

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

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

I. Complaints/Section 206 Proceedings

1	Base ROE Complaint IV (2016) (EL16-64)	Dec 20	2nd settlement conference held; third settlement conference tentatively scheduled for Mar 22
		Dec 21	Chief Judge Cintron designates ALJ Steven A. Glazer as presiding judge so that hearing procedures can proceed concurrently with settlement judge procedures still underway before Judge Long
		Dec 22	Trial Judge Glazer issues orders adopting rules for conduct of the hearing and scheduling a preliminary procedural conference for Jan 17
		Jan 3	Settlement Judge Long issues status report recommending settlement judge procedures be continued concurrently with hearings
3	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Dec 8	Settlement Judge Dring issues status report recommending settlement procedures be continued

II. Rate, ICR, FCA, Cost Recovery Filings

4	ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER17-472)	Dec 12-20	Dominion, Eversource, Exelon, National Grid, NESCOE, NRG intervene
5	FCA11 Qualification Informational Filing (ER17-321)	Dec 6	FERC accepts filing
5	ICR-Related Values and HQICCs - 2020/21 Capacity Commitment Period (ER17-320)	Dec 6	FERC accepts filing, eff. Jan 7
5	2017 NESCOE Budget (ER17-140)	Dec 6	FERC accepts NESCOE's 2017 Budget
5	2017 ISO-NE Administrative Costs and Capital Budgets (ER17-116)	Dec 6	FERC accepts the ISO's 2017 Budgets

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

* 6	Sub-Hourly Settlement NCPC Changes (ER17-680)	Dec 27	ISO-NE and NEPOOL jointly file changes; comment date Jan 17
* 7	Effective Date Update: Fast Start Pricing and DARD Pump Parameter Changes (ER17-576)	Dec 19	ISO-NE files to make Mar 1, 2017 the effective date for the Fast Start and DARD Pump Parameter Changes; comment date Jan 9
		Dec 27	NEPOOL intervenes
7	Natural Gas Index Changes (ER17-337)	Dec 15	NEPOOL answers Dominion's protest
		Dec 16	ISO-NE answers Dominion's protest
		Dec 20	Dominion answers ISO-NE's Dec 16 answer
7	Effective Date Update: MR1 §§ 2.7(a) & (g) (ER17-96)	Dec 6	FERC accepts update
7	Resource Dispatchability Changes (ER17-68)	Dec 9	FERC accepts changes, eff. Dec 12, 2016, Dec 1, 2018 and Jun 1, 2020, as requested

8	FCM Enhancements (ER16-2451)	Dec 19	FERC issues tolling order affording it additional time to consider Indicated NYTOs' request for rehearing of the <i>FCM Enhancements Order</i>
8	FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126)	Dec 6	FERC accepts Oct 25 compliance filing, eff. Dec 27

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

* 11	Schedule 23: FPL Energy Wyman SGIA (ER17-581)	Dec 19	ISO-NE and CMP file non-conforming SGIA to govern the interconnection of Wyman's 16 MW battery energy storage facility; comment date Jan 9
11	Schedule 21-CMP: Blue Sky LSA (ER17-407)	Dec 30	FERC accepts LSA, eff. Aug 8, 2016
11	Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)	Dec 2 Dec 9 Dec 13 Dec 15	FERC Trial Staff files initial comments supporting uncontested settlement agreement Settlement Judge Hurt certifies settlement to the Commission Settlement Judge Hurt issues status report recommending settlement judge procedures be terminated Chief Judge terminates settlement judge procedures, subject to final action by the Commission

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 13	2015 ISO-NE SIL Limits	Dec 20	ISO-NE submits 2015 Simultaneous Import Limits for the New England-wide market and the CT Import and SWCT Import Interface sub-markets
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IX. Membership Filings

* 14	January 2017 Membership Filing (ER17-682)	Dec 27	NEPOOL requests the FERC accept (i) the memberships of Emera Energy Services Subsidiaries 11-15; (ii) the termination of the Participant status of Summit Hydropower and StatArb Investments; comment date Jan 17
14	December 2016 Membership Filing (ER17-464)	Jan 3	FERC accepts (i) the memberships of Green Power USA; Maine Power LLC; Emera Energy Services Subsidiary Nos. 9 and 10; and (ii) the termination of the Participant status of Concord Steam and Advanced Power Services
14	November 2016 Membership Filing (ER17-229)	Dec 21	FERC accepts (i) memberships of Aspiry Energy, King Forest Industries, and Titan Gas LLC; (ii) the termination of the Participant status of CES Retail Energy Supply, Ameresco DR, and Quantum Utility Generation; and (iii) the name changes of Stored Solar J&WE and EmpireCo Limited Partnership

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

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| 14 | Revised Reliability Standards: IRO-018-1 & TOP-010-1 (RD16-6) | Dec 14 | FERC accepts revised Standards |
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XI. Misc. - of Regional Interest

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| 17 | 203 Application: Belmont/NSTAR (EC16-145) | Dec 27 | NSTAR notifies the FERC that the acquisition was consummated on Dec 15, 2016 |
| 17 | 203 Application: GDF Suez Energy Resources/Atlas Power (Dynergy/ECP) (EC16-93) | Dec 5
Dec 22
Dec 27 | Applicants request an order by the end of Dec
FERC conditionally approves application
Applicants submit compliance filing; comment date Jan 10 |
| 18 | PURPA Complaint: Allco v. MA Agencies (EL17-6 et al.) | Dec 15 | FERC issues notice of intent not to act (freeing Allco to pursue its enforcement action against the Mass. Agencies in federal court) |
| 18 | IA Cancellation: Superseded PSNH/Springfield Power IA (ER17-376) | Dec 16 | FERC accepts notice of cancellation of recently superseded 2012 PSNH IA with Springfield Power |
| 18 | EMM Contract (ER17-290) | Dec 2 | FERC accepts new contract for EMM services between ISO-NE and Potomac Economics |

