

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of February 28, 2017**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated February 1, 2017 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** 

4	NEPGA PER Complaint (EL16-120)	Feb 3 Feb 6 Feb 14 Feb 15 Feb 16 Feb 17  Feb 23	Cogentrix moves to intervene NEPGA protests NHEC Jan 26 motion to intervene Chief Judge grants NHEC intervention NEPGA requests clarification of <i>PER Complaint Order</i> 1st settlement conference held Judge Young issues a status report recommending settlement judge procedures be continued; schedules 2nd settlement conf. for May 3 Acting Chief Judge issues orders (i) continuing settlement judge procedures; and (ii) granting Cogentrix late intervention
3	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Feb 7	Settlement Judge Dring issues 7th status report; recommends settlement procedures be continued

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

* 5	FCA11 Results Filing (ER17-10##)	Feb 28	ISO files results of eleventh FCA; comment date Apr 14
* 6	Exelon Request for Additional Cost Recovery (ER17-933)	Feb 3  Feb 9-24 Feb 24	Exelon requests recovery of roughly \$1.5 million for actual fuel and associated regulatory costs for Mystic 8 and 9 not recovered due to mitigation applied during Oct and Nov 2016 NEPOOL, Direct Energy Business intervene ISO-NE answers Exelon request

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

* 6	Waiver Request: FCM Qualification for FCA8 MRAs (Emera ESS6) (ER17-1031)	Feb 23	Emera ESS6 requests waiver of qualification rules in connection with FCA8 Jun-Sep MRAs; comment date Mar 16
* 6	Active Demand Resource Types Removal (ER17-925)	Feb 3 Feb 16-23	ISO and NEPOOL jointly file changes Eversource, Exelon, National Grid intervene
7	CONE & ORTP Updates (ER17-795)	Feb 2-9 Feb 2-3 Feb 17	Avangrid, Brookfield, Dominion, Eversource, FirstLight, LSPower, NextEra, NRG, PSEG, and Cogentrix intervene NEPOOL, NESCOE file comments; NEPGA files protest ISO-NE answers NEPGA protest
7	<i>Order 825</i> Compliance: 5-Min. Settlement of Regulation Capacity & Service Credit (ER17-774)	Feb 24	FERC accepts compliance filing, eff. Dec 1, 2017
7	Sub-Hourly Settlement NCP Changes (ER17-680)	Feb 23	FERC accepts changes, eff. Mar 1, 2017 (Mar 31, 2017 for obsolete Tariff sheets)
7	Effective Date Update: Fast-Start Pricing and DARD Pump Parameter Changes (ER17-576)	Feb 6 Mar 1	FERC accepts Mar 1, 2017 effective date for fast-start pricing and DARD pump parameter changes Fast-start pricing & DARD pump changes become effective
8	NYISO Tariff Revisions in Response to FCM Enhancements (ER17-446)	Feb 6, 10 Feb 24	NYISO submits, and correct, compliance filing NRG requests reh'g of Jan 27 order

9	Demand Curve Changes Remand Proceedings (ER14-1639)	Feb 3	FERC denies CPower request for rehearing of the <i>ISO RTEG Waiver Request Order</i>
10	2013/14 Winter Reliability Program Remand Proceeding (ER13-2266)	Feb 13	TransCanada and MA AG protest ISO-NE's conclusion that there was "insufficient demonstration of market power to warrant modification of program"
		Feb 28	ISO-NE answers TransCanada and MA AG protests

**IV. OATT Amendments / TOAs / Coordination Agreements**

11	Attachment K Revisions (ER17-857)	Feb 2-22	Eversource, National Grid, NRG, Exelon intervene; no comments filed
11	Orders 827/828 Compliance Filing: New England (ER16-2695)	Feb 2	FERC accepts compliance filing changes, eff. Oct 5, 2016

**V. Financial Assurance/Billing Policy Amendments**

*No Activity to Report*

**VI. Schedule 20/21/22/23 Changes**

*No Activity to Report*

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

*No Activity to Report*

**VIII. Regional Reports**

* 12	Capital Projects Report - 2016 Q4 (ER17-963)	Feb 10	ISO-NE files 2016 Q4 Report; comment date Mar 3
		Feb 17	National Grid intervenes
		Feb 24	NEPOOL submits comments supporting Report

**IX. Membership Filings**

* 13	March 2017 Membership Filing (ER17-1048)	Feb 28	NEPOOL requests FERC accept (i) the memberships of Rubicon NYP Corp. and TransCanada Hydro Northeast; (ii) the termination of the Participant status of Duke Energy Comm. Enterprises, CinCap V and South Jersey Energy ISO2; and (iii) the name changes of McGill St-Laurent Inc. and St. Anselm College; comment date Mar 21
13	February 2017 Membership Filing (ER17-899)	Feb 28	FERC accepts (i) the membership of NRDC; (ii) the termination of Artis Energy Holdings, EMI Power Systems, Jeffrey A. Jones, and Powerex; and (iii) the name change of NextEra Energy Marketing

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

**XI. Misc. - of Regional Interest**

* 16	203 Application: Green Mountain Power/ENEL Hydros	Feb 3	GMP requests authorization to acquire from ENEL subsidiaries the following Maine hydros: Hoague-Sprague, Kelley's Falls, Lower Valley, Glen, Rollinsford, South Berwick, Somersworth, and Woodsville
16	203 Application: NSTAR/WMECO merger (EC17-62)	Feb 3	MA AG submits comments regarding the status of the on-going state proceeding reviewing the same merger

16	203 Application: GDF Suez Energy Resources/Atlas Power (Dynergy/ECP) (EC16-93)	Feb 2 Feb 7	FERC accepts compliance filing Transaction consummated, making the Engie/GDF Suez companies Related Persons to Dynergy
* 17	IA: Eversource/Covanta (Preston, CT) (ER17-1038)	Feb 24	Eversource files IA; comment date Mar 17
* 17	LSA: CL&P/Wallingford, CT Transmission Line Separation Agreement (ER17-967)	Feb 13	CL&P files Agreement; comment date Mar 6
* 17	LGIA: CMP/Wight Brook (ER17-938)	Feb 3	CMP files new LGIA with Wight Brook Hydro
* 17	LGIA: CMP/Stony Brook (ER17-937)	Feb 3	CMP files new LGIA with Stony Brook Hydro
18	Emera MPD OATT Changes (ER15-1429; EL16-13, ER12-1650)	Feb 9	Emera submits refund report identifying the amounts to be refunded to customers under the MPD OATT

**XII. Misc. - Administrative & Rulemaking Proceedings**

* 21	IDs for Visitors to FERC (not docketed)	Feb 2	FERC advises of new, REAL ID Ac-compliant security procedures for entry onto FERC premises; Maine driver's licenses and state-issued ID cards will no longer be accepted by security
* 21	Agency Operations in the Absence of a FERC Quorum (AD17-10)	Feb 3	FERC issues order delegating additional authority to FERC staff to continue certain agency operations in the absence of a quorum
* 21	Reliability Technical Conference	Feb 10	FERC issues notice of Jun 22, 2017 tech. conf. to discuss Bulk-Power System reliability policy issues; panel nominations date Mar 3
25	NOPR: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)	Feb 9-21	Over 100 parties file comments, including NEPOOL, ISO-NE, APPA/NRECA, Avangrid, AWEA, Brookfield, CT DEEP, CT PURA, Dominion, DTE, EEI, ELCON, EPSA, EPRI, ESA, Exelon, FirstLight, Genbright, IPKeys, MA DPU, MIT, MMWEC, NARUC, NERC, NESCOE, NextEra, NRG, SEIA, UCS
23	NOPR: LGIA/LGIP Reforms (RM17-8)	Feb 10 Feb 14 Feb 16 Feb 23	IRC requests 30-day extension of comment deadline Trade Assocs. (APPA, LPPA, NRECA) support requested extension NEPOOL supports requested extension FERC extends comment deadline to and including Apr 13, 2017
24	NOPR: Fast-Start Pricing in RTO/ISO Markets (RM17-3)	Feb 15-28	Parties submit comments on NOPR
25	NOPR: RTO/ISO Market Uplift Cost Allocation/Transparency (RM17-2)	Feb 7	<i>Uplift/Transparency NOPR</i> published in Federal Register; comment date Apr 10
26	<i>Order 833</i> : CEII Procedures (RM16-15)	Feb 24	<i>Order 833</i> becomes effective
26	NOPR: Primary Frequency Response - Essential Rel. Services & the Evolving BPS (RM16-6)	Feb 13	First Solar submits comments

**XIII. Natural Gas Proceedings**

30	New England Pipeline Proceedings Atlantic Bridge Project (CP16-9)	Feb 3 Feb 24	Algonquin and Maritimes submit initial implementation plan for Atlantic Bridge Project Town of Weymouth, a coalition of regional/local community and environmental organizations, and an individual intervenor request rehearing of order granting certif. of pub. convenience and necessity
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**XIV. State Proceedings & Federal Legislative Proceedings**

