

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of September 7, 2017**

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



2	NEPGA PER Complaint / Settlement Agreement (EL16-120; ER17-2153)	Aug 16-17	ISO-NE files comments stating that it neither supports nor objects to the proposed PER strike price methodology and requests that the Commission resolve how the Average Monthly Peak Energy Rent will be calculated on and after June 1, 2018; NEPOOL, NEPGA, NESCOE, Eversource file comments supporting Settlement; FERC Trial Staff submits comments stating it did not oppose the Settlement
		Aug 18	Judge Young issues final report anticipating certification of Settlement to Commission
		Aug 28	NEPGA et al., NESCOE file reply comments
		Aug 31	Judge Young certifies uncontested settlement to the FERC; FERC accepts withdrawal of initial filing in favor of filing now pending before the FERC with updated eTariff code
		Sep 6	Chief Judge terminates settlement judge procedures
5	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Aug 8	Settlement Judge Dring issues report recommending that settlement procedures be continued; 9th settlement conf. scheduled for <i>Sep 22</i>

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



7	FCA12 De-List Bids Filing (ER17-2110)	Aug 7-24 Aug 9 Aug 23	NEPOOL, National Grid, NEPGA, Eversource, PSEG intervene Public Citizen protests filing FERC issues deficiency letter requiring the ISO to submit a proposed form of a Non-Disclosure Agreement
		Aug 24	NEPGA answers Public Citizen Aug 9 Protest
		Aug 25	ISO-NE answers Public Citizen Aug 9; responds to Aug 23 deficiency letter
		Aug 28	Public Citizen answers ISO-NE's Aug 25 answer
		Sep 5	ISO-NE answers Public Citizen Aug 28 answer and formally objects to disclosure of public version of Jul 19 filing
8	NESCOE 5-year (2018-2022) <i>Pro Forma</i> Budget (ER17-2062)	Aug 18	FERC accepts NESCOE's 5-year <i>pro forma</i> budget covering the 2018-2022 period
9	Opinion 531-A Compliance Filing Undo: TOs (ER15-414)	Aug 2 Aug 9	CAPs/EMCOS request OEMR's Director, Division of Electric Power Regulation-East, reject filing under his delegated authority TOs' answer Aug 2 request, asserting no basis to grant request

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



9	PRD: Full Integration Conforming Changes (ER17-2164)	Aug 16	Direct, Dominion, Eversource, National Grid, Public Citizen intervene
9	Waiver Request: Dispatchable Resources RTU Req. (McCallum/ Derby Dam) (ER17-1615)	Sep 7	ISO-NE withdraws objection to waiver request, noting Derby Dam, if properly registered as an intermittent generator, would not be subject to Resource Dispatchability rules
10	CONE & ORTP Updates (ER17-795)	Aug 8	ISO-NE submits filing to re-establish statutory action date (now Oct 7) on its CONE/ORTP updates

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

- |      |  |         |   |
|------|--|---------|---|
| * 13 | Clustering Revisions (ER17-2421)                   | Sep 1   | ISO-NE, NEPOOL and PTO AC jointly file Clustering Revisions; comment date Sep 22  |
|      |  | Sep 6-7 | NESCOE, RENEW intervene   |
| 14   | Tariff Section II.44 Conforming Change (ER17-2118) | Aug 25  | FERC accepts change aligning Tariff Section II.44(1)(a) with the Market Rules' Day-Ahead Energy Market scheduling deadline, eff. Sep 20 |

**V. Financial Assurance/Billing Policy Amendments***No Activity to Report***VI. Schedule 20/21/22/23 Changes**

- |    |   |       |   |
|----|---|-------|---|
| 14 | Schedule 21-ES: PSNH/Pontook IA (ER17-2449)   | Sep 7 | Eversource files agreement; comment date Sep 28 |
| 14 | Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.) | Sep 6 | 4th settlement conf. held                       |

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

- |      |  |       |   |
|------|--|-------|---|
| * 15 | 131st Agreement (Small Standard Offer Service Provider Amendments) (ER17-2425) | Sep 1 | NEPOOL files changes to NEPOOL Agreement to implement Small Standard Offer Service Provider arrangements and increase to Data-Only Participant application fee; comment date Sep 22 |
|------|--|-------|---|

**VIII. Regional Reports**

- |      |  |                               |   |
|------|--|-------------------------------|---|
| * 16 | Capital Projects Report - 2017 Q2 (ER17-2289)        | Aug 11<br>Aug 21<br>Aug 28-29 | ISO files Q2 Report<br>NEPOOL intervenes and files comments on Q2 Report<br>National Grid, Eversource intervene |
| * 16 | IMM Quarterly Markets Reports - 2017 Spring (ZZ17-4) | Aug 4                         | IMM files 2017 Spring Report  |
| * 16 | ISO-NE FERC Form 3Q (2017/Q2) (not docketed)         | Aug 28                        | ISO submits quarterly financial report for 2017 Q2  |

**IX. Membership Filings**

- |      |  |        |  |
|------|--|--------|--|
| * 17 | September 2017 Membership Filing (ER17-2184) | Sep 1  | <b>New Members:</b> Durgin and Crowell Lumber Co.; Marie's Way Solar I; Phoenix Energy New England; Syncarpha Lexington; and Tenaska Power Management; and <b>Name Change:</b> Nautilus Power, LLC (f/k/a/ Essential Power, LLC) |
| 17   | July 2017 Membership Filing (ER17-2039)      | Aug 15 | FERC accepts as new members MPower Energy; Renaissance Power & Gas; and Environmental Defense Fund; Brayton Point's withdrawal   |

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

- |      |  |        |   |
|------|--|--------|---|
| * 17 | Revised Rel. Standards (Errata): VAR-001-4.1, VAR-002-4 (RD17-7) | Aug 18 | NERC files revised Standards; comment date Sep 20 |
| * 17 | Revised VRFs for Reliability Standard BAL-002-2 (RD17-6)         | Aug 14 | NERC files revised VRFs; comment date Sep 18      |

- |      |  |        |   |
|------|--|--------|---|
| * 19 | 2018 NERC/NPCC Business Plans and Budgets (RR17-7) | Aug 23 | NERC submits proposed 2018 Business Plan and Budget for itself and its Regional Entities, including NPCC; comment date Sep 13 |
|------|--|--------|---|

<b>XI. Misc. - of Regional Interest</b>	
---	---

- |      |   |        |  |
|------|---|--------|--|
| * 20 | 203 Application: CPV Towantic/ Archmore (EC17-158)                      | Aug 15 | CPV Towantic, GE Towantic Holdings and Aircraft Services Corp. request authorization for a transaction by which Archmore International Infrastructure Funds through a wholly-owned indirect sub. will acquire an approx. 11% interest in CPV Towantic  |
|      |   | Aug 18 | Eversource intervenes  |
| * 20 | 203 Application: GenOn Reorganization (EC17-152)                        | Aug 4  | GenOn requests authorization for reorganization that will occur as a result of its bankruptcy chapter 11 restructuring   |
|      |   | Aug 25 | Public Citizen protests, and withdraws protest to, application   |
| 20   | 203 Application: Dynege (Dighton/ Milford)/Marco DM Holdings (EC17-146) | Aug 7  | Public Citizen intervenes  |
| 21   | 203 Application: NAPG/Mercuria (EC17-144)                               | Aug 9  | Public Citizen intervenes  |
| 21   | 203 Application: PSNH /FPL Wyman 4 (EC17-132)                           | Aug 28 | FERC authorizes PSNH sale of its 3.14% ownership interest in Wyman 4 to FPL Energy Wyman IV  |
| * 22 | LCC Agreement: National Grid (ER17-2339)                                | Aug 21 | National Grid files LCC Agreement to replace REMVEC II Agreement; comment date Sep 11  |
| * 22 | LCC Agreement: NSTAR/Reading (ER17-2324)                                | Aug 18 | NSTAR files LCC and Telemetering Services Agreements with Reading; comment date Sep 8  |
| 22   | D&E Agreement: NSTAR/Essential Power Newington (ER17-1915)              | Aug 11 | FERC accepts agreement, eff. Aug 26  |
| * 24 | FERC Enforcement Action: Westar Energy (IN15-8)                         | Aug 24 | FERC approves <b>\$180,000</b> civil penalty for Westar Energy violations of the SPP Tariff  |
| * 25 | FERC Enforcement Action: ATC (IN17-5)                                   | Aug 28 | FERC approves <b>\$205,000</b> civil penalty for ATC violations of FPA Sections 203 and 205  |
| * 25 | FERC Enforcement Action: City Power Marketing and Tsingas (IN15-5)      | Aug 22 | FERC approves settlement resolving its investigation into (and subsequent litigation in the DC District Court to obtain payments for) City Power Respondents violations of the FERC's Anti-Manipulation Rules -- City Power to pay a <b>\$9 million</b> civil penalty, Tsingas to pay a <b>\$1.3 million</b> disgorgement to PJM and a <b>\$1.42 million</b> civil penalty, and Tsingas subject to a <b>3-year prohibition</b> on any connection to or with any FERC jurisdictional trades |