XII. Misc. - Administrative & Rulemaking Proceedings

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| 20 | Electric Storage Resource Utilization in RTO/ISO Markets (AD16-25) | Dec 14-16 | Over 45 parties file post-technical conf. comments |
| * 23 | NOPR: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20) | Dec 14
Dec 16
Dec 19
Dec 20 | Trade Associations, National Hydropower Assoc. request extension of time to file comments on <i>Storage NOPR</i>
PJM IMM supports extension of comment date
Public Interest Organizations, SolarCity oppose extension
FERC extends comment date on <i>Storage NOPR</i> to Feb 13 |
| 24 | <i>Order 833</i> : Critical Energy/Electric Infrastructure Information (CEII) Procedures (RM16-15) | Dec 19 | EEI requests rehearing of <i>Order 833</i> ; FERC action required on or before Jan 18 |
| 25 | <i>Order 831</i> : Price Caps in RTO/ISO Markets (RM16-5) | Dec 19 | AMP/APPA, Exelon, NYISO, TAPS request rehearing and/or clarification of <i>Order 831</i> ; FERC action required on or before Jan 18 |

XIII. Natural Gas Proceedings

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| 28 | New England Pipeline Proceedings AIM Project (CP14-96) | Dec 30 | FERC authorizes remaining facilities necessary to enable full capacity of firm transportation service to NY, CT, RI and MA to be placed in service |
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XIV. State Proceedings & Federal Legislative Proceedings*No Activity Reported***XV. Federal Courts**

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| 30 | FCA10 Results (16-1408) | Dec 22
Dec 28
Dec 29 | NEPGA, CPV Towantic intervene
Petitioners (UWUA and R. Clark) file Docketing Statement, Issues Statement and notice regarding filing of appendix
FERC files unopposed motion requesting 60 days for its response to Petitioners' opening brief |
|----|-------------------------|----------------------------|--|

30	FCA9 Results (16-1068)	Dec 7 Dec 20	Parties jointly request that this case be held in abeyance for 45 days following the Court's issuance of the mandate in 14-1244 FERC grants Dec 7 request; motions governing further proceedings due Feb 3
31	<i>Order 1000</i> Compliance Filings (15-1139, 15-1141**) (consolidated)	Dec 22	Court issues per curiam order granting intervenor-respondents request to divide oral argument time (15 minutes per side): hearing on January 13 before Judges Brown, Wilkins and Edwards
31	Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consolidated)	Dec 6	Oral argument held before Judges Millet, Sentelle and Randolph
32	Allco Finance Limited v. Klee et al. 16-2946 ((2d Cir.)	Dec 9 Dec 12	Oral argument held Court vacates Nov 2 injunction; Court opinion to follow in due course

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: January 4, 2017

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 January 3, 2017. If you have questions, please contact us.¹

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

NEPGA’s September 30 complaint remains pending before the FERC. As previously reported, NEPGA’s complaint asked 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.

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”).

³ “EMCOS” are: Belmont Mun. Light Dept., Braintree Elec. Light Dept., Concord Mun. Light Plant, Georgetown Mun. Light Dept., Groveland Elec. Light Dept., Hingham Mun. Lighting Plant, Littleton Elec. Light &

the 4th ROE complaint on April 29, 2016. The Complaint asked 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. Settlement conferences have thus far been held on November 8 and December 20, 2016; a third settlement conference is tentatively scheduled for March 22, 2017 (subject to change depending on disposition of *Emera Maine v. FERC* (DC Cir. case No. 15-1118)). On January 3, Settlement Judge Long issued a status report indicating that the parties remain open to settlement and recommending that settlement judge procedures be continued concurrently with the hearings described below.

Concurrent Hearing Procedures. On December 21, 2016, in response to a request of the parties and supported by Settlement Judge Long, Chief Judge Cintron designated Steven A. Glazer as presiding judge for hearings in this matter, so that hearing procedures can proceed *concurrently* with settlement judge procedures still underway before Judge Long. Absent a settlement, these hearing procedures will be conducted under the FERC's "Track II" procedural time standards, which requires that an initial decision be issued within 47 weeks, or by November 15, 2017. Judge Glazer scheduled a preliminary conference for January 17, 2017, noting that hearing has been set for August 2, 2017 (with September 27, 2017 as the deadline for reply briefs).

Water Dept., Middleborough Gas & Elec. Dept., Middleton Elec. Light Dept., Reading Mun. Light Dept. ("Reading"), Rowley Mun. Lighting Plant, Taunton Mun. Lighting Plant, and Wellesley Mun. 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.

Participants were directed to propose the remaining procedural schedule consistent with these dates at the January 17 conference. In addition, on December 22, 2016, Judge Glazer issued an order adopting rules for the conduct of the hearing. 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 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. Five settlement conferences have thus far been held: January 19, March 24, April 28, August 30, and November 18 (telephonically). Judge Dring issued his latest status report on December 8 indicating that the parties are making progress toward settlement and recommending that the settlement procedures be continued. 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

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

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 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 (ER17-472)**

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 were due December 22, 2016; none were filed. Doc-less interventions were filed by Dominion, Eversource, Exelon, National Grid,

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).

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*”).

NESCOE, 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).

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

On December 6, 2016, the FERC accepted the ISO’s November 8 informational filing for qualification in FCA11 (the “FCA11 Informational Filing”). As previously reported, for FCA11 which is scheduled to begin February 6, 2017, the ISO determined 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 an import-constrained Capacity Zone; NNE, 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. Unless the December 6 order is challenged, this proceeding will be concluded. 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 December 6, 2016, the FERC accepted the ICR, LSR for SENE, MCL for NNE, HQICCs, and Marginal Reliability Impact (“MRI”) Demand Curves for the 2020/2021 Capacity Commitment Year. The values will be used in FCA11 (collectively, the “2020/21 ICR-Related Values”). 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 MW. Unless the December 6 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On December 6, 2016, the FERC accepted the revisions to Schedule 5 of Tariff Section IV.A that support recovery of funding for NESCOE’s \$2.258 million budget.²¹ The amount to be recovered under Schedule 5 reflects true-ups from 2015 overcollections of \$674,276, and will result in a charge of \$0.00678 per kilowatt of Monthly Network Load. Unless the *2017 NESCOE Budget Order* is challenged, this proceeding will be concluded. 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)**

Again, on December 6, the FERC accepted the ISO’s filing permitting recovery of its 2017 administrative costs (the “2017 Revenue Requirement”) and submitting its capital budget and supporting materials for calendar year 2017 (“2017 Capital Budget”, and together with the 2017 Revenue Requirement, the “2017 ISO Budgets”). As previously reported, the 2017 Revenue Requirement, 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)

²¹ *ISO New England Inc.*, Docket No. ER17-140-000 (Dec. 6, 2016) (unpublished letter order) (“*2017 NESCOE Budget Order*”).