*No Activity Reported*

**XV. Federal Courts**

31	FCA10 Results and FCA9 Results (16-1408 and 16-1068 consol.)	Feb 2	Court issues briefing schedule
20	Base ROE Complaints II & III (2012 & 2014) (15-1212)	Feb 13	Parties file 6th status report

**MEMORANDUM**

**TO:** NEPOOL Participants Committee Member and Alternates

**FROM:** Patrick M. Gerity, NEPOOL Counsel

**DATE:** March 1, 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 February 28, 2017. If you have questions, please contact us.<sup>1</sup>

**I. Complaints/Section 206 Proceedings**

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

As previously reported, the FERC, on January 19, (i) granted in part NEPGA’s complaint<sup>2</sup> and (ii) set in part for hearing and settlement judge procedures the question of the appropriate method of calculating the PER Strike Price under Market Rule 1 section III.13.7.2.7.1.1.1.<sup>3</sup> In granting NEPGA’s complaint in part, the FERC found that “for the period at issue in NEPGA’s complaint (September 30, 2016 – May 31, 2018), the PER mechanism has become unjust and unreasonable as a result of the interaction between the PER mechanism and the higher Reserve Constraint Penalty Factors.”<sup>4</sup> Accordingly, the FERC required the ISO to revise the method by which it calculates the PER Strike Price as set forth in Tariff section III.13.7.2.7.1.1.1. But, finding NEPGA’s request that the PER Strike Price be increased by \$250 per MWh “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”, the FERC set the question of for hearing and

<sup>1</sup> 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”).

<sup>2</sup> 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.

<sup>3</sup> *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017).

<sup>4</sup> *Id.* at P 48.

settlement judge procedures under section 206 of the FPA.<sup>5</sup> The FERC established a refund effective date of September 30, 2016 (the date of the complaint). In establishing a September 30, 2016 effective date, the FERC clarified that “any changes to the calculation of the PER Strike Price under ISO-NE Tariff section III.13.7.2.7.1.1.1 would be prospective only from September 30, 2016, as required by FPA section 206, and would not impact the application of any PER Adjustment occurring before September 30, 2016.”<sup>6</sup> On February 15, NEPGA requested clarification of the *PER Complaint Order* with respect to the PER Adjustment payments charged to NEPGA’s members on capacity invoices issued after the refund effective date. Specifically, NEPGA seeks clarification that when the FERC “determines refunds, it will direct the ISO to refund to capacity suppliers the difference between: (i) the PER Adjustment payments charged to capacity suppliers after the September 30, 2016 refund effective date, and (ii) the PER Adjustment payments that would have been charged to capacity suppliers if the PER Adjustment were calculated using a just and reasonable PER Strike Price.”

**Settlement Judge Procedures.** On January 25, Chief Cintron designated Judge H. Peter Young as the Settlement Judge in these proceedings. A first settlement conference was held on February 16. On February 17, Judge Young issued a status report indicating that, at the February 16 conference, the ISO had committed to conduct and circulate a revised Strike Price analysis based on updated data by March 3, 2017 and to provide and Real-Time pricing data by March 23. Participants in the settlement proceedings are to respond to that information by April 7, 2017. A second settlement conference is scheduled for May 3. Accordingly, Judge Young recommended that settlement judge procedures be continued. On February 23, the Acting Chief Judge issued an order continuing the settlement judge procedures. Requests to intervene out-of-time by NHEC (contested by NEPGA) and Cogentrix (uncontested) were both granted.

If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto: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.<sup>7</sup> As previously reported, EMCOS<sup>8</sup> filed 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.”<sup>9</sup> The FERC also

<sup>5</sup> *Id.* at P 57.

<sup>6</sup> *Id.* at P 61.

<sup>7</sup> *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*”).

<sup>8</sup> “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 & 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.

<sup>9</sup> *Base ROE Complaint IV Order* at P 37.

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.”<sup>10</sup> 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.<sup>11</sup> 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.”<sup>12</sup> 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.<sup>13</sup> Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The FERC issued a tolling order on November 21, 2016, 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 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). At the January 17 conference, Participants proposed the remaining procedural schedule, which was adopted by Judge Glazer in an order issued January 23. In addition, Judge Glazer has issued orders adopting rules for the conduct of the hearing (December 21, 2016) and the discovery plan (January 17). Complainants’ and Parties Supporting Complainants’ Direct Testimony and Exhibits (with summaries) were due and filed on February 1. Respondents’ and Parties Supporting Respondents’ Answering Testimony and Exhibits (with summaries) are due March 23. Hearings are scheduled for August 2-8, with an initial decision to be issued November 15, 2017.

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto: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”).<sup>14</sup> The

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<sup>10</sup> *Id.* at P 38.

<sup>11</sup> 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.

<sup>12</sup> *Base ROE Complaint IV Order* at P 40.

<sup>13</sup> *Id.* at P 44.

<sup>14</sup> *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).

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”.<sup>15</sup> 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.<sup>16</sup> Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.<sup>17</sup> The FERC-established refund date is January 4, 2016.<sup>18</sup>

**Settlement Judge Procedures.** As previously reported, John P. Dring was designated the Settlement Judge in these proceedings. Five settlement conferences were held in 2016: January 19, March 24, April 28, August 30, and November 18 (telephonically). Judge Dring issued his latest status report on February 7 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](mailto: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)<sup>19</sup> and third (EL14-86)<sup>20</sup> complaints regarding the TOs’ 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;<sup>21</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>22</sup> 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.”<sup>23</sup> The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.<sup>24</sup> On

<sup>15</sup> *Id.* at P 8.

<sup>16</sup> *Id.* at P 11.

<sup>17</sup> *Id.*

<sup>18</sup> The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

<sup>19</sup> 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%.

<sup>20</sup> The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General (“MA AG”), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the “2014 ROE Complainants”), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

<sup>21</sup> *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).

<sup>22</sup> *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).

<sup>23</sup> *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).

<sup>24</sup> *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).

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.<sup>25</sup> 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](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

- **FCA11 Results Filing (ER17-[ ])**

On February 28, the ISO filed the results of the eleventh FCA (“FCA11”) held February 6, 2017. The ISO reported the following highlights:

- ◆ FCA11 Capacity Zones were the Southeastern New England (“SENE”) Capacity Zone (the Northeastern Massachusetts (“NEMA”)/Boston, Southeastern Massachusetts, and Rhode Island Load Zones), the Northern New England (“NNE”) Capacity Zone (the Maine, New Hampshire and Vermont Load Zones) and the Rest-of-Pool Capacity Zone (the Connecticut and Western/Central Massachusetts Load Zones)
- ◆ FCA11 commenced with a starting price of \$18.624/kW-mo. and concluded for the SENE, NNE and Rest-of-Pool after five rounds.
- ◆ Resources will be paid as follows:
  - ▶ \$5.297/kW-mo. – all Capacity Zones
  - ▶ \$5.297/kW-mo. – NY AC Ties imports (539.4 MW), HQ interfaces (441 MW) and Highgate (55 MW)
  - ▶ \$3.381/kW-mo. – New Brunswick imports (200 MW)
- ◆ No resources cleared as Conditional Qualified New Generating Capacity Resources
- ◆ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource
- ◆ No de-list bids were rejected for reliability reasons

The ISO asked the FERC to accept the FCA11 rates and results, effective June 28, 2017. Comments on this filing are due on or before April 14, 2017. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

<sup>25</sup> *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*”).



- **Exelon Request for Additional Cost Recovery (ER17-933)**

On February 3, pursuant to Section III.A.15 of Appendix A to Market Rule 1,<sup>26</sup> Exelon Generation Company (“Exelon”) requested that the FERC authorize recovery of \$1,495,171 of actual fuel costs for Mystic Generating Station Units 8 and 9 (“Mystic 8 and 9”) that were not recovered due to market power mitigation applied during the months of October and November 2016, as well as associated regulatory costs (estimated by Exelon to be roughly \$60,000). Comments on Exelon’s request were due on or before February 24. The ISO answered the Exelon request on February 24, requesting that the FERC “reject [Exelon]’s request for additional cost recovery for October 1, 3 and 4, and, to the extent it accepts the remainder of [Exelon]’s Cost Recovery Request, affirm that the amount recovered is justified by the IMM’s correct application of the ISO Tariff provisions for calculating cost-based Reference Levels.” Doc-less interventions were filed by NEPOOL and Direct Energy Business. 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](mailto:slombardi@daypitney.com)).