<b>XII. Misc. - Administrative &amp; Rulemaking Proceedings</b>	
---	---

- |    |  |        |  |
|----|--|--------|--|
| 29 | NOPR: Fast-Start Pricing in RTO/ISO Markets (RM17-3)                                     | Aug 18 | CAISO files supplemental comments                                      |
| 31 | NOPR: Primary Frequency Response - Essential Rel. Services and the Evolving BPS (RM16-6) | Aug 18 | FERC requests supplemental comments; comment date (as extended) Oct 10 |
|    |  | Aug 30 | APPA/EEI/NRECA jointly request extension of comment deadline           |
|    |  | Sep 7  | FERC grants motion for extension of comment deadline, now Oct 10       |

<b>XIII. Natural Gas Proceedings</b>	
--------------------------------------	---

- |    |   |        |  |
|----|---|--------|--|
| 35 | New England Pipeline Proceedings Atlantic Bridge Project (CP16-9) | Aug 21 | FERC denies Weymouth request for stay and denies rehearing of <i>Atlantic Bridge Project Order</i> |
|----|---|--------|--|

**XIV. State Proceedings & Federal Legislative Proceedings**

*No Activity Reported*

**XV. Federal Courts**

- |    |   |        |  |
|----|---|--------|--|
| 37 | Base ROE Complaints II & III (2012 & 2014) (15-1212)                            | Aug 14 | Parties file 8th status report   |
| 37 | FCM Pricing Rules Complaints (16-1042, 15-1071**) (consol.)                     | Aug 14 | Oral argument scheduled for <b>Oct 6, 2017</b> before Judges Srinivasan, Wilkins and Sentelle                                    |
| 37 | NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024) | Aug 14 | Oral argument scheduled for <b>Oct 27, 2017</b> (composition of panel will be identified approx. 30 days in advance of argument) |

## MEMORANDUM

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

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

**DATE:** September 8, 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 September 7, 2017. If you have questions, please contact us.<sup>1</sup>

<b>I. Complaints/Section 206 Proceedings</b>
--

- **NEPGA PER Complaint / Settlement Agreement (EL16-120; ER17-2153)**

On July 28, 2017,<sup>2</sup> the Settling Parties<sup>3</sup> submitted an Offer of Settlement and settlement materials (“PER Settlement”) to resolve the issue set for hearing and settlement judge procedures by the Commission in this proceeding. Under the PER Settlement, the ISO will calculate Adjusted Hourly Strike Price as the sum of the daily Strike Price (as calculated under the existing Tariff) and a newly-defined Hourly PER Adjustment. The Hourly PER Adjustment will be equal to the average over each hour of a newly-defined Five-Minute PER Strike Price Adjustment. The Five-Minute Strike Price Adjustment<sup>4</sup> will be equal to any positive difference between a five-minute Thirty Minute Operating Reserves Clearing Price or Ten-Minute Non-Spinning Reserves Clearing Price that exceeds the maximum allowable reserves clearing prices for those reserves products (i.e., the Reserve Constraint Penalty Factors) in effect before December 2014. The PER Settlement does not resolve the issues of the applicability of the Strike Price methodology to FCA9 (which will be subject to comment in response to the PER Settlement Agreement) or whether capacity suppliers will receive any refunds for PER Events that occurred in August 2016 (currently the subject of, and to be decided through, a pending request for clarification and/or rehearing as noted below). Those issues remain to be resolved by the Commission when and as appropriate. The term sheet that formed the basis for the PER Settlement was supported by the Participants Committee at the June 27 session of the Summer Meeting. Initial comments on the PER Settlement were due on or before August 17, 2017; reply comments, August 28,

<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> The Settlement was initially filed on July 26 under different eTariff codes and subsequently withdrawn in favor of the July 28 filing. The Docket Number (ER17-2153) remained the same. The withdrawal of the July 26 filing was accepted on August 31.

<sup>3</sup> PER “Settling Parties” are: NEPGA, NESCOE, the Retail Energy Supply Association (“RESA”), NEPOOL, Exelon, H.Q. Energy Services (U.S.) (“HQUS”), Eversource, Dominion, Entergy, NRG, and Cogentrix. Intervenors in the proceeding not opposing the Settlement (“Non-Opposing Intervenors”) are: the ISO, PSEG, Consolidated Edison Energy, Inc. (“ConEd”), Verso Corp., GenOn Energy Management LLC, National Grid, NextEra, the New Hampshire Electric Coop. (“NHEC”), and Calpine.

<sup>4</sup> Five-Minute PER Strike Price Adjustment will be calculated according to the following formula: Five-Minute PER Strike Price Adjustment = MAX (Thirty Minute Operating Reserves Clearing Price - \$500/MWh, 0) + MAX (Ten Minute Non-Spinning Reserves Clearing Price – Thirty Minute Operating Reserves Clearing Price - \$850/MWh, 0).

2017. On July 31, Chief Judge Cintron issued an order that, “in the interest of administrative efficiency,” all parties granted intervention in EL16-120 “are deemed to have intervened in Docket No. ER17-2153-000”.<sup>5</sup>

On August 16, ISO-NE filed comments stating that it neither supports nor objects to the proposed PER strike price methodology and requested that the Commission resolve how the Average Monthly Peak Energy Rent will be calculated on and after June 1, 2018. Comments supporting the settlement were filed by NEPOOL, NEPGA, NESCOE, and Eversource. FERC Trial Staff submitted comments stating it did not oppose the Settlement. Reply comments were filed on August 28 by NESCOE (asking the FERC to reject the position advocated by NEPGA that the agreed-upon Adjusted Hourly Strike Price as defined in the Settlement should extend beyond May 31, 2018) and jointly by NEPGA, NRG, HQUS, Dominion, and Verso (asking the FERC to approve the Settlement and order ISO-NE to make a compliance filing, but decline to address NESCOE’s request until some later date). On August 31, Judge Young certified the uncontested settlement to the FERC and is now pending before the Commission.

As previously reported, the FERC, on January 19, (i) granted in part NEPGA’s complaint<sup>6</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>7</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>8</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 settlement judge procedures under section 206 of the FPA.<sup>9</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>10</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 asked for 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.” On March 3, NESCOE and RESA answered NEPGA’s rehearing request. NEPGA answered those answers on March 17. The FERC issued a tolling order on March 16, 2017, affording it additional time to consider NEPGA’s request for rehearing, which remains pending.

