)(2)(ii) of the Commission's regulations, which it is entitled to do (and at a rate based on avoided costs calculated at the time the legally enforceable obligation is incurred – which it is also entitled to do), and, therefore, the Connecticut Authority must recognize that a legally enforceable obligation exists and calculate the appropriate forecasted avoided cost rate pursuant to section 292.304(d)(2)(ii) of the Commission's regulations.
- ▶ to the extent that Eversource's capacity needs can be satisfied by Windham's QFs rather than through the capacity auction, the avoided cost rates available to Windham should include an estimate of Eversource's avoided cost of capacity.
- ▶ a legally enforceable obligation should be long enough to allow QFs reasonable opportunities to attract capital from potential investors (though its regulations, do not, however, specify a particular number of years for such legally enforceable obligations).

The FERC's notice means that Allco may themselves bring an enforcement action against the CT PURA in an appropriate court. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA Cancellation: Superseded PSNH/Springfield Power IA (ER17-376)**

On November 17, Eversource filed a notice of cancellation of a 2012 Interconnection Agreement ("IA") between PSNH and Springfield Power. Eversource stated that the IA was recently superseded by a three-party SGIA entered into as a result of Springfield Power's request to increase the facility's Capacity Network Resource Capability and Network Resource Capability. An October 26, 2016 effective date (the effective date of the SGIA) was requested. Comments, if any, on this filing are due on or before December 8, 2016. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁷² *Windham Solar LLC and Allco Finance Limited et al.*, 157 FERC ¶ 61,134 (Nov. 22, 2016).

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

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. On November 21, NEPOOL filed comments supporting the new Contract, requesting that the FERC accept the Contract without modification, condition, or delay to be effective January 1, 2017. Doc-less interventions were filed by Eversource and National Grid. This matter is pending before the FERC. If there are questions on 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).

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

On November 16, the FERC accepted Emera Maine's 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. The changes were accepted effective as of December 14, 2016, as requested. Unless the November 16 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.⁷³ 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"⁷⁴ 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

⁷³ *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

⁷⁴ 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").

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.⁷⁵ 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 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, scheduled for November 22, was held on December 1. On November 22, Judge Dring issued a status report recommending that settlement judge procedures be continued. If you have any questions concerning these matters, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

As previously reported, the FERC issued in late September *Opinion 550*⁷⁶, 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,⁷⁷ 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

⁷⁵ *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh'g requested*.

⁷⁶ *Midwest Indep. Trans. Sys. Op., Inc.*, 156 FERC ¶ 61,202 (Sep. 22, 2016) ("*Opinion 550*").

⁷⁷ *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).

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 Agreement⁷⁸ that resolves its investigation into (and subsequent litigation in the US District Court for the District of Massachusetts⁷⁹ regarding) whether Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Co., LLC, and Pittsfield Generating Company, LP (collectively, "Maxim")⁸⁰ 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.⁸¹ 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

⁷⁸ *Maxim Power Corp. et al.*, 156 FERC ¶ 61,223 (Sep. 26, 2016).

⁷⁹ *FERC v. Maxim Power Corp. et al.*, No. 3:15-cv-30113-MGM (D. Mass.).

⁸⁰ 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).

⁸¹ 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.

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.

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| XII. Misc. - Administrative & Rulemaking Proceedings |
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- **Utilization of Electric Storage Resources in RTO/ISO Markets (AD16-25)**

On November 9, the FERC held a technical conference to discuss the utilization of electric storage resources as transmission assets compensated through RTO/ISO transmission rates, for grid support services that are compensated in other ways, and for multiple services. On November 14, the FERC invited all those interested to file, on or before December 14, 2016, post-technical conference comments on the topics discussed in the November 1 Supplemental Notice of Technical Conference.

- **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 Associations⁸² 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. Since the last Report, NEPOOL filed its Status Report, which was approved at the November 4 meeting. This matter is pending before the FERC.

- **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

⁸² The "Utility Trade Associations" are APPA, EEI, Large Public Power Council, National Rural Electric Cooperative Association ("NRECA"), and Transmission Access Policy Study Group ("TAPS").

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. Comments were due on or before November 7, 2016 and were filed by over 40 parties, including AWEA, Covanta, CT PURA/MA AG, Duke, EDP, EEI, ELCON, NARUC, and NRECA.

- **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.