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

- **Active Demand Resource Type Removal (ER17-925)**

On February 3, the ISO and NEPOOL jointly filed changes that remove Real-Time Demand Response (“RTDR”) and Real-Time Emergency Generation (“RTEG”) resource types from the Tariff. The filing was made in two parts to allow for two effective dates: February 24, 2017 (for the revisions which make RTEG Resources no longer qualified to participate in Forward Capacity Auctions (“FCAs”) starting with FCA12; and (2) requiring the ISO to convert any RTEG Resources that remain in the FCM into Demand Response Capacity Resources (“DRCRs”)) and June 1, 2018 (for the deletion of all provisions associated with RTDR Resources and RTEG Resources entirely – coincident with the full integration of Demand Response Resources). The Active Demand Resource Type revisions were supported by the Participants Committee by way of the February 3, 2017 Consent Agenda (Item #s 2 and 3). Comments on this filing were due on or before February 24; none were filed. Doc-less interventions were filed by Eversource, Exelon and National Grid. 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](mailto:slombardi@daypitney.com)).

- **Waiver Request: FCM Qualification for FCA8 MRAs (Emera ESS6) (ER17-1031)**

On February 23, Emera Energy Service Subsidiary No. 6 (“Emera ESS6”) requested waiver of the FCM qualification rules to allow EES6 to qualify Bayside Station for participation in the summer 2017 Monthly Reconfiguration Auctions (“MRAs”) associated with the FCA8 2017/18 Capacity Commitment Period. Absent waiver,<sup>27</sup> the ISO has determined EES6 cannot be qualified, notwithstanding market rule changes recently accepted in the *FCM Enhancements Order*<sup>28</sup> (see below), since Emera ESS6 did not submit during the FCA11 qualification process (and before the FCM Enhancements were accepted) contracts to provide capacity in the New

<sup>26</sup> Under Appendix A Section III.A.15, a Market Participant has the right to make a Section 205 filing seeking additional cost recovery if, as a result of mitigation applied under Appendix A or the Energy Offer Cap, it will not recover the fuel and variable operating and maintenance (“O&M”) costs of a Resource for all or part of one or more Operating Days.

<sup>27</sup> Among the Market Rules Emera identified as needing to be waived to allow Bayside Station the opportunity to secure a CSO in the FCA8 MRAs are: Section III.13.4.2.1.2.2.3.2 (recently adopted rule allowing early sales by Import Capacity Resources and setting the ARA3 Qualified Capacity for imports backed by a generator); Section III.13.1.3.5.1(b) (the rule stating that early sales must submit contracts by the New Capacity Qualification Deadline); Section III.13.1.3.5.2 (the rule describing the documentation that must be submitted for imports backed by existing external resources, including a description of the MWs and confirmation that the capacity is currently unobligated to others); and Section III.13.4.2.1.4 (the rule that equates MRA qualification with the ARA3 Qualified Capacity).

<sup>28</sup> Of pertinent relevance, the FCM Enhancements permit Import Capacity Resources backed by one or more External Resources to be granted the option to participate for certain reconfiguration auctions in Capacity Commitment Periods prior to the Capacity Commitment Period associated with the first FCA in which it qualified. Bayside has an FCA10 CSO.

England Control Area from outside of the New England Control Area. Comments on Emera ESS6's waiver request are due on or before March 16, 2017. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **CONE & ORTP Updates (ER17-795)**

The ISO's January 13 filing of updated FCM Cost of New Entry ("CONE"), Net CONE and Offer Review Trigger Price ("ORTP") values remains pending. With respect to CONE and Net CONE, the ISO will use a gas-fired simple cycle combustion-turbine ("CT") as the reference technology for the updated values, \$11.35 and \$8.04, respectively. The ISO will use a Capacity factor of 32%, resulting in a \$11.02 ORTP for on-shore wind resources. The ISO requested a March 15, 2017 effective date for the new values to coincide with the beginning of the administrative cycle for FCA12. The CONE & ORTP Updates were not supported by the Participants Committee when considered at the January 6 meeting. Comments on this filing were due on or before February 3. Doc-less interventions were filed by Avangrid, Brookfield, Calpine, ConEd, Dominion, Eversource, Exelon, FirstLight, LSPower, National Grid, NextEra, NRG, PSEG, and Cogentrix<sup>29</sup> (out-of-time). Comments were filed by NEPOOL (identifying concerns and alternatives presented and reviewed in the course of the stakeholder process preceding the filing) and NESCOE (supporting the CONE/Net CONE values as overall reasonable updates reflecting changed market outcomes and market designs). NEPGA filed a protest (challenging the ISO's proposal to base Net CONE for FCA12 on a greenfield simple-cycle combustion turbine). The ISO answered the NEPGA protest on February 17. 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](mailto:slombardi@daypitney.com)).

- **Order 825 Compliance: 5-Min. Settlement of Regulation Capacity & Service Credit (ER17-774)**

On February 24, the FERC accepted changes to the settlement interval for the Regulation Capacity Credit and Regulation Service Credit (to five minutes rather than hourly). The FERC found the changes satisfactorily compliant with the requirements of *Order 825*.<sup>30</sup> The changes were accepted effective as of December 1, 2017, as requested. Unless the February 24 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](mailto:slombardi@daypitney.com)).

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

On February 23, the FERC accepted changes to the Net Commitment Period Compensation ("NCPC") credit rules (the "NCPC Revisions"), jointly filed December 27, 2016 by the ISO and NEPOOL, 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"). The changes were accepted effective as of March 1, 2017, coincident with the effective date for Real-Time sub-hourly settlement. Unless the February 23 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](mailto:slombardi@daypitney.com)).

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

On February 6, the FERC accepted the changes that made 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);<sup>31</sup> and (ii) the

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<sup>29</sup> Cogentrix Energy Power Management, LLC ("Cogentrix") intervened on behalf of its Participant affiliates Rhode Island State Energy Center, LP, Essential Power Newington, LLC, and Essential Power Massachusetts.

<sup>30</sup> *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, Order No. 825, 155 FERC ¶ 61,276 (June 16, 2016) ("*Order 825*").

<sup>31</sup> 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).

DARD Pump Parameter Changes (improvements to pump storage hydro-generating resource modeling and dispatch).<sup>32</sup> As previously reported, 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. Unless the February 6 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](mailto:slombardi@daypitney.com)).

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

The FERC's *FCM Enhancements Order*<sup>33</sup> remains subject to a request for rehearing by Indicated NYTOs.<sup>34</sup> 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."<sup>35</sup> 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."<sup>36</sup> 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.

As noted above, on November 17, 2016, Indicated TOs' requested rehearing of the *FCM Enhancements Order*. On December 19, 2016, the FERC issued a tolling order affording it additional time to consider Indicated TOs' rehearing request, which remains pending before the FERC.

***NYISO Tariff Revisions in Response to FCM Enhancements (ER17-446)***. On January 27, the FERC conditionally accepted in part, and rejected, in part, NYISO tariff revisions proposed in response to the acceptance of the FCM Enhancements, to correct a pricing inefficiency in NYISO's Installed Capacity ("ICAP") market design related to capacity exports from certain zones in the New York Control Area.<sup>37</sup> Specifically, the FERC accepted NYISO's proposed locality exchange factor methodology to be implemented immediately but rejected NYISO's proposed one-year transitional mechanism.<sup>38</sup> In accepting the immediate

<sup>32</sup> 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).

<sup>33</sup> *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*.

<sup>34</sup> "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.

<sup>35</sup> *Id.* at P 31.

<sup>36</sup> *Id.*

<sup>37</sup> *NY Indep. Sys. Op., Inc.*, 158 FERC ¶ 61,064 (Jan. 27, 2017), *reh'g requested*.

<sup>38</sup> *Id.* at P 20.

implementation of NYISO's Locality Exchange Factor methodology, the FERC found the proposed methodology "just and reasonable because it corrects a pricing inefficiency in NYISO's ICAP market design. NYISO's proposed methodology will now recognize that an exporting generator continues to operate within its Locality, which would be reflected in the ICAP Spot Market Auction clearing prices by accounting for the portion of exported capacity that can be replaced by capacity located in Rest of State. Therefore, NYISO's proposal will ensure that prices within the Localities reflect actual market conditions and prices."<sup>39</sup> In rejecting the transition mechanism, the FERC found that "that the mechanism lacks analytical basis and will delay efficient market signals ... because it could overstate the extent to which the capacity export will unencumber NYISO's transmission capability into Southeast New York."<sup>40</sup> NYISO was directed to submit, and submitted on February 6 and corrected on February 10, a compliance filing removing the one-year transition mechanism provisions.<sup>41</sup> NRG requested rehearing of the January 27 order on February 24. The NRG request for rehearing is pending before the FERC, with FERC action required on or before March 27, or the NRG request will be deemed denied.