**Settlement Judge Procedures.** As reported previously, Judge H. Peter Young was the Settlement Judge in these proceedings. In his last status report, Judge Young reported that the formal offer of settlement

<sup>5</sup> Prior to Chief Judge Cintron’s order, the following parties filed doc-less interventions in ER17-2153: Calpine, ConEd, Entergy, Eversource, Exelon, HQUS, NEPGA, NESCOE, NRG/GenOn, and RESA.

<sup>6</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>7</sup> *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017).

<sup>8</sup> *Id.* at P 48.

<sup>9</sup> *Id.* at P 57.

<sup>10</sup> *Id.* at P 61.

appeared to be uncontested, would comprehensively resolve all issues set for hearing in this proceeding, and would be certified to the Commission before his next report would be due. As noted above, Judge Young certified the uncontested settlement to the Commission on August 31, where it is pending Commission action. There being no additional matters pending before Judge Young, and subject to final action by the Commission, Chief Judge Cintron terminated settlement judge procedures on September 6.

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>11</sup> As previously reported, EMCOS<sup>12</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 discounted cash flow ("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>13</sup> The FERC also found "unpersuasive the assertions of New England TOs and EEI that the Commission should dismiss the Complaint because the New England TOs' base ROE continues to fall within the zone of reasonableness. The Commission has repeatedly rejected the assertion that every ROE within the zone of reasonableness must be treated as an equally just and reasonable ROE."<sup>14</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>15</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>16</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>17</sup> Both the TOs and EEI requested rehearing of the *Base ROE*

<sup>11</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>12</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>13</sup> *Base ROE Complaint IV Order* at P 37.

<sup>14</sup> *Id.* at P 38.

<sup>15</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>16</sup> *Base ROE Complaint IV Order* at P 40.

<sup>17</sup> *Id.* at P 44.

*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 June 27, 2017, Settlement Judge Long recommended termination of settlement judge procedures, reporting that the parties did not appear to be amenable to settlement and had reached an impasse. On June 30, Chief Judge Cintron terminated settlement judge procedures; with hearings to continue as scheduled and reported below.

**Hearings.** 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 could proceed *concurrently* with settlement judge procedures (now terminated). Pursuant to a May 26, 2017 order of Chief Judge Cintron, hearings are now scheduled to be held December 11-15, 2017, with an initial decision to be issued on or before March 27, 2018.

Oral argument, conducted on May 18, 2017 *en banc* before Chief Judge Cintron and Presiding Judge Glazer, addressed the impacts of the DC Circuit’s April 14, 2017 *Emera Maine* decision on the Base ROE Complaint I orders (*see* Section XV below). At the conclusion of the May 18 *en banc* oral argument, Chief Judge Cintron ruled from the bench that (i) the request to hold this proceeding in abeyance or recommend to the Commission that it be dismissed was denied, (ii) the proceeding would continue pursuant to a revised procedural schedule, and (iii) the participants were to submit by May 25, 2017, a revised procedural schedule consistent with the sequencing proposed by the TOs Answer and Motion. She confirmed those rulings in a May 26 order, which also adopted a revised procedural schedule. On June 12, the TOs moved for reconsideration of the May 26 order, or in the alternative, that the Chief Judge grant the NETOs’ request to seek an interlocutory appeal of the May 26 order. The TOs’ motion was challenged by Complainants. On June 29, the Chief Judge denied the June 12 motion. On July 5, the TOs sought interlocutory appeal of the Chief Judge’s June 29 order, which Complainants opposed, and Chairman LaFleur, acting as motions Commissioner, declined to refer to the full Commission. On July 31, 2017, the TOs filed Supplemental Answering Testimony and Exhibits (with summaries).

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>18</sup> The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”.<sup>19</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>20</sup> Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.<sup>21</sup> The FERC-established refund date is January 4, 2016.<sup>22</sup>

<sup>18</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).

<sup>19</sup> *Id.* at P 8.

<sup>20</sup> *Id.* at P 11.

<sup>21</sup> *Id.*



**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). Three settlement conferences have thus far been held in 2017: April 5, May 9 and July 7, 2017. A ninth settlement conference has been scheduled for September 22, 2017. Judge Dring's most recent status report was issued on August 8, noting that the proceeding is taking longer than expected but that the parties are making progress toward settlement. Accordingly, he recommended that the settlement procedures be continued. The Transmission Committee is being kept apprised, as appropriate, 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>23</sup> and third (EL14-86)<sup>24</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>25</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>26</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>27</sup> The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.<sup>28</sup> On July 13, 2015, the TOs appealed those orders to the DC Circuit Court of Appeals (*see* Section XIV below), and that appeal remains pending.

**Hearings and Trial Judge Initial Decision.** Initial hearings on these matters were completed on July 2, 2015. In mid-December 2015, Judge Sterner reopened the record for the limited purpose of having the 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>29</sup> The Decision also lowered the

<sup>22</sup> The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

<sup>23</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>24</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>25</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>26</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>27</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>28</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).

<sup>29</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").

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

- **FCA12 De-List Bids Filing (ER17-2110)**

Pursuant to Market Rule 1 § 13.8.1(a), the ISO submitted on July 19 a filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the FCA12 Existing Capacity Retirement Deadline. The ISO reported that the Existing Capacity Retirement Deadline for FCA12 was March 24, 2017 and it received one Permanent De-List and 23 Retirement De-List Bids for resources located in each of the eight Load Zones, with an aggregate MWs of capacity of 511.104 MWs. Four of the 24 Bids were for resources under 20 MW, and from four suppliers that were not Affiliates of the remaining two suppliers that submitted the remaining 20 bids. The IMM was not required to perform a review of those 4 bids. The IMM did review the remaining two suppliers' 20 Bids for 502.579 MWs of capacity. The IMM's determination regarding these 20 bids is described in the version of the filing that was filed confidentially as required under §13.8.1(a) of Market Rule 1. Comments on this filing are due on or before August 9. Public Citizen filed a protest on the basis that, absent Commission direction, it would not have an opportunity to obtain access to the privileged components of the filing. Specifically, Public Citizen requested, subject to execution of a Non-Disclosure Agreement, access to: (i) the IMM's determination with respect to each Permanent De-List Bid and Retirement De-List Bid, (ii) supporting documentation for each determination, (iii) "the capacity that will permanently de-list or retire prior to the Forward Capacity Auction", and (iv) whether capacity suppliers that submitted the bids have elected to conditionally or unconditionally retire the capacity.

The July 19 filing was protested on August 9 by Public Citizen, which complained that it is unable to determine the just and reasonableness of the De-List Bids due to a lack of access to the privileged components of the filing. Public Citizen requested access, subject to a Non-Disclosure Agreement, to: (i) the IMM's documentation and determinations with respect to each De-List Bid and Retirement De-List Bid, and (ii) information as to the capacity that will permanently de-list or retire prior to FCA12 and whether any retirement elections were conditional or unconditional. Answers to Public Citizen's protest and objections to disclosure of any non-public information filed in the proceeding were filed by the ISO and NEPGA, with the ISO indicating that it would not disclose the non-public information to Public Citizen absent a FERC order. Doc-less interventions were filed by NEPOOL, National Grid, and out-of-time by Eversource, NEPGA and PSEG. Public Citizen answered the ISO's answer on August 28. The ISO answered Public Citizen's August 28 answer on September 5.

**Deficiency Letter.** On August 23, the FERC issued a letter indicating that the ISO's filing was insufficient because it did not include, as required per FERC regulations, a proposed form of a Non-Disclosure Agreement ("NDA") pursuant to which participants or intervenors in the proceeding could request a copy of the complete non-public version of the filing.<sup>30</sup> If an objection to the disclosure of the requested non-public information is filed, disclosure of the information need only be made if so ordered by the FERC. In response, on August 25, the ISO requested waiver of the FERC requirement, given prior FERC rulings on substantively indistinguishable, competitively sensitive and confidential market data in FCA8-related proceedings.<sup>31</sup> The ISO also submitted a form of NDA to comply with the August 23 letter, doing so without prejudice to its position that

<sup>30</sup> See 18 C.F.R. § 388 (b)(2)(i) (2017).