▶ 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)

Unless the December 6 order is challenged, this proceeding will be concluded. 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)**

As previously reported, the FERC accepted on December 1, 2016 the ISO’s October 28, 2016 informational filing presenting its evaluation of the current Base Capacity Cost (“CC”) Rate,²² in which, 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 would be continued. The December 1 order was not challenged and is final and unappealable. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **Sub-Hourly Settlement NCPC Changes (ER17-680)**

On December 27, 2016, the ISO and NEPOOL jointly filed changes to the Net Commitment Period Compensation (“NCPC”) credit rules (the “NCPC Revisions”) related (i) to the implementation of sub-hourly Real-Time settlement (including adding “Real-Time Dispatch Lost Opportunity Cost NCPC Credit” as an NCPC credit type) and (ii) to Dispatchable Asset Related Demand (“DARD”). A March 1, 2017 effective date (coincident with the Real-Time sub-hourly settlement effective date) was requested. The NCPC Revisions were supported by the Participants Committee by way of the December 2, 2016 Consent Agenda (Item #3). Comments on this filing are due on or before January 17, 2017. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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.

- **Effective Date Update: Fast Start Pricing and DARD pump Parameter Changes (ER17-576)**

On December 19, 2016, the ISO filed changes to make March 1, 2017 (rather than March 31, 2017) the effective date for the following two sets of previously-approved Tariff Changes: (i) the Fast Start Changes (improvements to Real-Time price formation when fast start resources are deployed);²³ and (ii) the DARD Pump Parameter Changes (improvements to pump storage hydro-generating resource modeling and dispatch).²⁴ The accelerated effective date was requested to make the two sets of changes effective coincident with the March 1, 2017 implementation of sub-hourly settlement. Comments on this filing are due on or before January 9, 2017. Thus far, a doc-less intervention was filed by NEPOOL. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Natural Gas Index Changes (ER17-337)**

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. Answers to Dominion’s protest were filed by NEPOOL and the ISO on December 15 and 16, respectively. On December 20, Dominion answered the ISO’s December 16 answer. 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).

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

On December 6, the FERC accepted updates to 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). Unless the December 6 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 9, 2016, the FERC accepted 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”).²⁵ As previously reported, 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). In accepting the changes, the FERC disagreed with Eversource comments protesting the Changes, finding, ultimately, that “the proposed revisions will not compromise QF PURPA

²³ See *ISO New England Inc. and New England Power Pool*, Revisions to Fast-Start Pricing and Dispatch, Docket No. ER15-2716 (filed Sep. 24, 2015; accepted Oct. 19, 2015).

²⁴ See *ISO New England Inc. and New England Power Pool Participants Comm.*, DARD Pump Parameter Changes, Docket No. ER16-954 (filed Feb. 17, 2016; accepted Mar. 22, 2016).

²⁵ *ISO New England Inc. and New England Power Pool Participants Comm.*, 157 FERC ¶ 61,189 (Dec. 9, 2016).

obligations and rights.”²⁶ Unless the December 9 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

The FERC’s *FCM Enhancements Order*²⁷ is subject to a request for rehearing by Indicated NYTOs.²⁸ As previously reported, the FERC accepted changes to the Tariff to increase liquidity in the FCM by increasing Market Participant opportunities to enter into reconfiguration auctions and bilateral contracts for the exchange of CSOs (“FCM Enhancements”). 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 included 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.”²⁹ 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.”³⁰ 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*. On December 19, the FERC issued a tolling order affording it additional time to consider Indicated TOs’ rehearing request, 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*³¹ (summarized in previous reports), but 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

²⁶ *Id.* at P 28.

²⁷ *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*.

²⁸ “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.

²⁹ *Id.* at P 31.

³⁰ *Id.*

³¹ *ISO New England Inc.*, 156 FERC ¶ 61,144 (Aug. 30, 2016).

price lock-in.³² That Tariff language was jointly submitted by the ISO and NEPOOL on October 25 and accepted by the FERC on December 6, concluding this proceeding. If you have questions regarding this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

CPower’s request for rehearing of the *ISO RTEG Waiver Request Order* remains pending. As previously reported, the FERC granted the limited waiver requested by the ISO of Tariff Sections III.13.1.4.2.5.2, III.13.1.4.3.1.2 & III.13.1.2.3.1.1.³³ 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’.”³⁴ 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)**

A request for rehearing by NEPGA, NextEra and Exelon of the FERC’s *Resource Retirement Reforms Order*³⁵ remains pending. 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,”³⁶ which were filed with and accepted by the FERC.³⁷ 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).

³² *Id.* at PP 19, 25.

³³ *ISO New England Inc.*, 156 FERC ¶ 61,096 (Aug. 8, 2016) (“*ISO RTEG Waiver Request Order*”), *reh’g requested*.

³⁴ *Id.* at P 19.

³⁵ *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.

³⁶ *Id.* at P 62.

³⁷ *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

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

Rehearing remains pending of the FERC's April 8, 2016 *Demand Curve Remand Order*.³⁸ As previously reported, the FERC conditionally accepted, on May 30, 2014, revisions to the FCM rules that establish a system-wide sloped demand curve ("Demand Curve Changes").³⁹ 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*,⁴⁰ 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).⁴¹ 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, 2015.⁴² 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/NRG rehearing request. On June 8, 2016, the FERC issued a tolling order affording it additional time to consider the NextEra/PSEG/NRG 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.⁴³ 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.⁴⁴ 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

³⁸ *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).

³⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("*Demand Curve Order*").

⁴⁰ *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).

⁴¹ *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*").

⁴² 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.

⁴³ *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("*2013/14 Winter Reliability Program Remand Order*").

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

consider the question of whether the Bid Results were just and reasonable.⁴⁵ 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).

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. 827⁴⁶ and 828⁴⁷ 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 23: FPL Energy Wyman SGIA (ER17-581)**

On December 19, the ISO and Central Maine Power (“CMP”) filed a non-conforming, 3-party SGIA between the ISO, CMP, and FPL Energy Wyman (“Wyman”). The SGIA will govern the interconnection of Wyman’s approximately 16 MW battery energy storage facility through existing facilities that are currently owned, operated and maintained by Wyman and FPL Energy Wyman IV (“Wyman IV”) for Wyman Station and Wyman Station IV. The SGIA is non-conforming in that it reflects the fact that the Interconnection Facilities include facilities that are not for the sole use of Wyman’s battery storage facility. A November 30, 2016 effective date was requested. Comments on this filing are due on or before January 9, 2017. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-CMP: Blue Sky LSA (ER17-407)**

On December 30, the FERC accepted 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”). The LSA was accepted effective as of August 8, 2016, as requested. Unless the December 30 order is challenged, this proceeding is concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Eversource’s November 22 offer of settlement to resolve the issues in this proceeding (described in previous reports) -- principally whether the \$38.9 million in FERC-jurisdictional, merger-related transmission

⁴⁵ 2013/14 Winter Reliability Program Remand Order at P 17.