If you have any questions concerning these proceedings, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

The NEPGA, NextEra and Exelon request for rehearing of the FERC's *Resource Retirement Reforms Order*<sup>42</sup> 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,"<sup>43</sup> which were filed with and accepted by the FERC.<sup>44</sup> 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](mailto:slombardi@daypitney.com)).

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

On February 3, the FERC denied rehearing of the *Demand Curve Remand Order*<sup>45</sup> jointly requested by NextEra, NRG and PSEG.<sup>46</sup> As previously reported, the FERC conditionally accepted, on May 30, 2014,

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<sup>39</sup> *Id.* at P 35.

<sup>40</sup> *Id.* at P 55.

<sup>41</sup> *Id.* at P 61.

<sup>42</sup> *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.

<sup>43</sup> *Id.* at P 62.

<sup>44</sup> *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) ("*Resource Retirement Reforms Compliance Order*").

<sup>45</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 155 FERC ¶ 61,023 (Apr. 8, 2016) ("*Demand Curve Remand Order*"), *reh'g denied* 158 FERC ¶ 61,138 (Feb. 3, 2017) (affirming its earlier finding that the renewables exemption from the minimum offer price rule is just and reasonable, and not unduly discriminatory or preferential).

<sup>46</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 158 FERC ¶ 61,138 (Feb. 3, 2017) ("*Demand Curve Remand Rehearing Order*").

revisions to the FCM rules that establish a system-wide sloped demand curve (“Demand Curve Changes”).<sup>47</sup> 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*,<sup>48</sup> 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).<sup>49</sup> 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.<sup>50</sup> NextEra, NRG and PSEG petitioned the DC Circuit Court of Appeals for review of the FERC’s Demand Curve orders (on 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* and *Demand Curve Remand Rehearing Orders* (together, the “*Remand Orders*”). Challenges, if any, to the *Remand Orders* must be filed in Federal Court on or before April 4, 2017. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

Pending before the FERC is the ISO’s compliance filing in response to the FERC’s August 8, 2016 remand order.<sup>51</sup> 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 a compilation of that information, an IMM analysis of that information, and the ISO’s recommendation as to the reasonableness of the bids, so that the FERC can further consider the question of whether the Bid Results were just and reasonable.<sup>52</sup> The ISO submitted its compliance filing on January 23, reporting the IMM’s conclusion that “the auction was not structurally competitive and a ‘small proportion’ of the total cost of the program may be the result of the exercise of market power” but that the “vast majority of supply was offered at prices that appear reasonable and that, for a number of reasons, it is difficult to assess the impact of market power on cost.” Based on the IMM and additional analysis, the ISO recommended that “there is insufficient demonstration of market power to warrant modification of program.” Comments on the ISO’s report were due on or before February 13. Both TransCanada and the MA AG protested the ISO’s conclusion and recommendation that modification of the program was unwarranted. TransCanada requested that FERC establish a settlement proceeding where market participants could

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<sup>47</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”).

<sup>48</sup> *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).

<sup>49</sup> *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*”).

<sup>50</sup> 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.

<sup>51</sup> *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) (“*2013/14 Winter Reliability Program Remand Order*”). 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. *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

<sup>52</sup> *2013/14 Winter Reliability Program Remand Order* at P 17.

“exchange confidential information to determine what the rates should be” and refunds and “such other relief as may be warranted” provided. On February 28, the ISO answered the TransCanada and MA AG protest. This matter is again pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

#### IV. OATT Amendments / TOAs / Coordination Agreements

- **Attachment K Revisions (Public Policy Transmission Studies Timeline Modifications and Clean-Up/Admin Changes to Section 6.3 and Appendices 2 & 3) (ER17-857)**

On January 26, the ISO and NEPOOL filed revisions to Attachment K of the OATT to modify the timeline associated with the Public Policy Transmission Study Process and to reflect clean-up changes to Section 6.3(Interregional Coordination) and to Appendices 2 (List of Entities Enrolled in the Transmission Planning Region) and 3 (List of Qualified Transmission Project Sponsors). A March 22, 2017 effective date was requested. The Attachment K Revisions were supported by the Participants Committee at its January 6 meeting (Consent Agenda Item #s 1 and 2). Comments on this filing were due on or before February 16; none were filed. Doc-less interventions were filed by Eversource, National Grid, NESCOE, NRG and Exelon (out-of-time). This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

The FERC accepted, on February 2,<sup>53</sup> 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. 827<sup>54</sup> and 828.<sup>55</sup> 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. The compliance filing changes were accepted effective as October 5, 2016, as requested. Unless the February 2 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

#### V. Financial Assurance/Billing Policy Amendments

*No Activity to Report*

#### VI. Schedule 20/21/22/23 Changes

- **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,<sup>56</sup> 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

<sup>53</sup> *ISO New England Inc.*, 158 FERC ¶ 61,116 (Feb. 2, 2017)

<sup>54</sup> *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).

<sup>55</sup> *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) (“*Order 828*”).

<sup>56</sup> *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*June 2 Order*”).

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.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup> The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.<sup>60</sup>

**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. In a January 11 status report, Judge Dring indicated that the parties had reached a settlement in principal and were memorializing their agreement. He recommended that settlement procedures be continued. If you have any questions concerning these matters, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

*No Activity to Report*

**VIII. Regional Reports**

- **Capital Projects Report - 2016 Q4 (ER17-963)**

On February 10, the ISO filed its 2016 fourth quarter (“Q4”) Capital Projects Report and Unamortized Cost Schedule (the “Report”). The ISO filed the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights included the following new projects: (i) Situational Awareness – Video Wall Expansion Phase I (\$854,000); (ii) 2017 Issue Resolution Phase I (\$840,000); (iii) Information Technology (“IT”) Asset Workflow (\$794,500); (iv) Cyber Security Network Segmentation Phase I (\$655,500); (v) Case Snapshot Market Operator Interface (\$619,600); (vi) Cyber Security Network Segmentation Phase II (\$565,000); (vii) Asset Characteristic Database Re-Design (\$549,300); (viii) Update Enhanced Energy Scheduling Technical Architecture (\$500,000); (ix) Corporate Performance Management and Budget Forecast System (\$385,000); (x) 2016 Market System Corrective Action / Preventative Action (“CAPA”) (\$208,000); and (xi) Demand Response Resources (“DRR”) Baseline Methodology Modification (\$185,000). Projects with significant changes were: (i) Price Responsive Demand (2016 budget increase of \$416,200); (ii) market enhancements for DARD pumps (2016 budget decrease of \$878,700; 2017 budget decrease of \$25,000); (iii) Real-Time Fast-Start Pricing (2016 budget decrease of \$798,900; 2017 budget decrease of \$45,000); (iv) FCA11 (2016 budget decrease of \$245,300; 2017 budget increase of \$14,500); (v) Operations Document Management System (2016 budget decrease of \$300,000); (vi) IMM data needs (2016 budget decrease of \$204,100); (vii) Transmart Technical Architecture Update (2016 budget decrease of

<sup>57</sup> *Id.* at P 24.

<sup>58</sup> *Id.* at PP 25-26.

<sup>59</sup> *Id.* at P 27.

<sup>60</sup> *Id.* at P 21; Ordering Paragraph (B).

\$177,300; 2017 budget decrease of \$25,000); (viii) Energy Management Platform 3.1 Upgrade and Customs Reduction (2016 budget decrease of \$159,700); and (ix) Sub-Hourly Settlements (2016 budget decrease of \$157,300). On February 24, NEPOOL filed comments supporting the Report. A doc-less intervention has been filed by National Grid. Additional comments and interventions are due on or before March 3. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

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

On January 27, the Internal Market Monitor (“IMM”) filed with the FERC its report for the Fall quarter of 2016 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC.

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

FG&E’s June 29, 2015 refund report for its customers taking local service during *Opinion 531-A*’s refund period remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

The TOs’ November 2, 2015 refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*<sup>61</sup> and *531-B*<sup>62</sup> also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

The *Opinions 531-A and 531-B* refund reports filed by the following TOs for their customers taking local service during the refund period also remain pending before the FERC:

- |                       |                 |                       |
|-----------------------|-----------------|-----------------------|
| ◆ Central Maine Power | ◆ National Grid | ◆ United Illuminating |
| ◆ Emera Maine         | ◆ NHT           | ◆ VT Transco          |
| ◆ Eversource          | ◆ NSTAR         |                       |

If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## IX. Membership Filings

- **March 2017 Membership Filing (ER17-1048)**

On February 28, NEPOOL requested that the FERC accept (i) the membership of Rubicon NYP Corp. and TransCanada Hydro Northeast Inc.; (ii) the termination of the Participant status of Duke Energy Commercial Enterprises, Inc. and CinCap V, LLC (Supplier Sector) and South Jersey Energy ISO2, LLC (Related Person to remaining South Jersey Energy Companies); and (iii) the name changes of McGill St-Laurent Inc. (f/k/a Canadian Wood Products – Montreal, Inc.) and St. Anselm College (f/k/a The Order of St. Benedict of New Hampshire). Comments on this filing are due on or before March 21.