<sup>31</sup> See *ISO New England Inc.*, 148 FERC ¶ 61,137, at PP 11, 21 (2014).

none of the confidential portions of the De-List Bids Filing should be disclosed to any intervenor even under a NDA. The ISO's response to the deficiency re-set the statutory action deadline in this proceeding to October 24. On September 5, the ISO filed a formal objection to the disclosure of the non-public version of its filing. Other than Public Citizen, no additional parties requested access to the non-public version of the filing, which absent FERC order will not be provided.

These matters are pending before the FERC. If you have any questions, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **NESCOE 5-year (2018-2022) Pro Forma Budget (ER17-2062)**

On August 18, 2017, the FERC accepted NESCOE's 5-year *pro forma* budget covering years 2018 - 2022 (the "5-year Pro Forma Budget"). Annual NESCOE budgets will continue to be reviewed on roughly the same schedule as the ISO's annual budgets. Unless the August 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

As previously reported, the Director of Office of Energy Market Regulation ("OEMR")-East, pursuant to the FERC's February 3 *Absence of a Quorum Delegation Order*,<sup>32</sup> issued an order on March 30, 2017, accepting Exelon's Cost Recovery Filing for filing, suspended for a nominal period, to become effective March 30, 2017, subject to refund and further Commission order. As a practical matter, however, the letter order merely punted to a later date a final FERC decision on this matter. The letter order stated that "preliminary analysis indicates that Exelon's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful ... Protests and comments will be addressed in a further Commission order as appropriate."

Recall that, on February 3, pursuant to Section III.A.15 of Appendix A to Market Rule 1,<sup>33</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." On March 13, Exelon and NEPGA (which also moved to intervene out-of-time) answered the ISO's February 24 answer. Exelon asked that the FERC strike the portions of the IMM's pleading related to issues Exelon is not seeking/contesting -- Exelon's recovery of additional fuel costs incurred under a Shoulder Period Agreement with ENGIE and the IMM's request that the FERC "find that the IMM has properly applied the ISO Tariff in establishing the Reference Levels for the Mystic 8 and 9 units . . ." NEPGA, which also moved to intervene out-of-time, also asked the FERC to deny the IMM's requested Reference Level finding. Additional parties to the proceeding include NEPOOL and Direct Energy Business. On March 29, the IMM responded to the March 13 Exelon and NEPGA answers.

This matter remains subject to further FERC proceedings and/or action. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

---

<sup>32</sup> *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (Feb. 3, 2017) ("*Absence of a Quorum Delegation Order*").

<sup>33</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.

- **TOs *Opinion 531-A Compliance Filing Undo (ER15-414-002)***

As previously reported, the TOs submitted, on June 5, 2017, tariff changes (to both the regional and local rates in the ISO OATT) to document the reinstatement of their transmission rates under the OATT to the *status quo ante* as a result of the DC Circuit's mandate in *Emera Maine v. FERC*, Case No. 15-118 *et al.* ("June 5 Filing"). While the TOs asked for a June 6, 2017 effective date, the TOs also stated that they do not intend to commence billing under the reinstated rates until 60 days after the FERC has a quorum (now known to be October 9, 2017). On June 26, both EMCOS and Consumer Aligned Parties ("CAPs")<sup>34</sup> protested the June 5 Filing. On July 11, the TOs answered those protests. On August 2, CAPs and EMCOS requested that, in light of concerns that New England transmission customers will be subject to increased charges before the FERC is able to act on this matter, the Director of OEMR's Division of Electric Power Regulation East exercise his delegated authority and reject the June 5 Filing. On August 9, the TOs answered the August 2 CAPs/EMCOS request, asserting that there was no basis to grant their request for rejection of the June 5 Filing. No action in response to the August 2 request has been taken and this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **2017/18 Power Year Transmission Rate Filing (ER09-1532; RT04-2)**

On July 28, 2017, the Participating Transmission Owners ("PTOs") Administrative Committee ("PTO AC") submitted a filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2017 through May 31, 2018. The filing reflected the charges to be assessed under annual transmission formula rates, reflecting actual 2016 cost data, Forecasted Annual Transmission Revenue Requirements associated with projected PTF additions for the 2017 Forecast Period, and the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of \$111.96 /kW-year effective June 1, 2017, an increase of \$7.86 /kW-year from the charges that went into effect on June 1, 2016. In addition, the annual update to the Schedule 1 formula rate results in a charge of \$1.81 kW-year, a \$0.01/kW-year increase over the Schedule 1 charge that last went into effect on June 1, 2016. This filing was reviewed at the July 18 session of the Reliability/Transmission Committee summer meeting. The filing was not noticed for public comment. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

- **PRD: Full Integration Conforming Changes (ER17-2164)**

On July 27, 2017, the ISO and NEPOOL jointly filed a final package of Tariff revisions required to implement the full integration of price-responsive demand ("PRD") into New England's Energy, Ancillary Services, and capacity markets on June 1, 2018 ("PRD Revisions"). Accordingly, a June 1, 2018 effective date was requested. The PRD Revisions were supported unanimously by the Participants Committee at the Summer Meeting's June 27 session (Item #8). Comments on this filing were due on or before August 17; none were filed. Doc-less interventions were filed by NRG, Direct, Dominion, Eversource, National Grid, and Public Citizen. 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: Dispatchable Resources RTU Requirement (McCallum Enterprises) (ER17-1615)**

On May 9, McCallum Enterprises, owner of the 7 MW Derby Hydroelectric Project in Shelton and Derby, Connecticut, asked the FERC for a waiver of the portion of Market Rule Section 1.11.3 that requires McCallum to install a remote terminal unit ("RTU") and the necessary circuitry to make the Derby Project electronically dispatchable ("Waiver Request"). McCallum asserts that, based on the specific facts related to the Derby Project, it is both unreasonable and unnecessary for it to be required to incur the expenses associated with an RTU and 24x7x365 staff monitoring. It asks that it be allowed to continue to utilize a telephone-

<sup>34</sup> CAPs are: the state utility commissions of Connecticut, Massachusetts, and New Hampshire; the Rhode Island Division of Public Utilities and Carriers ("RIPUC"); the Connecticut and Massachusetts Attorneys General; CT OCC; MOPA; NHOCA; MMWEC; NHEC; IECG; and AIM.

based dispatch system. On May 31, the ISO opposed the Waiver Request. In opposing the request, the ISO asserted that McCallum has at least two other available options to meet the Resource Dispatchability Requirements, the Waiver Request is contrary to both the price formation and reliability objectives of the Resource Dispatchability Rules, would provide an unjustified preference over similarly situated resources, and would not be consistent with OP-14 requirements that a Designated Entity be available 24x7x365 to receive dispatch instructions. CL&P, which is the Lead Market Participant for the Project, intervened and asked that it “not be held liable for compliance with the market rule should the waiver request be declined.” In a June 12 answer, the ISO opposed CL&P’s request, noting that, “as the Lead Market Participant for the Derby Dam facility, and under the terms of the Market Participant Service Agreement executed by it, CL&P is responsible for compliance with all ISO-NE Tariff requirements applicable to the Derby Dam facility—including compliance with the new Resource Dispatchability rules.” McCallum answered the ISO’s protest on June 9, re-iterating its points made in the initial May 9 request, and the ISO’s answer to CL&P’s motion on June 22.