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

- **Enforcement Annual Report (AD07-13-010)**

On November 17, 2016, the FERC issued its Annual Enforcement Report. The report provides additional transparency and guidance for regulated entities and the public. Highlights include summaries of activities undertaken by the Office of Enforcement's investigations, audits and accounting, market oversight, and analytics and surveillance divisions. In 2017, the Office Enforcement will continue to target fraud and market manipulation, serious violations of Reliability Standards, anticompetitive conduct, and conduct that threatens the transparency of regulated markets. The Report is available at <http://ferc.gov/enforcement/enforce-res.asp>.

- **NOPR: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)**

On November 23, the FERC issued a NOPR proposing to require each RTO and ISO to revise its tariff "to (1) establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, accommodates their participation in the organized wholesale electric markets and (2) define distributed energy resource aggregators as a type of market participant that can participate in the organized wholesale electric markets under the participation model that

⁸³ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

⁸⁴ 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.

best accommodates the physical and operational characteristics of its distributed energy resource aggregation.”⁸⁵ Comments on the *Storage NOPR* are due on or before January 30, 2017.⁸⁶

The Storage NOPR follows FERC Staff’s data request directing the RTO/ISOs to submit information on rules that affect the participation of electric storage resources in their markets, including, but not limited to, the eligibility of electric storage resources to participate in the 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)..

- **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.⁸⁷ 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, 2016⁸⁸ 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 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>.

- **Order 833: Critical Energy/Electric Infrastructure Information (CEII) Procedures (RM16-15)**

On June 16, the FERC issued *Order 833* amending its regulations to implement provisions of the Fixing America’s Surface Transportation (“FAST”) Act that pertain to the designation, protection and sharing of Critical Electric Infrastructure Information (“CEII”) and to amend its regulations that pertain to CEII.⁸⁹ The amended

⁸⁵ *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) (“*Storage NOPR*”).

⁸⁶ The *Storage NOPR* was published in the *Fed. Reg.* on Nov. 30, 2016 (Vol. 81, No. 230 pp. 86,522-86,550).

⁸⁷ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

⁸⁸ The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

⁸⁹ *Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information; Availability of Certain North American Electric Reliability Corporation Databases to the Commission*, Order No. 833, 157 FERC ¶ 61,123 (Nov. 17, 2016) (“*Order 833*”).

procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures. *Order 833* will become effective [60 days after its publication in the *Federal Register*].

- **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.

- **NOPR: Primary Frequency Response - Essential Reliability Services and the Evolving Bulk-Power System (RM16-6)**

On November 17, 2016, the FERC issued a NOPR proposing to require all newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install and enable primary frequency response capability as a condition of interconnection.⁹⁰ To implement these requirements, the Commission proposes to revise the *pro forma* Large Generator Interconnection Agreement ("LGIA") and the *pro forma* Small Generator Interconnection Agreement ("SGIA"). The *Primary Frequency Response NOPR* follows the FERC's *Frequency Response NOI*⁹¹ from early 2016. Comments on the *Primary Frequency Response NOPR* are due on or before January 24, 2017.⁹²

seeking comment on the need for reforms to its rules and regulations regarding the provision and compensation of primary frequency response. 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.⁹³ Comments on the *Frequency Response NOI* were due on or before April 25, 2016 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.

- **Order 831: Price Formation Fixes - Price Caps in RTO/ISO Markets (RM16-5)**

On November 17, 2016, the FERC issued *Order 831*⁹⁴ requiring each RTO/ISO: (i) to cap each resource's incremental energy offer at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer; and (ii) cap verified cost-based incremental energy offers at \$2,000/MWh when calculating locational marginal prices ("LMP"). In addition, the FERC clarified that the verification process

⁹⁰ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016) ("*Primary Frequency Response NOPR*").

⁹¹ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOI*").

⁹² The *Primary Frequency Response NOPR* was published in the *Fed. Reg.* on Nov. 25, 2016 (Vol. 81, No. 227) pp. 85,176-85,190.

⁹³ *Frequency Response NOI* at P 2.

⁹⁴ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (Nov. 17, 2016) ("*Order 831*").

for cost-based incremental offers above \$1,000/MWh should ensure that a resource's cost-based incremental energy offer reasonably reflects that resource's actual or expected costs. *Order 831* modified the FERC's *Offer Cap NOPR* by including a \$2,000/MWh hard cap for the purposes of calculating LMPs. *Order 831* will become effective, and Market Rule changes implementing *Order 831* will be required to be filed [75 days after its publication in the Federal Register].