- **February 2017 Membership Filing (ER17-899)**

On February 28, the FERC accepted (i) the Governance Only End User membership of Natural Resources Defense Council (“NRDC”), effective April 1, 2017; (ii) the termination of the Participant status, each effective January 1, 2017, of Provisional Members Artis Energy Holdings, LLC (formerly Nxegen, LLC and EMI Power Systems, Inc., Jeffrey A. Jones, P.E. (Related Person of Maine Energy LLC), and Powerex Corp. (Supplier Sector); and (iii) the name change of NextEra Energy Marketing, LLC (f/k/a/ NextEra Energy Power Marketing).

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

<sup>62</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).



**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](mailto:pmgerity@daypitney.com)).

- **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.

- **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").<sup>63</sup> 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,<sup>64</sup> and were filed by NERC, EEI, Bonneville, Idaho Power and J. Appelbaum. The *Frequency Control Changes NOPR* is now pending before the FERC.

- **Order 835: Revised Reliability Standard: BAL-002-2 (RM16-7)**

On January 19, the FERC approved revised Reliability Standard -- BAL-002-2 (Disturbance Control Performance - Contingency Reserve for Recovery from a Balancing Contingency Event), and eight associated Glossary definitions, implementation plan, VRFs and VSLs (together, the "BAL Changes").<sup>65</sup> *Order 835* also directed NERC: (1) to collect and report on data regarding additional MW losses following Reportable Balancing Contingency Events during the Contingency Reserve Restoration Period; and (2) to study and report on the reliability risks associated with MW losses above the most severe single contingency ("MSSC") that do not cause energy emergencies. As previously reported, BAL-002-2 is intended to ensure that balancing authorities and reserve sharing groups are able to recover from system contingencies by deploying adequate reserves to return

<sup>63</sup> *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Rel. Standards*, 156 FERC ¶ 61,210 (Sep. 22, 2016) ("*Frequency Control Changes NOPR*").

<sup>64</sup> The *Frequency Control Changes NOPR* was published in the *Fed. Reg.* on Sep. 28, 2016 (Vol. 81, No. 188) pp. 66,555-66,562.

<sup>65</sup> *Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event Reliability Standard*, Order No. 835, 158 FERC ¶ 61,030 (Jan. 19, 2017) ("*Order 835*").

their Area Control Error (“ACE”) to defined values and by replacing the capacity and energy lost due to generation or transmission equipment outages. *Order 835* will become effective on April 3, 2017.<sup>66</sup>

- **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*<sup>67</sup> 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 Standards<sup>68</sup> 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,<sup>69</sup> and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, NAESB supplemented its comments with a report on its efforts to develop WEQ Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the *ATC NOPR* remains pending before the FERC.

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

The *BAL-002-1a Interpretation Remand NOPR*<sup>70</sup> 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*

<sup>66</sup> *Order 835* was published in the *Fed. Reg.* on Feb 2, 2017 (Vol. 82, No. 21) pp. 8,994-9,004.

<sup>67</sup> *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) (“*ATC NOPR*”).

<sup>68</sup> 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.

<sup>69</sup> The MOD-001-2 *NOPR* was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

<sup>70</sup> *Elec. Rel. Org. Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) (“*BAL-002-1a Interpretation Remand NOPR*”).

*Remand NOPR* were due on or before July 8, 2013,<sup>71</sup> 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: Green Mountain Power/ENEL Hydros (EC17-76)**

On February 3, Green Mountain Power filed an application requesting FERC authorization to acquire the following small hydroelectric generation facilities (each a QF, collectively 8.39 MW of total generating capacity) from subsidiaries of Enel Green Power North America, Inc. (“EGPNA”): Hoague-Sprague, Kelley’s Falls, Lower Valley, Glen, Rollinsford, South Berwick, Somersworth, and Woodsville. Comments on the application were due on or before February 24, 2017; none were filed. This matter is pending before the FERC.

- **203 Application: NSTAR/WMECO Merger (EC17-62)**

Pending before the FERC is Eversource’s January 13 application requesting FERC authorization for an internal reorganization under which Western Massachusetts Electric Company (“WMECO”) will merge with and into NSTAR Electric Company (“NSTAR”), with NSTAR as the surviving entity. Eversource indicated its expectation that the Merger would be consummated on January 1, 2018, following the receipt of all necessary regulatory approvals, waivers, and orders. Comments on the application were due on or before February 3, 2017. In comments submitted on February 3, the MA AG provided a summary of the status of the on-going MA state proceeding reviewing the same merger, which cannot go forward without a MA DPU finding of net benefits and approval.

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

On February 7, 2017, Atlas Power Finance, a subsidiary of Atlas Power (a joint venture between Dynergy Inc. and Energy Capital Partners III, LLC) acquired Engie (f/k/a GDF Suez Energy) Resources, making the Engie/GDF Suez companies Related Persons to Dynergy (the “Acquisition”). As previously reported, the FERC conditionally authorized the Acquisition, subject to mitigation, and authorized the purchase of approximately 10 percent of Dynergy’s outstanding shares by a subsidiary of ECP III, Terawatt Holdings, LP (“Stock Purchase”),<sup>72</sup> finding that the applicants had not shown that either the Acquisition or the Stock Purchase would adversely affect competition within the SENE capacity zone.<sup>73</sup> In that order, 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 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.<sup>74</sup>

**Compliance Filing.** On February 2, 2017, the FERC accepted applicants’ compliance filing, which proposed a divestiture within six months of 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 Dynergy 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 Engie. 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

<sup>71</sup> 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.

<sup>72</sup> *Atlas Power Finance, LLC*, 157 FERC ¶ 61,237 (Dec. 22, 2016) (“*Atlas 203 Order*”).

<sup>73</sup> *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.

<sup>74</sup> *Id.* at P 56.

limit capacity bids to a level no greater than the FCA clearing price for the applicable planning period. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **MOPR-Related Proceedings (PJM, NYISO) (EL16-49; ER13-62)**

In two proceedings which, unless narrowly limited solely to the unique facts of the directly applicable markets (PJM in EL16-49; NYISO in ER13-62), could impact the New England market through FERC jurisdictional or other determinations, NEPOOL filed limited comments requesting that any Commission action or decision be limited narrowly to the facts and circumstances as presented in the applicable market. NEPOOL urged that any changes that may be ordered by the Commission in the proceedings not circumscribe the results of NEPOOL's stakeholder process or predetermine the outcome of that process through dicta or a ruling concerning different markets with different history and different rules. NEPOOL's comments were filed on January 24 in the NYISO proceeding; January 30 in the PJM proceeding, and are pending before the FERC. If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **IA: Eversource/Covanta (Preston, CT) (ER17-1038)**

On February 24, 2017, Eversource filed a non-conforming Interconnection Agreement ("IA") with Covanta Southeastern Connecticut Company ("Covanta") to govern the continuing interconnection of Covanta's 18.5 MW generating facility located in Preston, Connecticut. Since the IA continues the existing interconnection arrangements between Eversource and Covanta, without modification to the facility's capability or operating characteristics, a new three-party Interconnection Agreement ("IA") that would include the ISO was not required. A February 18, 2017 effective was requested. Comments on this filing are due on or before March 17, 2017. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LSA: CL&P/Wallingford, CT Transmission Line Separation Agreement (ER17-967)**

On February 13, 2017, CL&P filed a Transmission Line Separation Agreement with the Town of Wallingford, CT Department of Public Utilities Electric Division ("Wallingford"). The purpose of the Agreement is to set forth the terms and conditions under which CL&P will assist Wallingford in separating transmission lines 1630 and 1640, a required upgrade following an ISO-NE post-FCA re-study. A February 13, 2017 effective was requested. Comments on this filing are due on or before March 6, 2017. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: CMP/Wight Brook (ER17-938)**

On February 3, 2017, CMP filed a non-conforming Large Generation Interconnection Agreement ("LGIA") with Wight Brook Hydro ("Wight Brook") to govern the continuing interconnection of Wight Brook's 30 MW hydro generating facility located in Newry, Maine. Since the LGIA continues the existing interconnection arrangements between CMP and Wight Brook, without modification to the facility's capability or operating characteristics, a new three-party IA that would include the ISO was not required. A February 1, 2017 effective was requested. Comments on this filing were due on or before February 24, 2017; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: CMP/Stony Brook (ER17-937)**