On September 7, the ISO withdrew its opposition to the McCallum Waiver Request. The ISO stated that, based on McCallum statements in its June 9 answer (which indicated that McCallum’s generator does not have control over its output because its operation is wholly subject to the operation of an upstream dam facility), and after further investigation, the ISO has subsequently determined that the Derby Dam facility is improperly registered as a non-intermittent generator, and that it should instead be registered as an intermittent generator. If properly registered as an intermittent generator, the Derby Dam Facility would not in fact be subject to the Resource Dispatchability rules. The ISO added that it is undertaking efforts to require the resource to re-register as an intermittent generator, and to evaluate whether it should be subject to other dispatch rules when so registered. McCallum’s Waiver Request remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Order 831 (Modified Energy Market Offer Caps) Revisions (ER17-1565)**

Tariff changes in response to the requirements of *Order 831* (“*Order 831 Revisions*”) jointly filed by the ISO and NEPOOL on May 8, 2017 remain pending. As previously reported, the *Order 831 Revisions* cap incremental energy offers at the higher of \$1,000/MWh or a resource’s verified cost-based incremental energy offer (with a hard cap of \$2,000/MWh on incremental energy offers used in pricing calculations), provide for make whole payments to recover costs that cannot be verified until after the offer clears and the resource is dispatched, and apply offer cap requirements on a resource-neutral basis. In addition, the *Order 831 Revisions* include a number of ancillary changes required in order for the offer capping rules to function seamlessly within the market or that are needed because of their relationship to the offer capping rules. An October 1, 2019 effective date was requested (which the ISO stated accounts for the time required to design, develop, implement and test the software and process changes required to implement the *Order 831 Revisions* and the need to complete other high-priority projects ahead of the development of *Order 831 Revision*-implementing software changes). The *Order 831 Revisions* were supported unanimously by the Participants Committee by way of the May 5 Consent Agenda (Item #1). Comments on this filing were due on or before May 30; none were filed. Doc-less interventions were filed by ConEd, Dominion, EPSA, National Grid, and NRG. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

The ISO’s January 13, 2017 filing of updated FCM Cost of New Entry (“CONE”), Net CONE and Offer Review Trigger Price (“ORTP”) values, following an ISO-NE amendment-type filing re-starting the 60-day statutory clock, is pending before the FERC. Under the updates, the ISO will use a gas-fired simple cycle combustion-turbine (“CT”) as the reference technology for updated CONE and Net CONE 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>35</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. NEPGA answered the ISO's February 17 answer on March 6 and the ISO answered NEPGA's March 6 answer on March 21.

***Amendment-Type Filing Deferring Statutory Deadline.*** On March 6, the ISO submitted, in light of the contested nature of this proceeding and the lack of a FERC quorum, an amendment-type filing to extend indefinitely the date by which the FERC would otherwise have been required to act on the January 13 filing or have the filing become effective by operation of law. The ISO committed to submit a further amendment-type filing, triggering a new 60-day statutory action date, "at the appropriate time" (presumably once the FERC has a quorum). In the meantime, the ISO stated that the proposed March 15, 2017 effective date for the CONE and ORTP Updates remains unchanged and will be used for the administration of FCA12. Comments on the ISO's March 6 filing were due on or before March 27. NEPOOL filed limited comments seeking acknowledgement in any final order that the ISO's actions not be construed to have any precedential effect in future contested Section 205 proceedings where the FERC does have a quorum.

***Amendment-Type Filing Re-Establishing Statutory Deadline.*** On August 8, the ISO submitted an amendment-type filing to re-establish the date (now October 7) by which the FERC must act on the January 13 filing or have the filing become effective by operation of law. As previously noted, the proposed March 15, 2017 effective date for the CONE and ORTP Updates remains unchanged and has been used for the administration of FCA12. Comments on the August 8 filing were due on or before August 29; none were filed.

This matter is again 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)).

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

The FERC's *FCM Enhancements Order*<sup>36</sup> remains subject to a request for rehearing by Indicated NYTOs.<sup>37</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-

<sup>35</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>36</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>37</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.

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>38</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>39</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)***. Rehearing remains pending of the FERC's January 27, 2017 order conditionally accepting in part, and rejecting, 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>40</sup> The order accepted NYISO's proposed locality exchange factor methodology to be implemented immediately but rejected NYISO's proposed one-year transitional mechanism.<sup>41</sup> In accepting the immediate 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>42</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>43</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>44</sup> NRG requested rehearing of the January 27 order on February 24. The FERC issued a tolling order on March 27, 2017, affording it additional time to consider NRG's request for rehearing, which remains pending before the FERC.

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 NEPA, NextEra and Exelon request for rehearing of the FERC's *Resource Retirement Reforms Order*<sup>45</sup> remains pending. As previously reported, the FERC conditionally accepted, effective March 1, 2016,

<sup>38</sup> *Id.* at P 31.

<sup>39</sup> *Id.*

<sup>40</sup> *NY Indep. Sys. Op., Inc.*, 158 FERC ¶ 61,064 (Jan. 27, 2017), *reh'g requested*.

<sup>41</sup> *Id.* at P 20.

<sup>42</sup> *Id.* at P 35.

<sup>43</sup> *Id.* at P 55.

<sup>44</sup> *Id.* at P 61.

<sup>45</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

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>46</sup> which were filed with and later accepted by the FERC.<sup>47</sup> NEPGA, Exelon and NextEra jointly requested rehearing of the *Resource Retirement Reforms Order*. On June 13, 2016, 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)).

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

Still pending before the FERC is the ISO’s compliance filing in response to the FERC’s August 8, 2016 remand order.<sup>48</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>49</sup> The ISO submitted its compliance filing on January 23, 2017, 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.” In February 13 comments, 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 “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 protests. On March 10, TransCanada answered the ISO’s February 28 answer. 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

- **Clustering Revisions (ER17-2421)**

On September 1, the ISO, NEPOOL and the PTO AC on behalf of the TOs jointly filed changes to the ISO Tariff to incorporate a cluster-based methodology for considering Interconnection Requests and allocating interconnection upgrade costs when a specified set of conditions are present in the interconnection queue (“Clustering Revisions”). A November 1, 2017 effective date was requested. The Clustering Revisions were supported by the Participants Committee at the February 3, 2017 Participants Committee meeting. Comments on this filing are due on or before September 22. Thus far, doc-less interventions were filed by NESCOE and

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>46</sup> *Id.* at P 62.

<sup>47</sup> *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

<sup>48</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>49</sup> *2013/14 Winter Reliability Program Remand Order* at P 17.



RENEW. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **Tariff Section II.44 Conforming Change (ER17-2118)**

On August 25, the FERC accepted the change that aligns Tariff Section II.44(1)(a) with the Market Rules' Day-Ahead Energy Market scheduling deadline. The Tariff change was accepted effective as of September 20, 2017. Unless the August 25 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-ES: PSNH/Pontook IA (ER17-2449)**

On September 7, 2017, Eversource, on behalf of PSNH, filed a two-party IA between PSNH and Pontook for the continued provision of interconnection service to Pontook's existing 3-unit, 9.6 MW hydro-electric facility located on the Androscoggin River in Dummer, New Hampshire. The facility has been connected to PSNH distribution system since 1986, Pontook makes use of PSNH's distribution system and the New England transmission system to market the output of the facility, and the IA replaces a 1985 Agreement whose initial 3-year term has expired. Because there was no modification to the facility or to the interconnection facilities, a three-way IA between PSNH, Pontook and ISO-NE under Schedule 23 of the ISO-NE OATT was not required. A December 16, 2016 effective date was requested. Comments on this filing are due on or before September 28, 2017. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.)**

On June 2, 2016, the FERC accepted, but established hearing and settlement judge procedures for,<sup>50</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 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>51</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>52</sup> The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are

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

<sup>51</sup> *Id.* at P 24.