⁴⁶ *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).

⁴⁷ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) (“Order 828”).

costs incurred as the result of the April 10, 2012 NU/NSTAR merger that Eversource sought to recover through changes to Schedule ES-21 were just and reasonable⁴⁸ -- remains pending. On December 2, FERC Trial Staff filed initial comments supporting the uncontested settlement agreement; no other comments were filed. Settlement Judge Hurt certified the settlement to the Commission on December 9,⁴⁹ and, given these developments, issued a status report on December 13 recommending that settlement proceedings in this matter be terminated. Chief Judge Cintron terminated settlement judge procedures on December 15, subject to final action by the Commission, which, as noted above, remains pending. 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,⁵⁰ 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.⁵¹ 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.⁵² 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.⁵³ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁵⁴

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

⁴⁸ See *ISO New England Inc. et al.*, 155 FERC ¶ 61,136 (May 3, 2016).

⁴⁹ *ISO New England Inc. et al.*, 157 FERC ¶ 63,026 (Dec. 9, 2016).

⁵⁰ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) ("*June 2 Order*").

⁵¹ *Id.* at P 24.

⁵² *Id.* at PP 25-26.

⁵³ *Id.* at P 27.

⁵⁴ *Id.* at P 21; Ordering Paragraph (B).

VII. NEPOOL Agreement/Participants Agreement Amendments*No Activity to Report***VIII. Regional Reports**

- **2015 ISO-NE SIL Limits (AD10-2-009)**

On December 20, 2016, the ISO submitted an information filing with the 2015 simultaneous import limits (“SIL”) for the New England market and the Connecticut Import Interface (“CT Import Interface”) and the Southwest Connecticut Import Interface (“SWCT Import Interface”) geographic submarkets. The SILs may be used by New England sellers in updated market power indicative screens and Delivered Price Test (“DPT”) analyses submitted under *Order 697*. [Note: in the GDF Suez Energy Resources/Atlas Power (Dynergy/ECP) order in EC16-93/94 discussed in *Section XI* below, the FERC found that “Connecticut and Southwest Connecticut are no longer submarkets in the ISO-NE energy market.”⁵⁵] If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@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 2015; 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*⁵⁶ and *531-B*.⁵⁷ 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, 2016)
- ◆ Emera Maine (Jan 29, 2016)
- ◆ Eversource (CL&P, PSNH, WMECO) (Jan 21, 2016)
- ◆ National Grid (Jan 13, 2016)
- ◆ NHT (Jan 21, 2016)
- ◆ NSTAR (Jan 21, 2016)
- ◆ United Illuminating (Jan 21, 2016); supplement (Feb 1, 2016)
- ◆ VT Transco (Feb 3, 2016)

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).

⁵⁵ *Atlas Power Finance, LLC et al.*, 157 FERC ¶ 61,237 (Dec. 22, 2016)) at P 48.

⁵⁶ *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

⁵⁷ *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

IX. Membership Filings

- **January 2017 Membership Filing (ER17-682)**

On December 27, NEPOOL requested that the FERC accept (i) the memberships of Emera Energy Services Subsidiary Nos. 11, 12, 13, 14, and 15 [each Related Persons of Emera Maine, Transmission Sector]; (ii) the termination of the Participant status of Summit Hydropower (AR Sector Small RG Group Member) and StatArb Investments (Supplier Sector); and (iii) the name change of Calpine Energy Solutions (f/k/a/ Noble Americas Energy Solutions). Comments on this filing are due on or before January 17.

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

On January 3, the FERC accepted (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].

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

On December 21, the FERC accepted (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).

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)**

On December 14, the FERC accepted the revised VRF designations that NERC submitted in response to the *September 22 Order* approving the Revised IRO-018-1 and TOP-010-1 Standards.⁵⁸ As previously reported, the compliance filing modified the VRF designations for IRO-018-1 Requirement R1 and TOP-010-1 Requirements R1 and R2 to “high.”⁵⁹ Unless the December 14 order is challenged, this proceeding will be concluded.

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

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

⁵⁸ *N. Amer. Elec. Rel. Corp.*, 156 FERC ¶ 61,207 (Sep. 2, 2016) (“*September 22 Order*”).

⁵⁹ *September 22 Order* at P 2.

- **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”).⁶⁰ 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, 2016,⁶¹ 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.⁶² NERC stated that the BAL Changes consolidate six requirements in BAL-002-1 into three requirements, supported by several proposed associated NERC Glossary definitions, along with a revised Applicability section that incorporates language from the existing Standard. BAL-002-2 requires responsible entities to maintain and deploy energy reserves and to stabilize system frequency through identification of a Reportable ACE deviation and restoration of Reporting ACE to defined values after a system disturbance. BAL-002-2 will also require the responsible entity to maintain an Operating Process to ensure maintenance of Contingency Reserves to a level at least equal to the responsible entity’s Most Severe Single Contingency (“MSSC”), thereby implementing a continent-wide reserve policy to ensure that adequate Contingency Reserves will always be available to be deployed as necessary. NERC requested that responsible entities be required to comply with BAL-002-2 on the first day of the first calendar quarter that is six months after this standard is approved by the FERC. On February 12, 2016, NERC submitted supplemental information that clarified how BAL-002-2 will work in conjunction with the successor provisions to TOP-007-0 (TOP-007-0 is set to expire on April 1, 2017). On March 31, NERC provided further supplemental information to further clarify the significance of the MSSC as the upper bounds for events that qualify as Reportable Balancing Contingency Events (“RBCE”) under Reliability Standard BAL-002-2 and the way in which other Reliability Standards are necessary and appropriate to address events beyond MSSC. Comments on the *BAL Changes NOPR* were due on or before July 25, 2016⁶³ and were filed by APS, IESO, NaturEner USA, the Canadian Electricity Association, Idaho Power, TVA, NRECA, NERC, Bonneville, EEI, and jointly by the Alberta Electric System Operator (“AESO”), the California Independent System Operator (“CAISO”), Electric Reliability Council of Texas, Inc. (“ERCOT”), the Independent Electricity System Operator of Ontario, Inc. (“IESO”), Midcontinent Independent

⁶⁰ *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Rel. Standards*, 156 FERC ¶ 61,210 (Sep. 22, 2016) (“*Frequency Control Changes NOPR*”).