Also on February 3, 2017, CMP filed a non-conforming LGIA with Stony Brook Hydro ("Stony Brook") to govern the continuing interconnection of Stony Brook's 30 MW hydro generating facility located in Hanover, Maine. Since the LGIA continues the existing interconnection arrangements between CMP and Stony Brook, without modification to the facility's capability or operating characteristics, a new three-party IA was not required. A February 1, 2017 effective was requested. Comments on this filing were due on or before February 24, 2017; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: CMP/ReEnergy Livermore Falls (ER17-909)**

On January 31, 2017, CMP filed a non-conforming LGIA with ReEnergy Livermore Falls to govern the interconnection of ReEnergy's 39 MW biomass-fueled generating facility located in Livermore Falls, Maine. Since the LGIA continues the existing interconnection arrangements between CMP and Livermore Falls, without modification to the facility's capability or operating characteristics, a new three-party IA was not required. A January 1, 2017 effective was requested. Comments on this filing were due on or before February 21, 2017; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Emera MPD OATT Changes (ER15-1429; EL16-13, ER12-1650)**

As previously reported, the FERC conditionally accepted, on December 7, 2015, changes to the Maine Public District ("MPD") Open Access Transmission Tariff ("MPD OATT"), including to the rates, terms, and conditions set forth in MPD OATT Attachment J.<sup>75</sup> 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"<sup>76</sup> 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

<sup>75</sup> *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

<sup>76</sup> 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").

judge procedures.<sup>77</sup> The FERC also consolidated ER12-1650 with this proceeding. In addition, the FERC directed that Emera Maine to make a compliance filing, on or before July 5, that (1) revises its 2014-2015 formula rate charges to correct the errors the Maine Customer Group raised with respect to amortization of long-term debt costs and post-retirement benefits other than pensions, and (2) imputes the retired debt balance for the tax-free Maine Public bonds (\$22.6 million) into the capital structure calculation for the 2014-2015 Rate Year. Emera Maine requested rehearing of the June 2 order on July 5. On January 6, 2017, the FERC denied rehearing and Emera Maine's alternative request for consolidation with the ongoing proceedings in Docket Nos. EC10-67-002, *et al.*<sup>78</sup>

**Compliance Filing (ER12-1650).** The *January 6 Order* also conditionally accepted Emera Maine's July 5, 2016, pending compliance filing, submitted in response to the June 2 Order described above. 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. While the FERC sided with Emera Maine on the refund issues, it agreed with the Maine Customer Group that immediate refunds were in order. Accordingly, the FERC directed Emera Maine to make adjustments during the 2014-2015 Rate Year and refund the nearly \$400,000 of excess revenue requirement as shown in its compliance filing, demonstrating in a refund report 6 how the excess charges will be refunded.<sup>79</sup> Emera Maine submitted that report on February 9, indicating the amounts to be refunded by February 28, 2017 to each customer that took either point-to-point or network service under the MPD OATT. No comments were submitted on that Report and the Report is pending before the FERC.

**Hearing and Settlement Judge Procedures.** The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and 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. Since the last Report, Judge Dring issued a status report on January 24 (i) indicating that the parties have reached a settlement in principal and are memorializing their agreement (which is to be filed in March), and (ii) recommending that settlement judge procedures be continued. If you have any questions concerning these matters, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **FERC Enforcement Action: Covanta Haverhill Associates (IN17-3)**

On February 1, 2017, the FERC approved on a Stipulation and Consent Agreement between the Office of Enforcement ("OE") and Covanta Haverhill Associates LP ("Covanta") that, among other things, levied a **\$36,000 civil penalty** and required Covanta to implement procedures to improve compliance, subject to monitoring via submission of semi-annual reports for at least two years.<sup>80</sup> OE determined, following a referral from the ISO, that Covanta failed to provide instantaneous metered data from an RTU to the ISO, as required by the Tariff, relying instead on its Local Control Center (LCC) to provide such output data through its settlement system. Covanta did not complete installation of the necessary equipment to provide such data until June 29, 2016. OE determined that Covanta violated sections 1.3.2, II.22.1, II.22.2 of the Tariff, and thereby violated the FERC's Unit Operation Market Behavior Rule. The February 1 order was preceded on January 23, 2016 by a staff notice of alleged violations.

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<sup>77</sup> *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh'g denied*, 158 FERC ¶ 61,012 (Jan. 6, 2017).

<sup>78</sup> *Emera Maine*, 158 FERC ¶ 61,012 (Jan. 6, 2017) ("*January 6 Order*").

<sup>79</sup> *Id.* at PP 39-40.

<sup>80</sup> *Covanta Haverhill Assoc. LP*, 158 FERC ¶ 61,105 (Feb. 1, 2017).

- **FERC Enforcement Action: GDF SUEZ Energy Marketing NA (IN17-2)**

Also on February 1, the FERC approved a Stipulation and Consent Agreement<sup>81</sup> that resolves OE's investigation into whether GDF SUEZ Energy Marketing NA ("GSEMNA") violated the FERC's Anti-Manipulation by improperly targeting and increasing its receipt of lost opportunity cost credits ("LOCs") in the PJM market. In summary, GSEMNA offered units into the PJM Da-Ahead market at discounted prices, resulting in Day-Ahead commitments and LOCs at times when the units would have been out of the money had they not been offered at discounted prices.<sup>82</sup> OE determined that GSEMNA's offers did not reflect the price at which it wanted to generate power, but rather the price at which it could obtain a Day-Ahead award and then receive LOCs during periods when the discounted units likely could not have been operated profitably. OE further determined that, in order to increase LOCs, GSEMNA discounted the cost-based offers for the units when it discounted their price-based offers. Accordingly, OE concluded that GSEMNA's strategy of targeting and inflating LOCs was contrary to supply and demand fundamentals and impaired the functioning of the LOC provisions of the PJM market and PJM's unit commitment process.<sup>83</sup> Under the Settlement, in which GSEMNA neither admitted nor denied the alleged violations, GSEMNA agreed to *disgorge \$40.8 million* to PJM and pay a *\$40 million civil penalty* to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

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

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

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

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

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<sup>81</sup> *GDF SUEZ Energy Marketing NA, Inc.*, 158 FERC ¶ 61,102 (Feb. 1, 2017).

<sup>82</sup> OE explained that GSEMNA implemented its strategy of offering the units into the DA market with discounted price-based and cost-based offers, seeking to obtain a Day-Ahead award and to profit from LOCs at times when its units would have operated at a loss if dispatched. GSEMNA would discount a given unit's Day-Ahead offer based on an assessment of the likelihood that the unit would not be dispatched in the Real-Time market, weighing the risk of running the unit at a loss if dispatched against the potential reward of LOCs if the unit was not dispatched. When GSEMNA expected that a CT unit would be dispatched in the Real-Time market, it typically offered the unit at or above cost and did not discount its Day-Ahead energy offer. GSEMNA typically offered uncommitted units (which were not eligible for LOCs) in the Real-Time market without discounting.

<sup>83</sup> *Id.* at PP 12-13.

**XII. Misc. - Administrative & Rulemaking Proceedings**

- **IDs for Visitors to FERC (not docketed)**

On February 2, all parties on service lists subject to settlement judge and hearing procedures were notified that, pursuant to new security procedures for entry onto FERC premises implemented pursuant to the REAL ID Act,<sup>84</sup> driver's licenses and state-issued ID cards from certain states, including the state of Maine, will no longer be accepted by security. Visitors from those states must use alternative forms of identification.<sup>85</sup>

- **Agency Operations in the Absence of a FERC Quorum (AD17-10)**

On February 3, the FERC issued an order delegating additional authority to agency staff to continue certain agency operations in the absence of a quorum of FERC Commissioners.<sup>86</sup> The delegation order also affirmed that all pre-existing delegations of authority by the FERC to its staff continue to be effective. The delegation order took effect February 4, 2017, and the additional authority granted to agency staff will last until the earlier of FERC action lifting the *Delegation Order* or 14 days following the date a quorum is re-established. The specific delegation of agency authority permits (i) the Director of the Office of Energy Market Regulation ("OEMR") to accept and suspend rate filings, and make them effective subject to refund and further order of the FERC, or accept and suspend them, make them effective subject to refund, and set them for hearing and settlement judge procedures (for initial rates or rate decreases submitted under section 205 of the FPA, for which suspension and refund protection are unavailable, FERC staff was granted authority under section 206 to institute proceedings in order to protect the interests of customers);<sup>87</sup> (ii) FERC staff to extend the time for action on matters where it is permitted by statute; and (iii) the Director of OEMR to take appropriate action on uncontested waiver and settlement filings.

- **BPS Reliability Technical Conference (AD17-8)**

On February 10, the FERC issued a notice that it will hold a June 22, 2017 technical conference to discuss policy issues related to the reliability of the Bulk-Power System ("BPS"). The FERC will issue an agenda at a later date. In the meantime, those wishing to be considered for participation in panel discussions should submit nominations no later than close of business on March 3, 2017 online at:

<https://www.ferc.gov/whats-new/registration/06-22-17-speaker-form.asp>.