<sup>52</sup> *Id.* at PP 25-26.

commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures.<sup>53</sup> The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.<sup>54</sup>

**Settlement Judge Procedures.** ALJ John Dring is the settlement judge for these proceedings. There have been three settlement conferences: June 29, October 25, and December 1, 2016. A fourth settlement conference was held on September 6. In a July 26 status report, Judge Dring indicated that, although his previous report indicated that the parties had reached a settlement in principal, the parties informed him that that settlement would not cover this proceeding. Nonetheless, Judge Dring found that the parties are making progress towards settlement, and 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).

- **Schedule 21-FG&E Annual Informational Filing (ER09-1498)**

On July 25, 2017 Fitchburg Gas & Electric (“FG&E”) submitted its data and schedules used to calculate its annual transmission revenue requirement for Non-PTF Local Network Transmission Service, Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service as set forth in Schedule 21-FG&E covering the June 1, 2017– May 31, 2018 period. FG&E reported that its annual revenue requirement reflected in FG&E's rates effective June 1, 2017, is \$1,491,456. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-NSTAR Annual Informational Filing CWIP Supplement (ER09-1243; ER07-549)**

On June 30, 2017, NSTAR supplemented its May 31 annual informational filing with a “CWIP Supplement” in accordance with Section 4.1(i) and (ix) of Schedule 21-NSTAR as added and supplemented by Article 4.2 of the 2008 Settlement. The CWIP Supplement was provided primarily on a project-specific basis, and included NSTAR’s 2017 long-range construction forecast. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-CMP Annual Informational Filing (ER09-938)**

On June 29, CMP submitted its annual update to the formula rates contained in Schedule 21-CMP. CMP indicated that the informational filing reflected actual cost data for the 2016 calendar year plus estimated cost data for the 2017 calendar year associated with CMP’s forecasted transmission plant additions and MPRP CWIP as well as the annual true-up and associated interest. CMP referred to Section 10.2 of Schedule 21-CMP for specific procedures for review and challenges to the informational report. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VII. NEPOOL Agreement/Participants Agreement Amendments

- **131st Agreement (ER17-2425)**

On September 1, 2017, NEPOOL filed changes that implement the Small Standard Offer Service Provider arrangements. The Amendments allow Entities, which exclusively serve a “small” amount of standard offer load (an average hourly aggregate RTLO of 10 MWh or less) the option to have a limited voting share and to make a limited contribution to Participant Expenses until such time as their business grows to the point where they no longer qualify as “small”. A September 1, 2017 effective date was requested. Comments on this filing are due on or before September 22. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

<sup>53</sup> *Id.* at P 27.

<sup>54</sup> *Id.* at P 21; Ordering Paragraph (B).

## VIII. Regional Reports

- **Capital Projects Report - 2017 Q2 (ER17-2289)**

On August 11, the ISO filed its Capital Projects Report and Unamortized Cost Schedule covering the second quarter (“Q2”) of calendar year 2017 (the “Report”). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights include the following new projects: (i) Price Responsive Demand (“PRD”) (\$9,579,200); (ii) IMM Data Analysis Phase I (\$1,281,900); (iii) Data Archival & Storage (\$683,000); and (iv) Operations Document Management System (\$300,000). Projects with significant changes (decreases reallocated to 2018) included: (i) FCM Improvements (\$1 million decrease; \$300,000 reallocated to 2018); 2017 Issue Resolution Phase II (\$600,000 decrease); (iii) Forward Capacity Tracking System (“FCTS”) Technical Architecture Upgrade (\$476,800 decrease); (iv) Situational Awareness – Video Wall Expansion Phase II (\$834,000 decrease); (v) Balance of Planning Period (“BoPP”) Financial Assurance Project (\$141,700 decrease); (vi) Streamlining Asset Registration – Relationship Management (\$75,000 decrease); and (vii) Energy Management System (“EMS”) Alarm Presentation Enhancements (\$62,000 decrease). Comments on this filing were due on or before September 1. NEPOOL filed comments on the Q2 Report on August 21. Doc-less interventions were filed by National Grid and Eversource. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

- **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>55</sup> and *531-B*<sup>56</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)).

- **IMM Quarterly Markets Reports - 2017 Spring (ZZ17-4)**

On August 4, the Internal Market Monitor (“IMM”) filed with the FERC its report for the Spring quarter (Mar 2017 – May 2017) 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. The Spring Report was discussed with Participants at the August Markets Committee Summer meeting. These filings are not noticed for public comment by the FERC.

- **ISO-NE FERC Form 3Q (2017/Q2) (not docketed)**

On August 28, the ISO submitted its 2017/Q2 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which

<sup>55</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

<sup>56</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

## IX. Membership Filings

- **September 2017 Membership Filing (ER17-2405)**

On August 31, NEPOOL requested that the FERC accept (i) the memberships of Durgin and Crowell Lumber Co. (MPEU, End User Sector); Marie’s Way Solar I (AR RG Large Group Seat with Related Persons Fisher Road Solar and Syncarpha Lexington); Phoenix Energy New England (Supplier Sector); Syncarpha Lexington (AR RG Large Group Seat with Related Persons Fisher Road Solar and Marie’s Way Solar I); and Tenaska Power Management (Supplier Sector with Tenaska Power Services); and (ii) the name change of Nautilus Power, LLC (f/k/a/ Essential Power, LLC). Comments on the September Membership filing are due on or before September 21.

- **August 2017 Membership Filing (ER17-2184)**

On July 31, NEPOOL requested that the FERC accept (i) the memberships of Cianbro Energy (AR Sector Large Renewable Generation Group Seat); Maple Energy (Provisional Member Group Seat); South Jersey Energy ISO3, LLC (Related Person of South Jersey Energy Companies, Supplier Sector); and CWP Energy inc. (Related Person to McGill-St. Laurent, Supplier Sector); and (ii) the termination of the Participant status of Anbaric Management (Provisional Group Member). Comments on the August Membership filing were due on or before August 21; none were filed. This matter is pending before the FERC.

- **July 2017 Membership Filing (ER17-2039)**

On August 15, the FERC accepted (i) the memberships of MPower Energy (Supplier Sector), Renaissance Power & Gas (Supplier Sector); and Environmental Defense Fund (End User Sector); and (ii) the termination of the Participant status of Brayton Point Energy (Dynergy Related Person (Supplier Sector), who will remain in Pool).

## 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)).

- **Revised Reliability Standards (Errata): VAR-001-4.1, VAR-002-4 (RD17-7)**

On August 18, 2017, NERC requested FERC approval of errata changes identified during a periodic review of Reliability Standards VAR-001-4.1 (Voltage and Reactive Control) and VAR-002-4 (Generator Operation for Maintaining Network Schedules). NERC states that the changes will not materially impact those subject to the associated Reliability Standard. NERC requested an effective date that is the first day of the first calendar quarter after the date that the changes are approved. Comments, if any, on the revised Standards are due on or before September 20, 2017.

- **Revised VRFs for Reliability Standard BAL-002-2 (RD17-6)**

On August 14, 2017, NERC requested FERC approve revisions to the Violation Risk Factors (“VRFs”) (from “medium” to “high”) for Requirements R1 and R2 of Reliability Standard BAL-002-2 (Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event). The revisions were directed by the FERC in *Order 835*.<sup>57</sup> Comments, if any, on the revised VRFs are due on or before September 18, 2017.

- **Revised Reliability Standard: CIP-003-7 (RM17-11)**

On March 3, NERC filed for approval changes to Reliability Standard CIP-003 (Cyber Security - Security Management Controls), approval of the associated implementation plan, VRFs, VSLs, and revised NERC

<sup>57</sup> *Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event Rel. Standard*, Order No. 835, 158 FERC ¶ 61,030 (2017) (“*Order 835*”).