⁶¹ The *Frequency Control Changes NOPR* was published in the *Fed. Reg.* on Sep. 28, 2016 (Vol. 81, No. 188) pp. 66,555-66,562.

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

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

System Operator, Inc. (“MISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”). The *BAL Changes NOPR* is pending before the FERC.

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

As previously reported, the FERC issued, on September 22, 2016, a final rule approving a new Reliability Standard -- TPL-007-1 (Geomagnetic Disturbance (“GMD”) Operations) -- and one new definition (Geomagnetic Disturbance Vulnerability Assessment), associated VRFs and VSLs (“*Order 830*”).⁶⁴ 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, 2016.⁶⁵ 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, *NOPR*⁶⁶ 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 Standards⁶⁷ to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2’s effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC sought comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also sought further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this *NOPR* were due August 25, 2014,⁶⁸ 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.

⁶⁴ *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

⁶⁵ *Order 830* was published in the *Fed. Reg.* on Sep. 30, 2016 (Vol. 81, No. 190) pp. 67,120-67,140.

⁶⁶ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) (“*ATC NOPR*”).

⁶⁷ 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.

⁶⁸ The MOD-001-2 *NOPR* was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

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

The *BAL-002-1a Interpretation Remand NOPR*⁶⁹ 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, 2013,⁷⁰ and were filed by NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. As noted, the *BAL-002-1a Interpretation Remand NOPR* remains pending before the FERC.

XI. Misc. - of Regional Interest

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

On December 27, 2016, NSTAR notified the FERC that its 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,⁷¹ authorized by the FERC on October 25,⁷² was consummated on December 15, 2016. Reporting on this matter is now concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 22, the FERC conditionally authorized, subject to mitigation, the acquisition of GDF Suez Energy Resources by Atlas Power Finance, a subsidiary of Atlas Power (a recently-formed joint venture between Dynergy Inc. and Energy Capital Partners III, LLC) ("Acquisition") and the purchase of approximately 10 percent of Dynergy's outstanding shares by a subsidiary of ECP III, Terawatt Holdings, LP ("Stock Purchase").⁷³ In authorizing the transaction, the FERC found that the applicants had not shown that either the Acquisition or the Stock Purchase would not adversely affect competition within the SENE capacity zone.⁷⁴ Specifically, the FERC disagreed with applicants that, because GSENA was pivotal prior to the Transactions and Atlas would be pivotal after the Transactions, albeit with an additional 224 MW, there would be no adverse impact on competition. Rather, the FERC identified concerns that, because there would be an increase in the degree to which Atlas would be pivotal, Atlas would have an increased ability to exercise market power in an FCA when its resources enter or

⁶⁹ *Elec. Rel. Org. Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

⁷⁰ 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.

⁷¹ 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.

⁷² *NSTAR Elec. Co.*, 157 FERC ¶ 62,059 (Oct. 25, 2016).

⁷³ *Atlas Power Finance, LLC*, 157 FERC ¶ 61,237 (Dec. 22, 2016) ("*Atlas 203 Order*").

⁷⁴ *Atlas 203 Order* at P 45. The FERC also found that the Applicants had not shown that the Acquisition would not adversely affect PJM's COMED Local Deliverability Area, and that the protest filed by Public Citizen was beyond the scope of the proceeding.

exit the market. Accordingly, as a condition to its authorization, the FERC suggested that Atlas propose in a 30-day compliance filing tailored mitigation mechanisms to address that concern, including divestiture of generation units or a commitment to keep resources in the FCM for a specified period of time.⁷⁵

Compliance Filing. In its compliance filing, applicants propose to divest within six months an amount of generation equal to or greater than the amount by which they would become more pivotal post-transaction (i.e. the 224 MW currently controlled by Dynegy and ECP in SENE), so that the amount of generation controlled in SENE is equal to or less than the amount of generation currently controlled by GDF Suez. Until that divestiture is accomplished, applicants will rely on pre-existing market mitigation provisions for annual FCA purposes and, for monthly and reconfiguration auctions, a commitment to limit capacity bids to a level no greater than the FCA clearing price for the applicable planning period. Comments on the compliance filing are due on or before January 10. Applicants requested that the FERC issue an order on the compliance filing on or before January 31. 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 December 15, the FERC issued a notice of intent not to act on the petition by Allco Renewable Energy Limited and Allco Finance Limited (together, “Allco”) asking 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”).⁷⁶ As previously reported, Allco claimed that Massachusetts’ implementation of Massachusetts state law Section 83A 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 had sought FERC enforcement of 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.⁷⁷ In light of the FERC’s notice, Allco now has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations. 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 December 16, the FERC accepted a notice of cancellation of a 2012 Interconnection Agreement (“IA”) between PSNH and Springfield Power, effective October 26, 2016 (the effective date of the three-party SGIA that superseded the IA),⁷⁸ as requested. Unless the December 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).

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

The FERC accepted on December 2 the new 3-year contract between the ISO and Potomac Economics, Ltd., under which Potomac Economics will continue as the ISO’s External Market Monitor (“EMM”). As previously reported, the new agreement is closely modeled on the existing agreement between Potomac Economics and the ISO, including all of the functions laid out for the EMM in Section 9.4.3 of the Participants Agreement. The new EMM contract term will run from January 1, 2017 through December 31,

⁷⁵ *Id.* at P 56.

⁷⁶ *Allco Renewable Energy Ltd. et al.*, 157 FERC ¶ 61,202 (Dec. 15, 2016).

⁷⁷ 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.

⁷⁸ Eversource stated that the three-party SGIA was entered into as a result of Springfield Power’s request to increase the facility’s Capacity Network Resource Capability and Network Resource Capability.