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

On November 9, 2016, 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

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<sup>84</sup> Congress passed the REAL ID Act in 2005 in response to the 9/11 Commission's recommendation that the Federal Government "set standards for the issuance of sources of identification, such as driver's licenses." The Act established minimum security standards for state-issued driver's licenses and identification cards and prohibits Federal agencies from accepting, for official purposes, licenses and identification cards from states that do not meet these standards. Visitors seeking access to FERC and other Federal facilities using their state-issued driver's licenses or identification cards must present proper identification issued by REAL ID compliant states or a state that has received an extension. Connecticut and Vermont are REAL ID compliant. Massachusetts, New Hampshire and Rhode Island have received an extension until October 17, 2017. The REAL ID status of other states is available at <https://www.dhs.gov/real-id-enforcement-brief>.

<sup>85</sup> Other TRA-approved IDs include: US passports or passport cards; DHS trusted traveler cards; US military IDs; and permanent resident or border crossing cards. For a complete list, see <https://www.ferc.gov/security-requirements-for-visitors-to-FERC.pdf>.

<sup>86</sup> Agency Operations in the Absence of a Quorum, 158 FERC ¶ 61,135 (Feb. 3, 2017) ("*Delegation Order*").

<sup>87</sup> The acceptance for filing and suspension and making effective subject to refund and to further FERC order of these filings is without prejudice to any further action of the FERC with respect to these filings once the FERC again has a quorum.



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 Associations<sup>88</sup> and the New Jersey BPU, the deadline for comments was extended to October 3, 2016 and comments were filed by over 60 parties, including: NEPOOL, ISO-NE, Avangrid, AWEA, BHE US Transmission, EDF Renewables, EEI, ELCON, Eversource, Exelon, LSP Transmission Holdings, MMWEC, National Grid, NESCOE, NextEra, and PSEG.

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

A workshop to discuss compensation for Reactive Supply and Voltage Control (Reactive Supply) in RTO/ISO markets was held on June 30, 2016. The workshop explored the types of costs incurred by generators for providing Reactive Supply capability and service; whether those costs are being recovered solely as compensation for Reactive Supply or whether recovery is also through compensation for other services; and different methods by which generators receive compensation for Reactive Supply (e.g., FERC-approved revenue requirements, market-wide rates, etc.). The workshop also explored potential adjustments in compensation based on changes in Reactive Supply capability and potential mechanisms to prevent overcompensation for Reactive Supply. Technical conference materials are available on the FERC's e-Library. Written comments were due on or before July 28, 2016, and were filed by, among others, NYISO, PJM, the PJM IMM, AWEA, EEI, EPSA, EDF Renewables, Talen, Essential Power, and Exelon. EDF Renewables filed reply comments on August 19; the PJM IMM on August 21. 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, and the RTO/ISO's provided, information related to five price formation issues:<sup>89</sup> (1) pricing of fast-start resources; (2) commitments to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency. The

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<sup>88</sup> The "Utility Trade Associations" are APPA, EEI, Large Public Power Council, National Rural Electric Cooperative Association ("NRECA"), and Transmission Access Policy Study Group ("TAPS").

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

FERC indicated it would use the reports and comments filed in response thereto to determine what further action is appropriate. NOPRs addressing fast-start pricing and uplift allocation have already been issued.

- **NOI: FERC's Policy for Recovery of Income Tax Costs & ROE Policies (PL17-1)**

On December 15, 2016, the FERC issued a notice of inquiry (“NOI”) seeking comments regarding how to address any double recovery resulting from the FERC’s current income tax allowance and ROE policies.<sup>90</sup> The NOI follows the D.C. Circuit’s *United Airlines*<sup>91</sup> holding that the FERC failed to demonstrate that there is no double recovery of taxes for a partnership pipeline as a result of the income tax allowance and ROE determined pursuant to the DCF methodology, and remanding the decisions to the FERC to develop a mechanism “for which the Commission can demonstrate that there is no double recovery” of partnership income tax costs”.<sup>92</sup> In response to requests for an extension of the comment and reply comment deadlines, and objections to those requests, the FERC extended the comment and reply comment deadlines to March 8 and April 7, 2017, respectively.

- **Order 834: Civil Monetary Penalty Inflation Adjustments (RM17-9)**

On January 9, the FERC issued *Order 834*<sup>93</sup> to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within FERC’s jurisdiction. The FERC is required to update each such civil monetary penalty on an annual basis every January 15.<sup>94</sup> Of particular interest is the increase in potential civil penalties for market manipulation, which were increased from \$1,193,970 to \$1,213,503 per violation, per day. *Order 834* became effective January 24, 2017.<sup>95</sup>

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

As previously reported, the FERC issued a NOPR<sup>96</sup> on December 15, 2016 proposing reforms designed to improve certainty,<sup>97</sup> promote more informed interconnection,<sup>98</sup> and enhance interconnection

<sup>90</sup> *Inquiry Regarding the FERC’s Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2017).

<sup>91</sup> *United Airlines Inc., et al. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (“*United Airlines*”).

<sup>92</sup> *Id.* at 137.

<sup>93</sup> *Civil Monetary Penalty Inflation Adjustments*, Order No. 834, 158 FERC ¶ 61, 170 (Jan. 9, 2017) (“*Order 834*”).

<sup>94</sup> See Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. 114-74, 129 Stat. 584, 599. The FERC made its first adjustment under the Act in July 2016. See *Civil Monetary Penalty Inflation Adjustments*, Order No. 826, 81 FR 43937 (July 6, 2016), FERC Stats. & Regs. ¶ 31,386 (2016).

<sup>95</sup> *Order 834* was published in the *Fed. Reg.* on Jan. 24, 2017 (Vol. 82, No. 14) pp. 8,137-8,139.

<sup>96</sup> *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016) (“*LGIP/LGIA Reforms NOPR*”). The *LGIP/LGIA Reforms NOPR* was published in the *Fed. Reg.* on Jan. 13, 2017 (Vol. 82, No. 9 pp. 4,464-4,501).

<sup>97</sup> 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.

<sup>98</sup> 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

processes.<sup>99</sup> Based, in part, on input 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.<sup>100</sup> Following a request from the ISO/RO Council ("IRC"), supported by NEPOOL and a coalition of trade associations (APPA, LPPA, NRECA), for a 30-day extension of the comment deadline granted by the FERC on February 23, comments on the *LGIP/LGIA Reforms NOPR* are now due April 13, 2017.

- **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.<sup>101</sup> 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* were due on or before February 28, 2017<sup>102</sup> and were filed by numerous parties, including NEPOOL, ISO-NE and EEI.

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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.

<sup>99</sup> 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) 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.

<sup>100</sup> *Id.* at P 11.

<sup>101</sup> *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*").

<sup>102</sup> The *Fast-Start Pricing NOPR* was published in the *Fed. Reg.* on Dec. 30, 2016 (Vol. 81, No. 251 pp. 96,391-96,404).

- **NOPR: Uplift Cost Allocation and Transparency in RTO/ISO Markets (RM17-2)**

On January 19, the FERC issued a NOPR proposing to require each RTO and ISO that currently allocates the costs of Real-Time uplift due to deviations to do so only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.<sup>103</sup> In addition, the FERC proposed to revise its regulations to enhance transparency by requiring that each RTO/ISO post uplift costs paid (dollars) and operator-initiated commitments (MWs) on its website; and define in its tariff its transmission constraint penalty factors, as well as the circumstances under which those penalty factors can set LMPs, and any procedure for changing those factors. Comments on the *Uplift/Transparency NOPR* are due on or before April 10, 2017.<sup>104</sup>

- **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.”<sup>105</sup> Comments on the *Storage NOPR* were initially due on or before January 30, 2017,<sup>106</sup> but following requests for an extension of time, were due February 13, 2017. Comments were filed by over 100 parties, including: NEPOOL, ISO-NE, APPA/ NRECA, Avangrid, AWEA, Brookfield, CT DEEP, CT PURA, Dominion, DTE, EEI, ELCON, EPSA, EPRI, ESA, Exelon, FirstLight, Genbright, IPKeys, MA DPU, MIT, MMWEC, NARUC, NERC, NESCOE, NextEra, NRG, SEIA, UCS. This matter is pending before the FERC.

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

The FERC’s *Data Collection NOPR* remains pending. As previously reported, the FERC issued a July 21, 2016 NOPR, which superseded 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.<sup>107</sup> 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,

<sup>103</sup> *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 158 FERC ¶ 61,047 (Jan. 19, 2017) (“*Uplift/Transparency NOPR*”).

<sup>104</sup> The *Uplift/Transparency NOPR* was published in the *Fed. Reg.* on Feb. 7, 2017 (Vol. 82, No. 24 pp. 9,539-9,555).