Glossary definitions of “Removable Media” and “Transient Cyber Asset”, and the retirement of the currently-effective version of CIP-003 and the NERC Glossary definitions of “Low Impact External Routable Connectivity” and “Low Impact BES Cyber System Electronic Access Point”. The CIP-003 Changes ) (i) clarify the electronic access control requirements applicable to low impact BES Cyber Systems; (ii) add requirements related to the protection of transient electronic devices used for low impact BES Cyber Systems; and (iii) require Responsible Entities to have a documented cyber security policy related to declaring and responding to CIP Exceptional Circumstances for low impact BES Cyber Systems. The proposed implementation plan provides that the CIP-003-Changes become effective on the first day of the first calendar quarter that is 18 calendar months after the effective date of the FERC’s order approving the CIP-003 Changes. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **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 Standard: PRC-012-2 (RM16-20)**

On January 19, 2017, the FERC issued a NOPR proposing to approve Reliability Standard PRC-012-2 (Remedial Action Schemes), its associated implementation plan, VRFs, VSLs, and effective date, and retirement of PRC-015-1 and PRC-016-1 (together, the “RAS Changes”).<sup>58</sup> In addition, the FERC proposes to withdraw pending Standards PRC-012-1, PRC-013-1, and PRC-014-1. The RAS Changes are designed to ensure that remedial action schemes do not introduce unintentional or unacceptable reliability risks to the BES. NERC requested that the RAS Changes become effective on the first day of the first calendar quarter that is 36 months after the effective date of an order approving the Standard, pursuant to the Implementation Plans included with the Changes. Comments on the *RAS Changes NOPR* were due on or before April 10, 2017,<sup>59</sup> and were filed by NERC, NESCOE, ISO-NE/IESO/NYISO, MISO, Bonneville, EEI, and ITC. This matter is pending before the FERC.

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

On September 22, 2016, 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>60</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

<sup>58</sup> *Remedial Action Schemes Rel. Standard*, 158 FERC ¶ 61,042 (Jan. 19, 2017) (“*RAS Changes NOPR*”).

<sup>59</sup> The *RAS Changes NOPR* was published in the *Fed. Reg.* on Feb. 8, 2017 (Vol. 82, No. 25) pp. 9,702-9,706.

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

*Frequency Control Changes NOPR* were due on or before November 28, 2016,<sup>61</sup> and were filed by NERC, EEI, Bonneville, Idaho Power and J. Appelbaum.

On March 7, the FERC issued a data request seeking additional information about the current back-up power supply practices of a representative sample of entities potentially affected by the Frequency Control Changes. NERC filed its response to the FERC's data request on April 6. This matter is pending before the FERC.

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

The *ATC NOPR* remains pending before the FERC. As previously reported, the FERC's June 19, 2014, NOPR<sup>62</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>63</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>64</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.

- **2018 NERC/NPCC Business Plans and Budgets (RR17-7)**

On August 23, 2017, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2018. FERC regulations<sup>65</sup> require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reports that its proposed 2018 Funding requirement represents an overall increase of approximately \$2.8 million (4%) over NERC's 2017 Funding requirement. The NPCC U.S. allocation of NERC's net funding requirement is \$4.1 million. NPCC has requested \$15.11 million in statutory funding (a U.S. assessment per kWh (2016 NEL) of \$0.0000450) and \$1.07 million for non-statutory functions. Comments on this filing are due on or before September 13, 2017. Thus far

<sup>61</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>62</sup> *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) ("*ATC NOPR*").

<sup>63</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>64</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>65</sup> 18 CFR § 39.4(b) (2014).

- **Rules of Procedure Changes (RR17-6)**

On June 26, 2017, NERC filed for approval revisions to Sections 600 (Personnel Certification Program) and 900 (Training and Education) of the NERC Rules of Procedure (“ROP”). The purpose of the revisions is to (i) clarify the scope of the Personnel Certification Program, the Training and Education Program and the Continuing Education Program; and (ii) streamline and align the language of the ROP with current practices of those programs. NERC stated that the changes are part of its first comprehensive review to modernize and align the language of the ROP with current NERC practices. NERC requested that the proposed revisions be made effective upon FERC approval. Comments on this filing were due on or before July 17, 2017 and were filed jointly by the Alberta Electric System Operator (“AESO”), The California Independent System Operator (“CAISO”), The Independent Electricity System Operator (“IESO”), ISO-NE and PJM (“System Operators”). System Operators, while agreeing that changes to Sections 600 and 900 are needed, nevertheless disagreed with the proposed changes as written and the rationale for making those changes in the first instance. This matter is pending before the FERC.

- **Annual NERC CMEP Filing (RR15-2)**

On February 22, NERC submitted a compliance filing reviewing the progress of its risk-based Compliance Monitoring and Enforcement Program (“CMEP”) program. In this filing, NERC identified and proposed two enhancements to the risk-based CMEP: (1) providing minimal risk Compliance Exceptions (“CEs”) identified through self-logging to FERC non-publicly; and (2) expanding the use of CEs to include certain moderate risk noncompliance currently processed through Find, Fix, Track and Report (“FFTs”). Comments on this filing were submitted by the ISO/RTO Council (“IRC”), AEP, EEL, PPL, and jointly by the American Public Power Association (“APPA”), the Electricity Consumers Resource Council (“ELCON”), the National Rural Electric Cooperative Association (“NRECA”), and the Transmission Access Policy Study Group (“TAPS”). This filing is pending before the FERC.

## XI. Misc. - of Regional Interest

- **203 Application: CPV Towantic/Archmore (EC17-158)**

On August 15, and as corrected on August 21, CPV Towantic, GE Towantic Holdings and Aircraft Services Corp. requested authorization for a transaction by which Archmore International Infrastructure Funds through a wholly-owned indirect subsidiary will acquire an approximately 11% interest in CPV Towantic. Comments on the application were due on or before September 5; none were filed. A doc-less intervention was filed by Eversource. This matter is pending before the FERC.

- **203 Application: GenOn Reorganization (EC17-152)**

On August 4, GenOn Energy Inc. and its direct and indirect public utility subsidiaries (including NEPOOL Participant GenOn Energy Management) asked the FERC to approve certain conversions of GenOn notes into common equity of, and corporate structure changes that will result in, a “reorganized GenOn”. Reorganized GenOn will emerge as a result of a plan of reorganization to be confirmed by the United States Bankruptcy Court for the Southern District of Texas in connection with GenOn’s chapter 11 restructuring (the “Restructuring”). As a result of the Restructuring, Reorganized GenOn will not be a subsidiary of, and GenOn Energy Management will no longer be a Related Person to, NRG. Comments on the application were due on or before August 25. A protest was filed, but withdrawn, by Public Citizen, which sought the identities of the Steering Committee of GenOn Noteholders (already available as part of the public version of the application).<sup>66</sup>

- **203 Application: Dynegy (Dighton/Milford)/Marco DM Holdings (EC17-146)**

On August 1, Dighton Power, LLC (“Dighton”), Milford Power, LLC (“Milford”), and Marco DM Holdings, L.L.C. (“Marco”) requested FERC authorization for a transaction in which Marco will acquire 100% of the equity interests in Dighton and Milford (each, wholly owned subsidiaries of Dynegy). The transaction

<sup>66</sup> The Steering Committee members are: J.P. Morgan Investment Management Inc., PGIM, Inc., Solus Alternative Asset Management LP, Sound Point Capital Management LP, York Capital Management Global Advisors, LLC and MacKay Shields LLC.

implements the FERC's requirement in EC16-93-001, approving Dynegy Inc.'s acquisition of GDF Suez Energy North America, Inc., that Dynegy divest at least 224 MW in the Southeast New England capacity zone.<sup>67</sup> Comments on the application were due on or before August 22; none were filed. A doc-less intervention was filed by Public Citizen. This matter is pending before the FERC.