2019. This proceeding is now concluded. 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).

- **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.⁷⁹ 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”⁸⁰ filed a motion to reject (“Motion to Reject”) the April 1 Filing, asserting the April 1 Filing was deficient because, rather than actual rates, it included proxy rates that MPD said would be replaced with 2014 Form 1 numbers when MPD’s 2014 Form 1 was available. On April 22, the Maine PUC and the Maine Customer Group protested the filing. The MPUC challenged three aspects of the filing: (i) the proposed increase of ROE from 9.75% to 10.20% based on anomalous economic conditions; (ii) the change from a measured loss factor calculation to a fixed loss factor; and (iii) the use of end-of-year account balances, rather than average 13-month account balances, for determination of facilities that are included in rate base. In addition to those aspects, the Maine Customer Group further challenged: (iv) inclusion of an out-of-period adjustment to rate base for forecasted transmission; (v) the proposed capital structure, which they assert is artificially distorted to accommodate a requirement resulting from the merger of Emera Maine’s predecessor companies; and (vi) the proposed new cost allocation scheme. On April 24, Emera Maine answered the Maine Customer Group’s Motion to Reject. On April 29, the Maine Customer Group answered Emera Maine’s April 24 answer. On May 1, Emera Maine filed an amendment and errata to its April 1 filing, in part reflecting 2014 FERC Form 1 data rather than estimated data. On May 7, Emera Maine answered the April 22 Maine PUC and MCG protests and the MCG’s April 29 answer. On May 8, MCG moved to compel revision to Emera’s May 1 filing, asserting that it was not filed in accordance with Emera’s OATT, and specifically the Protocols for Implementing and Reviewing Charges Established by the Attachment J Rate Formulas (the “Motion to Compel”). MCG also protested the May 1 filing on May 22. On May 26, Emera Maine answered MCG’s May 8 Motion to Compel, which MCG answered the next day.

On June 2, 2016, the FERC granted Maine Customer Group’s Motion to Compel, and set the remaining issues with respect to Emera Maine’s 2014 and 2015 Annual Updates for hearing and settlement judge procedures.⁸¹ 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

⁷⁹ *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

⁸⁰ 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”).

⁸¹ *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh’g requested*.

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).

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

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

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

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

The FERC's audit of ISO-NE docketed in this proceeding is on-going. As previously reported, the FERC informed ISO-NE on November 24, 2015 that it would evaluate ISO-NE's compliance with: (1) the transmission provider obligations described in the Tariff, (2) *Order 1000* as it relates to transmission planning and expansion, and interregional coordination, (3) accounting requirements of the Uniform System of Accounts under 18 C.F.R. Part 101, (4) financial reporting requirements under 18 C.F.R. Part 141; and (5) record retention requirements under 18 CFR Part 125. The FERC indicated that the audit will cover the July 10, 2013 period through the present.

XII. Misc. - Administrative & Rulemaking Proceedings

- **Electric Storage Resource Utilization 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. Comments were filed by over

45 parties, including Avangrid, Brookfield, EEI, Energy Storage Association, Exelon, FirstLight, NEPGA, NextEra, PSEG, Solar City/Tesla, and UCS. This matter is pending before the FERC.

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

The FERC held a technical conference on a June 27-28, 2016 to discuss competitive transmission development process-related issues, including use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking issues. In addition, participants had the opportunity to discuss issues relating to interregional transmission coordination, regional transmission planning and other transmission development issues. Pre-technical conference comments were filed by over 20 parties, including by NESCOE, BHE US Transmission, LSPower, and NextEra Energy Transmission. Technical conference materials are available on the FERC's e-Library. On August 3, the FERC issued a notice inviting post-technical conference comments on questions listed in the attachment to the notice. Following requests by Utility Trade 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 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.

- **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;

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").

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).

(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: LGIA/LGIP Reforms (RM17-8)**

On December 15, the FERC issued a NOPR⁸⁵ proposing reforms designed to improve certainty,⁸⁶ promote more informed interconnection,⁸⁷ and enhance interconnection processes.⁸⁸ Based, in part, on input

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.

⁸⁵ *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016) (“*LGIP/LGIA Reforms NOPR*”).

⁸⁶ To accomplish this goal, the FERC proposes to: (1) revise the *pro forma* LGIP to require transmission providers that conduct cluster studies to move toward a scheduled, periodic restudy process; (2) remove from the *pro forma* LGIA the limitation that interconnection customers may only exercise the option to build transmission provider’s interconnection facilities and standalone network upgrades if the transmission owner cannot meet the dates proposed by the interconnection customer; (3) modify the *pro forma* LGIA to require mutual agreement between the transmission owner and interconnection customer for the transmission owner to opt to initially self-fund the costs of the construction of network upgrades; and (4) require that the RTO/ISO establish dispute resolution procedures for interconnection disputes. The Commission also seeks comment on the extent to which a cap on the network upgrade costs for which interconnection customers are responsible can mitigate the potential for serial restudies without inappropriately shifting cost responsibility. *Id.* at P 6.

⁸⁷ The FERC proposes to: (1) require transmission providers to outline and make public a method for determining contingent facilities in their LGIPs and LGIAs based upon guiding principles in the Proposed Rule; (2) require transmission providers to list in their LGIPs and on their OASIS sites the specific study processes and assumptions for forming the networking models used for interconnection studies; (3) require congestion and curtailment information to be posted in one location on each transmission provider’s OASIS site; (4) revise the definition of “Generating Facility” in the *pro forma* LGIP and LGIA to explicitly include electric storage resources; and (5) create a system of reporting requirements for aggregate interconnection study performance. The FERC also seeks comment on proposals or additional steps that the Commission could take to improve the resolution of issues that arise when affected systems are impacted by a proposed interconnection. *Id.* at P 7.

⁸⁸ The FERC proposes to: (1) allow interconnection customers to limit their requested level of interconnection service below their generating facility capacity; (2) require transmission providers to allow for provisional agreements so that interconnection customers can operate on a limited basis prior to completion of the full interconnection process; (3) require transmission providers to create a process for interconnection customers to utilize surplus interconnection service at existing interconnection points; (4) require transmission providers to set forth a separate procedure to allow transmission providers to assess and, if necessary, study an interconnection customer’s technology changes (e.g., incorporation of a newer turbine model) without a change to the interconnection customer’s queue position; and (5)

received in response to AWEA's petition for changes to the *pro forma* LGIP/LGIA, and the FERC's May 13, 2016 technical conference to explore generator interconnection issues (as reported previously under Docket Nos. RM16-12; RM15-21), the FERC has identified proposed reforms which it states could remedy potential shortcomings in the existing interconnection processes. The FERC also seeks comment on whether any of its proposed reforms should be applied to the *pro forma* SGIP/SGIA.⁸⁹ Comments on the *LGIP/LGIA Reforms NOPR* are due [60 days after publication in the Federal Register].⁹⁰