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

Also on June 16, the FERC issued *Order 825*,⁹⁵ 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, 2016.⁹⁶

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

XIII. Natural Gas Proceedings

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

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

On March 31, 2016, the FERC conditionally accepted Algonquin tariff modifications and request for waiver that provided an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies ("EDCs") that are participating in state-regulated electric reliability programs.⁹⁷ 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

⁹⁵ *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*").

⁹⁶ *Order 825* was published in the *Fed. Reg.* on June 30, 2016 (Vol. 81, No. 126) pp. 42,882-42,910.

⁹⁷ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

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.⁹⁸ 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.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ 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.

- **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*¹⁰² 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").¹⁰³ 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."¹⁰⁴ 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

⁹⁸ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

⁹⁹ *Id.* at P 27.

¹⁰⁰ *Id.* at P 34.

¹⁰¹ *Id.* at P 35

¹⁰² *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹⁰³ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹⁰⁴ *BP Penalties Order* at P 3.

order establishing a hearing in this proceeding.¹⁰⁵ 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.¹⁰⁶

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁰⁷ 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 2012.¹⁰⁸

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.

¹⁰⁵ *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).

¹⁰⁶ *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

¹⁰⁷ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁰⁸ 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, 2015.¹⁰⁹ Order Denying Rehearing and Dismissing Stay Request issued Jan. 28, 2016. FERC orders appealed to DC Circuit. Order Amending Certificate issued October 6, 2016.¹¹⁰
 - ▶ 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, 2016.¹¹¹
 - ▶ Construction expected to begin 4th Quarter 2016.

¹⁰⁹ 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).

¹¹⁰ *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.

¹¹¹ *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, 2015.¹¹²
 - ▶ Construction began in May 2015.
 - ▶ ***In-Service: November 1, 2016 (reporting is now concluded).***

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).

¹¹² Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

- **FCA10 Results (16-1408)**

Underlying FERC Proceeding: ER16-1041¹¹³

Petitioner: UWUA Local 464 and Robert Clark

In a new appeal since the last Report, UWUA Local 464 and Robert Clark (“Petitioners”) filed a petition for review of the FERC’s orders on the FCA10 Results Filing. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions are due December 30, 2016; dispositive motions, January 17, 2017.

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

Underlying FERC Proceeding: ER15-1137¹¹⁴

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;¹¹⁵ **EL14-52;116 EL15-25**¹¹⁷

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. On November 14, NEPGA filed a Joint Appendix. NEPGA filed its Petitioner Final Brief and Reply Brief on November 22. On November 28, the FERC filed its Respondent Final Brief and NESCOE filed its Intervenor for Respondent Final Brief.

¹¹³ 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).

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

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

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

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

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹¹⁸
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 November 14, the parties filed their fifth 90-day status report, again indicating, ultimately, that the proceedings upon which the NETOs based their request for abeyance of this appeal remain ongoing.

- **Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated)**
Underlying FERC Proceedings: ER13-193; ER13-196¹¹⁹

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

As previously reported, NETOs¹²⁰ 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: EL11-66¹²¹
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,¹²² 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"¹²³ and the TOs¹²⁴ 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

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

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

¹²⁰ "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.

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

¹²² "EMCOS" are Taunton, Reading, Hingham, and Braintree.

¹²³ "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.

¹²⁴ In this case, TOs are CMP, Emera Maine, Eversource, National Grid, NHT, UI, and Vermont Transco.

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 TOs and the MA AG will be allotted 10 minutes each; the FERC, 20 minutes. The argument panel will be composed of Judges Millett, Sentelle and Randolph.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹²⁵ EL15-23¹²⁶
Petitioners: NEPGA, Exelon

On March 31, 2015, NEPGA filed a petition for review of the FERC's orders on NEPGA's FCM Administrative Pricing Rules Complaint. A docketing statement form, statement of issues to be raised, and Petitioners' appearances were filed on April 23, 2015. Also on April 23, 2015, NEPGA requested that the case be held in abeyance pending the FERC's issuance of an order on rehearing of its initial order in Exelon Corporation v. ISO New England Inc. (EL15-23). Motions for leave to intervene were filed by NEPOOL, CT PURA, CT OCC, NESCOE, NECPUC, NHEC, and PSEG. On May 22, the Court granted all motions to intervene and NEPGA's motion to hold the case in abeyance pending a decision in EL15-23. Following the FERC's decision in EL15-23 and Exelon's appeal of that case (16-1042), the Court granted, on March 1, 2016, Exelon's motion to consolidate this proceeding with 16-1042. Accordingly, this proceeding was returned to the court's active docket on a consolidated basis with 16-1042.