<sup>105</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) (“*Storage NOPR*”).

<sup>106</sup> The *Storage NOPR* was published in the *Fed. Reg.* on Nov. 30, 2016 (Vol. 81, No. 230 pp. 86,522-86,550).

<sup>107</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

2016<sup>108</sup> and were filed by over 30 parties, including: American Public Power Association (“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)**

The FERC issued *Order 833*<sup>109</sup> on November 16, 2016. *Order 833* amended FERC 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 amend other regulations that pertain to CEII. The amended procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures. *Order 833* became effective February 21, 2017.<sup>110</sup> On December 19, 2016, EEI requested rehearing of *Order 833*. The FERC issued a tolling order on January 17, affording it additional time to consider the EEI request for rehearing, which remains pending.

- **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.<sup>111</sup> 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*<sup>112</sup> from early 2016. Comments on the *Primary Frequency Response NOPR* were due on or before January 24, 2017<sup>113</sup> and were filed by over 30 parties, including AWEA, EEI, ELCON, EPSA, ESA, the IRC, NRECA, and UCS. Since the last Report, comments were filed by First Solar. This matter is pending before the FERC.

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

On November 17, 2016, the FERC issued *Order 831*<sup>114</sup> 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

<sup>108</sup> The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

<sup>109</sup> *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*”).

<sup>110</sup> *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

<sup>111</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016) (“*Primary Frequency Response NOPR*”).

<sup>112</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) (“*Frequency Response NOI*”).

<sup>113</sup> The *Primary Frequency Response NOPR* was published in the *Fed. Reg.* on Nov. 25, 2016 (Vol. 81, No. 227) pp. 85,176-85,190.

<sup>114</sup> *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*.

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* became effective February 21, 2017.<sup>115</sup> Market Rule changes implementing *Order 831* are required to be filed within 75 days of that effective date, or May 8, 2017.<sup>116</sup> 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 FERC issued a tolling order on January 17, affording it additional time to consider the requests for rehearing, which remain pending. On January 4, the PJM Market Monitor opposed Exelon’s motion for clarification and/or rehearing. On January 13, MISO submitted comments supporting NYISO request for rehearing.

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

As previously reported, *Order 825*<sup>117</sup> 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) inertie transactions in the same time interval it schedules inertie 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.<sup>118</sup>

**Compliance.** Each RTO/ISO was 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). As noted in Section III above, New England’s *Order 825* compliance filing was submitted on January 11. The FERC will allow a further 12 months from the compliance filing date for the tariff changes implementing reforms to settlement intervals to be effective, and 120 days from that same compliance filing date for the tariff changes implementing shortage pricing reforms to be effective. As previously noted, the ISO’s and NEPOOL’s jointly filed Sub-Hourly Settlement Changes, which changed to five minutes the settlement interval in the Real-Time Energy and Reserves Markets, was filed and accepted by the FERC.

### XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto: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.<sup>119</sup> 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

<sup>115</sup> *Order 831* was published in the *Fed. Reg.* on Dec. 5, 2016 (Vol. 81, No. 233) pp. 87,770-87,800.

<sup>116</sup> The 75-day period ends on Saturday, May 6. Pursuant to Rule 2007 of the FERC’s Rules of Practice & Procedure, if the last day of a time period falls on a weekend, the time period does not end until the close of the next day on which the FERC remains open. See 18 CFR 385.2007(a)(2).

<sup>117</sup> *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*”).

<sup>118</sup> *Order 825* was published in the *Fed. Reg.* on June 30, 2016 (Vol. 81, No. 126) pp. 42,882-42,910.

<sup>119</sup> *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

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.<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> 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.<sup>123</sup> On September 30, 2016, ConEd and Orange & Rockland Utilities, Inc. ("O&R") requested clarification of the *Algonquin Order Following Technical Conference*, asking the FERC to clarify certain aspects of its approval exempting from bidding an EDC's capacity release to an asset manager. Algonquin Gas Transmission, National Grid Electric Distribution Companies, and Sequent Energy Management and Tenaska Marketing Ventures filed answers to the requests for clarification on October 17. Those requests are pending before the FERC.

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

- **Natural Gas-Related Enforcement Actions**

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

**BP (IN13-15).** On July 11, 2016, the FERC issued *Opinion 549*<sup>124</sup> 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").<sup>125</sup> 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

<sup>120</sup> *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

<sup>121</sup> *Id.* at P 27.

<sup>122</sup> *Id.* at P 34.

<sup>123</sup> *Id.* at P 35

<sup>124</sup> *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

<sup>125</sup> *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

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.”<sup>126</sup> 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.<sup>127</sup> 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.<sup>128</sup>

***Total Gas & Power North America, Inc. et al. (IN12-17)***. On April 28, 2016, the FERC issued a show cause order<sup>129</sup> in which it directed Total Gas & Power North America, Inc. (“TGPNA”) and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen (“Tran”) and Aaron Hall (collectively, “Respondents”) to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC’s Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.<sup>130</sup>

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.

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<sup>126</sup> *BP Penalties Order* at P 3.

<sup>127</sup> *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).

<sup>128</sup> *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) (“*Order Staying BP Disgorgement*”).

<sup>129</sup> *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

<sup>130</sup> 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.



Respondents field 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:

- ***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.
  - ▶ Certificate of public convenience and necessity granted Jan. 25, 2017.<sup>131</sup>
- ***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.<sup>132</sup>
  - ▶ Construction began 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

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<sup>131</sup> Order Issuing Certificate and Authorizing Abandonment, *Algonquin Gas Transmission LLC and Maritimes & Northeast Pipeline, LLC*, 158 FERC ¶ 61,061 (Jan. 25, 2017), *reh'g requested*.

<sup>132</sup> *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).

decision effectively guarantees that the Constitution Pipeline project will, at best, be delayed by several years.

- ▶ On May 16, 2016, the New York Attorney General filed a complaint against Constitution at the FERC (CP13-499) seeking a stay of the December 2014 order granting the original certificates, as well as alleging violations of the order, the Natural Gas Act, and the Commission’s own regulations due to acts and omissions associated with clear-cutting and other construction-related activities on the pipeline right of way in New York.
- ▶ Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays.
  - On October 13, 2016, the FERC approved Constitution’s request to proceed to remove the felled trees in Pennsylvania.

**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](mailto:pmgerity@daypitney.com)).

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**  
**Underlying FERC Proceedings: ER16-1041<sup>133</sup> ER15-1137<sup>134</sup>**  
**Petitioners: UWUA Local 464 and Robert Clark**

UWUA Local 464 and Robert Clark (“Petitioners”) filed petitions for review of the FERC’s orders on the FCA10 and FCA9 Results Filings. On January 17, the FERC moved to have the FCA10 Results and FCA9 Results appeals consolidated. On January 31, the Court consolidated the two cases, and directed the Clerk to issue an appropriate briefing order. On February 2, the Clerk issued a briefing schedule that calls for the following: Petitioners’ Brief to be filed by March 14, 2017; Respondent’s Brief, May 15, 2017; Intervenor for Respondent’s Brief, May 22, 2017; Petitioners’ Reply Brief, June 5, 2017; Deferred Appendix, June 12, 2017; and Final Briefs, June 26, 2017.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**  
**Underlying FERC Proceeding: ER14-1050;<sup>135</sup> EL14-52;136 EL15-25<sup>137</sup>**  
**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 consolidate this proceeding with 16-1024. Briefing was completed on November 28, 2016 and this matter remains pending before the DC Circuit.

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<sup>133</sup> 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).  
<sup>134</sup> 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).  
<sup>135</sup> 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).  
<sup>136</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).  
<sup>137</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>138</sup>**  
**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 sixth such report filed, was filed on February 13, 2017. 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; ER13-196<sup>139</sup>**

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

As previously reported, NETOs<sup>140</sup> 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 and oral argument was held on January 13, 2017 before a panel comprised of Judges Brown, Wilkins and Edwards. This matter is now pending before the DC Circuit.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121\*\*) (consolidated)**  
**Underlying FERC Proceeding: EL11-66<sup>141</sup>**

**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,<sup>142</sup> EL15-23<sup>143</sup>**  
**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 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*

<sup>138</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

<sup>139</sup> 150 FERC ¶ 61,209 (Mar. 19, 2015); 143 FERC ¶ 61,150 (May 17, 2013).

<sup>140</sup> "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.

<sup>141</sup> 150 FERC ¶ 61,165 (Mar. 3, 2015); 149 FERC ¶ 61,032 (Oct. 16, 2014); 147 FERC ¶ 61,234 (June 19, 2014).

<sup>142</sup> 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

<sup>143</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

*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. Oral argument was held on December 9, 2016 and on December 12, 2016 the Court vacated the November 2 injunction, indicating that an opinion would follow in due course. That opinion has not yet been issued.

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