- **NOPR: Fast Start Pricing in RTO/ISO Markets (RM17-3)**

On December 15, the FERC issued a NOPR proposing to require each RTO and ISO to incorporate market rules that meet certain requirements when pricing fast-start resources.⁹¹ The FERC stated that these reforms should lead to prices that more transparently reflect the marginal cost of serving load, which will reduce uplift costs and thereby improve price signals to support efficient investments. Specifically, the FERC proposes to require that each RTO/ISO incorporate the following five requirements for its fast-start pricing:

1. an RTO/ISO must apply fast-start pricing to any resource committed by the RTO/ISO that is able to start up within 10 minutes or less, has a minimum run time of one hour or less, and that submits economic energy offers to the market;
2. when an RTO/ISO makes a decision to commit a fast-start resource, it should incorporate commitment costs, i.e., start-up and no-load costs, of fast-start resources in energy and operating reserve prices, but must do so only during the fast-start resource's minimum run time;
3. an RTO/ISO must modify its fast-start pricing to relax the economic minimum operating limit of fast-start resources and treat them as dispatchable from zero to the economic maximum operating limit for the purpose of calculating prices;
4. if an RTO/ISO allows offline fast-start resources to set prices for addressing certain system needs, the resource must be feasible and economic; and
5. an RTO/ISO must incorporate fast-start pricing in both the Day-Ahead and Real-Time markets.

Comments on the *Fast-Start Pricing NOPR* are due on or before February 28, 2017.⁹²

- **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 best accommodates the physical and operational characteristics of its distributed energy resource aggregation."⁹³ Comments on the *Storage NOPR* were initially due on or before January 30, 2017,⁹⁴ but following requests for an extension of time, are now due **February 13, 2017**.

require transmission providers to evaluate their methods for modeling electric storage resources for interconnection studies and report to the Commission why and how their existing practices are or are not sufficient. *Id.* at P 8.

⁸⁹ *Id.* at P 11.

⁹⁰ The *LGIP/LGIA Reforms NOPR* were published in the *Fed. Reg.* on Jan. [], 2017 (Vol. 82, No. [] pp. []).

⁹¹ *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 157 FERC ¶ 61,213 (Dec. 15, 2016) ("*Fast-Start Pricing NOPR*").

⁹² The *Fast-Start Pricing NOPR* was published in the *Fed. Reg.* on Dec. 30, 2016 (Vol. 81, No. 251 pp. 96,391-96,404).

⁹³ *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) ("*Storage NOPR*").

⁹⁴ The *Storage NOPR* was published in the *Fed. Reg.* on Nov. 30, 2016 (Vol. 81, No. 230 pp. 86,522-86,550).

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.⁹⁵ 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, 2016⁹⁶ and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

Technical Workshops. The FERC held two technical workshops. The first technical workshop was held on August 11 and focused on the *Data Collection NOPR's* draft data dictionary. The second technical workshop was held on December 7, 2016 and focused 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 also provided a high-level update on proposed technical refinements to the data dictionary based on input received during the first workshop and additional outreach.

- **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.⁹⁷ The amended procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures. *Order 833* will become effective February 21, 2017.⁹⁸ On December 19, 2016, EEI requested rehearing of *Order 833*. The EEI request is pending, with FERC action required on or before January 18, 2017 or EEI's request will be deemed denied.

⁹⁵ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

⁹⁶ The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

⁹⁷ *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*").

⁹⁸ *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

- **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.⁹⁹ 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*¹⁰⁰ from early 2016. Comments on the *Primary Frequency Response NOPR* are due on or before January 24, 2017.¹⁰¹

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

On November 17, 2016, the FERC issued *Order 831*¹⁰² 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 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, February 21, 2017.¹⁰³ On December 19, 2017, American Municipal Power Inc. (“AMP”) and American Public Power Association (“APPA”), Exelon, NYISO, and the Transmission Access Policy Study Group (“TAPS”) requested rehearing and/or clarification of *Order 831*. The requests for rehearing are pending, with FERC action required on or before January 18, 2017 or the requests will be deemed denied.

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

As previously reported, *Order 825*¹⁰⁴ 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, 2016.¹⁰⁵

Compliance. Each RTO/ISO is required to submit a compliance filing with the tariff changes needed to implement this Final Rule within 120 days of the Final Rule’s September 13, 2016 effective date (on or before January 11, 2017). The FERC will allow a further 12 months from the compliance filing date for the tariff changes implementing reforms to settlement intervals to be effective, and 120 days from that same compliance filing date for the tariff changes implementing shortage pricing reforms to be effective. As previously noted, the

⁹⁹ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016) (“*Primary Frequency Response NOPR*”).

¹⁰⁰ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) (“*Frequency Response NOI*”).

¹⁰¹ The *Primary Frequency Response NOPR* was published in the *Fed. Reg.* on Nov. 25, 2016 (Vol. 81, No. 227) pp. 85,176-85,190.

¹⁰² *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*”), *reh’g requested*.

¹⁰³ *Order 831* was published in the *Fed. Reg.* on Dec. 5, 2016 (Vol. 81, No. 233) pp. 87,770-87,800.

¹⁰⁴ *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 825, 155 FERC ¶ 61,276 (June 16, 2016) (“*Order 825*”).

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

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

XIII. Natural Gas Proceedings

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

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

On March 31, 2016, the FERC conditionally accepted Algonquin tariff modifications and request for waiver that provided an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies (“EDCs”) that are participating in state-regulated electric reliability programs.¹⁰⁶ As previously reported, Algonquin stated that the modifications were consistent with the FERC’s current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies (“LDCs”) from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC’s initiatives related to gas-electric coordination. On May 9, 2016, the FERC held a technical conference to examine “concerns raised regarding the basis and need for the waiver.” Initial comments were due May 31. Almost two dozen sets of initial comments were filed, raising numerous issues both in support and in opposition to the Algonquin proposal. Reply comments were due June 10, 2016 and were filed by Algonquin Gas Transmission, Sequent Energy Management, L.P. and Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG.

On August 31, 2016, the FERC issued an order in which it rejected Algonquin’s request for a waiver that would have exempted gas-fired generators from capacity release bidding requirements but accepted Algonquin’s proposal to exempt from bidding an EDC’s capacity release to an asset manager who is required to use the released capacity to carry out the EDC’s obligations under the state-regulated electric reliability program.¹⁰⁷ The 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.¹⁰⁸ Algonquin’s proposal, whereby any gas-fired generator to whom EDCs release capacity would be a pre-arranged replacement shipper, failed to meet the standard of “improving the competitive structure of the natural gas industry” as formulated by the FERC in granting bidding exemptions for state-regulated retail access programs.¹⁰⁹ 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.¹¹⁰ 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.