On June 16, NEPGA and Exelon filed Petitioners' Briefs. PSEG submitted its Intervenor for Petitioner Brief on July 7. FERC's Respondent Brief was filed on August 15. A Joint Intervenor for Respondent Brief was filed on September 6 by NESCOE, NECPUC, CT PURA, and CT OCC. 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.

- **Allco Finance Limited v. Klee et al. (Commissioners, CT DEEP and CT PURA) (2d Cir. 16-2946)**

In this proceeding, an appeal from an unsuccessful challenge of Connecticut's actions under the 2015 multi-state clean energy RFP ("Clean Energy RFP") in Connecticut District Court, Allco continues its challenges to Connecticut's actions under the Clean Energy RFP. Allco asserts that Connecticut's actions are inconsistent with PURPA and constitutional principles recently addressed by the Supreme Court in *Hughes v Talen Energy Marketing* and summarized in prior Reports. As reported at the November Participants Committee meeting, the Second Circuit Court of Appeals on November 2 granted Allco's motion for an emergency injunction. The emergency injunction enjoins Connecticut (but not Massachusetts or Rhode Island) from "awarding, entering into, executing, or approving any wholesale electricity contracts in connection with the [Clean Energy RFP] during the pendency of this appeal." The injunction does "not apply retroactively to any wholesale electricity contract that has been entered into, executed, and approved" as of November 2, 2016. Since the last Report, Briefs and Amicus Briefs have been filed. Oral argument has been set for December 8, 2016.

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

Entergy¹²⁷ 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"

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

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

¹²⁷ Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

as a natural gas-fired (rather than coal-fired) plant (the “Term Sheet”)¹²⁸ is preempted by the FPA and invalid under the dormant Commerce Clause of the US Constitution. Entergy also seeks a permanent injunction requiring the NYPSC Commissioners to withdraw the Order and/or preventing the NYPSC Commissioners from continuing to treat the Order as valid and binding. This case is noteworthy given the relationship of the issues raised to the Supreme Court’s *Hughes*¹²⁹ decision summarized in earlier Reports.

As previously reported, the Court dismissed, on March 7, 2016, a NYPSC motion to dismiss Entergy’s claim that its Order is both field- and conflict-preempted by the FPA, finding that “Entergy has timely asserted claims of harm flowing from state action to an interstate market in which it participates”. Since the last Report, briefing on how *Hughes* impacts discovery and the issue of a stay in this case was filed on May 6. Also on May 6, the Parties filed updated Civil Case Management Plans. On May 10, the trial judge issued a protective order adopting a confidentiality agreement should discovery proceed. On May 20, 2016, the NYPSC requested that the stay of discovery be continued to afford the NYSPC the opportunity to consider in a separate proceeding the impact of the *Hughes* case and other developments on the NYPSC’s prior authorization of the Term Sheet, subject to reporting to this Court, advising the Court that it had contemporaneously solicited comments in in NYPSC Case 12-E-0577.¹³⁰

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.

¹²⁸ 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.

¹²⁹ *Hughes v. Talen Energy Marketing LLC*, 136 S. Ct. 993 (2016) (“*Hughes*”).

¹³⁰ The NYPSC asked for comments on whether “National Grid should still be authorized to recover costs under the Term Sheet given various intervening events subsequent to the Commission’s approval. In particular, NRG/Dunkirk mothballed the Dunkirk facility in January 2016, and has not taken the actions necessary to add natural gas firing capability at the Dunkirk facility by September 1, 2015, or otherwise. Meanwhile, National Grid has completed certain transmission upgrades that it previously could defer and avoid, in contemplation of the refueled Dunkirk facility being available. Moreover, on April 19, 2016, the United States Supreme Court issued a decision with respect to preemption of a State-ordered contract for the sale of electric generation capacity, which may implicate the Dunkirk/National Grid Term Sheet. *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288 (2016) (“*Hughes*”). For instance, would *Hughes* require modification of the Term Sheet? Similarly, would *Hughes* be considered a “Change of Law” under the provisions of the Term Sheet providing for termination?

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