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

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

¹⁰⁸ *Id.* at P 27.

¹⁰⁹ *Id.* at P 34.

¹¹⁰ *Id.* at P 35

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*¹¹¹ 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").¹¹² 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."¹¹³ Accordingly, the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in "unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index." The \$20.16 million civil penalty was at the top of the FERC's Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP's violation of a FERC order within 5 years of the scheme. BP's penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP's request for rehearing of the order establishing a hearing in this proceeding.¹¹⁴ 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.¹¹⁵

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹¹⁶ 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

¹¹¹ *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹¹² *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹¹³ *BP Penalties Order* at P 3.

¹¹⁴ *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).

¹¹⁵ *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

¹¹⁶ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.¹¹⁷

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)**

- ▶ On December 30, 2016, the FERC authorized Algonquin to place into service the remaining facilities necessary to enable Algonquin to provide the remaining 97,000 dekatherms per day of incremental firm transportation service of the total 342,000 dekatherms/day (Dth/d) of firm capacity to NY, CT, RI and MA.
- ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate Feb. 28, 2014 (37.6 miles of take-up, loop and lateral pipeline facilities in NY, CT, and MA and system modifications in NY, CT and RI).
- ▶ 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, 2015.¹¹⁸ Order Denying Rehearing and Dismissing Stay Request issued Jan. 28, 2016. FERC orders appealed to DC Circuit. Order Amending Certificate issued October 6, 2016.¹¹⁹
- ▶ Reporting on this project is now concluded.

¹¹⁷ 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 bid-week designed to move indexed market prices in a way that benefited the company's related positions. Staff alleged that the West Desk implemented the bid-week 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.

¹¹⁸ 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).

¹¹⁹ *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.

- **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, 2016.¹²⁰
 - ▶ Construction expected to begin 4th Quarter 2016.
 - ▶ 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.

¹²⁰ *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).

- On October 13, 2016, the FERC approved Constitution's request to proceed to remove the felled trees in Pennsylvania.

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).

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

Underlying FERC Proceeding: ER16-1041¹²¹

Petitioner: UWUA Local 464 and Robert Clark

UWUA Local 464 and Robert Clark ("Petitioners") filed a petition for review of the FERC's orders on the FCA10 Results Filing. Since the last Report, Petitioners filed a Docketing Statement Form, Statement of Issues, and its notice that it intends to file an appendix after briefing is completed. In addition to Petitioners and the FERC, interventions were filed by CPV Towantic and NEPGA. On December 29, the FERC filed an unopposed motion requesting that its response to Petitioners' opening brief be due at least 60 days after Petitioners' opening brief is filed. Dispositive motions are due January 17, 2017.

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

Underlying FERC Proceeding: ER15-1137¹²²

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: ER14-1050,¹²³ EL14-52;124 EL15-25¹²⁵

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. On February 24, 2016, the Court granted NEPGA's motion to

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

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

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

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

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

consolidate this proceeding with 16-1024. Briefing was completed on November 28, 2016 and this matter remains pending before the DC Circuit.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹²⁶
Appellants: New England Transmission Owners

As previously reported, 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 August 14, 2015, the TOs 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 the TOs' motion to hold the case in abeyance, subject to submission of status reports every 90 days. The most recent status report, the fifth such report filed, was filed on November 14, 2016. In that report, the parties again indicated, ultimately, that the proceedings upon which the TOs based their request for abeyance of this appeal remain ongoing. This case continues to be held in abeyance.

- **Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated)**
Underlying FERC Proceedings: ER13-193; ER13-196¹²⁷

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

As previously reported, NETOs¹²⁸ 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. Arguments will be held before a panel comprised on Judges Brown, Wilkins and Edwards. On December 22, the court issued a *per curiam* order granting intervenor-respondents request to divide oral argument time. Petitioners and Respondents have both been allocated 15 minutes each, to be divided as the parties on each side see fit.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consolidated)**
Underlying FERC Proceeding: EL11-66¹²⁹
Appellants: NETOs

On April 30, 2015, NETOs filed a petition for review of the FERC's orders in the 2011 Base ROE Complaint Proceeding. All briefing was completed and oral argument was held on December 6 before Judges Millett, Sentelle and Randolph. This matter is now pending before the DC Circuit.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹³⁰ EL15-23¹³¹
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. On May 22, the Court granted NEPGA's motion to hold the case in abeyance pending a decision in EL15-23 and, following the FERC's decision in EL15-23 and Exelon's appeal of

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

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

¹²⁸ "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.

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

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

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

that case (16-1042), Exelon's motion to consolidate this proceeding with 16-1042. All briefing in the consolidated proceeding has now been completed and 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 enjoined 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 did "not apply retroactively to any wholesale electricity contract that has been entered into, executed, and approved" as of November 2, 2016. Briefs and Amicus Briefs were filed. Since the last Report, oral argument was held on December 9, 2016 and on December 12, the Court vacated the November 2 injunction, indicating that an opinion would follow in due course.

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

This case was dismissed on November 29, 2016. As previously reported, Entergy¹³² filed, on February 27, 2015, in the United States District Court for the Northern District of New York ("NDNY"), a Complaint seeking a declaratory judgment that the NY PSC Commissioners' order ("Order") approving an agreement to keep NRG's 435 MW Dunkirk facility in the NYISO market, "repowered" as a natural gas-fired (rather than coal-fired) plant (the "Term Sheet")¹³³ was preempted by the FPA and invalid under the dormant Commerce Clause of the US Constitution. Entergy also sought a permanent injunction requiring the NY PSC Commissioners to withdraw the Order and/or preventing the NY PSC Commissioners from continuing to treat the Order as valid and binding. This case was noteworthy given the relationship of the issues raised to the Supreme Court's *Hughes*¹³⁴ decision summarized in earlier Reports.

As previously reported, the Court found this case appropriate for referral to and ordered the case to the Mandatory Mediation Program. The Mediator was to encourage and assist the parties in reaching a resolution to their dispute, but could not compel or coerce the parties to settle. The deadline for completion of mediation, as ultimately extended, was November 1, 2016.

On November 18, the parties stipulated and agreed to voluntarily dismiss this case without prejudice. On November 29, District Judge D. Hurd issued an order dismissing this case.

¹³² Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

¹³³ 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.

¹³⁴ *Hughes v. Talen Energy Marketing LLC*, 136 S. Ct. 993 (2016) ("*Hughes*").

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