- **203 Application: NAPG/Mercuria (EC17-144)**

On July 31, Noble Americas Gas & Power Corp. ("NAPG") and Mercuria Energy America, Inc. ("Mercuria") requested FERC authorization for a transaction in which Mercuria will acquire 100% of the equity interests in NAPG. Comments on the application were due on or before August 21; none were filed. A doc-less intervention was filed by Public Citizen. This matter is pending before the FERC.

- **203 Application: PSNH /FPL Wyman 4 (EC17-132)**

On August 28, the FERC authorized the sale of Public Service Company of New Hampshire d/b/a Eversource Energy's ("PSNH" or "Seller") 3.14% ownership interest in W.F. Wyman Station – Unit 4 ("Wyman 4") and associated jurisdictional facilities to FPL Energy Wyman IV LLC (the "Transaction"). Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

- **203 Application: Green Mountain Power/VT Transco (Highgate) (EC17-86)**

On May 19, the FERC authorized Green Mountain Power ("GMP") to sell its undivided ownership share in the Highgate Transmission Facility to and Vermont Transco ("VT Transco") and VTransco to acquire GMP's undivided ownership share, as well as certain undivided ownership shares of other joint owners of the Highgate Transmission Facility.<sup>68</sup> Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

- **203 Application: Green Mountain Power/ENEL Hydros (EC17-76)**

On May 9, the FERC authorized GMP's acquisition of 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.: Hoague-Sprague, Kelley's Falls, Lower Valley, Glen, Rollinsford, South Berwick, Somersworth, and Woodsville.<sup>69</sup> Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

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

On March 2, 2017, the FERC authorized Eversource's internal reorganization under which Western Massachusetts Electric Company ("WMECO") will merge with and into NSTAR Electric Company ("NSTAR"), with NSTAR as the surviving entity.<sup>70</sup> Applicants committed to hold harmless transmission and wholesale customers from transaction-related costs for five years to the extent that such costs exceed savings related to the merger. Among other conditions, the *NSTAR/WMECO Merger Order* required Eversource to notify the FERC within 10 days of the consummation of the merger, which was expected to occur on January 1, 2018.

- **MOPR-Related Proceedings (PJM, NYISO) (EL16-49; EL13-62)**

In two proceedings which, unless narrowly limited solely to the unique facts of the directly applicable markets (PJM in EL16-49; NYISO in EL13-62), could impact the New England market through FERC jurisdictional or other determinations, NEPOOL filed limited comments requesting that any Commission

<sup>67</sup> *Atlas Power Finance, LLC*, 158 FERC ¶ 61,122, at P 28 (2017).

<sup>68</sup> *Green Mountain Power Corp. and Vermont Transco, LLC*, 159 FERC ¶ 62,191 (May 19, 2017).

<sup>69</sup> *Green Mountain Power Corp.*, 159 FERC ¶ 62,144 (May 9, 2017).

<sup>70</sup> *NSTAR Elec. Co. and W. Mass. Elec. Co.*, 158 FERC ¶ 62,155 (Mar. 2, 2017) ("*NSTAR/WMECO Merger Order*").



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. Since the last Report, EPSA filed motions to lodge information in each proceeding. In the PJM proceeding, EPSA moved to lodge a July 14, 2017 Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed challenges to the zero emissions credits ("ZECs") legislation enacted by the State of Illinois. In the NYISO proceeding, in a substantively similar motion, EPSA moved to lodge a Memorandum and Order of the New York District Court dismissing challenges to the ZECs program implemented by the NYSPSC. In each case, EPSA reiterates its position that unless addressed, the ZEC programs will adversely impact the respective markets. These proceedings remain pending before the FERC.

If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; [dttdoot@daypitney.com](mailto:dttdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **LCC Agreement: National Grid (ER17-2339)**

On August 21, 2017, National Grid filed a Local Control Center ("LCC") Agreement among New England Power Company ("NEP") and a number of Participants that sets forth the terms pursuant to which certain local control center services are to be provided at or through NEP's dispatching center that is operated under the ISO's direction/ authorization. The LCC Agreement supersedes and replaces the Rhode Island, Eastern Massachusetts, Vermont Energy Control ("REMVEC") II Agreement and the related REMVEC Security Analysis Services Agreement. An August 17, 2017 effective date was requested. Comments on this filing are due on or before September 11, 2017. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LCC Agreement: NSTAR (ER17-2324)**

On August 18, 2017, NSTAR filed LCC and Telemetering Agreements with Reading Municipal Light Department ("Reading"). The Agreements set forth the terms pursuant to which certain local control center services are to be provided at or through NSTAR's (rather than NEP's) dispatching center that is operated under the ISO's direction/ authorization. An August 17, 2017 effective date was requested. Comments on this filing are due on or before September 8, 2017. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **IA: CMP/Bucksport (ER17-2198)**

On July 31, 2017, CMP filed a First Amendment to the Bucksport Generation LLC Interconnection Agreement in order to extend the term of the Agreement until September 28, 2031 (the initial Agreement expired on April 17, 2017), with automatic renewals for each successive one-year period thereafter absent termination by a party, and to add termination procedures and termination costs provisions that are consistent with the provisions contained in the ISO Tariff's Schedule 22 *pro forma* LGIA. The Amended Agreement will replace the initial Agreement in its entirety. An August 1, 2017 effective date was requested. Comments on this filing were due on or before August 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).

- **D&E Agreement: NSTAR/Essential Power Newington (ER17-1915)**

On August 11, the FERC accepted a Design and Engineering Agreement ("D&E Agreement") between NSTAR and Essential Power Newington (designated as service agreement IA-NSTAR-34) that sets forth the terms and conditions under which NSTAR will undertake certain design and engineering activities on its transmission system<sup>71</sup> in connection with Essential Power Newington's FCA11 New Capacity

---

<sup>71</sup> Specifically, NSTAR has agreed to make changes to the Zone 2 timer on both primary (P1) and backup (P2) relays at its Mystic Substation that are associated with NSTAR Line 423-515.

Qualification Determination Notification. The FERC accepted the D&E Agreement effective as of August 26, 2017. Unless the August 11 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Maine Power Express Negotiated Rates Determination Request (ER16-1619)**

On May 26, Maine Power Express LLC (“MPX”) filed a motion asking the FERC to determine that its July 1, 2016 order,<sup>72</sup> authorizing MPX to sell transmission rights at negotiated rates, permits MPX to sell the Maine Power Express merchant transmission project’s<sup>73</sup> capacity pursuant to the March 30, 2017 Massachusetts RFP. MPX requested expedited treatment of and a shortened comment period for its request, given the July 27 RFP bid deadline (which has since passed). As of the date of this Report, a comment date has not been set. 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>74</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>75</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,

<sup>72</sup> *Maine Power Express*, 156 FERC ¶61,002 (July 1, 2016).

<sup>73</sup> The Maine Power Express project is a proposed 315-mile, 1,000 MW HVDC completely underground merchant transmission project that will originate in Haynesville, Maine, and terminate at a new DC/AC converter station in Boston connected with the Eversource transmission system. MPX anticipates that the Project will be operational in 2021.

<sup>74</sup> *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

<sup>75</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”).

in part reflecting 2014 FERC Form 1 data rather than estimated data. On May 7, Emera Maine answered the April 22 Maine PUC and MCG protests and the MCG's April 29 answer. On May 8, MCG moved to compel revision to Emera's May 1 filing, asserting that it was not filed in accordance with Emera's OATT, and specifically the Protocols for Implementing and Reviewing Charges Established by the Attachment J Rate Formulas (the "Motion to Compel"). MCG also protested the May 1 filing on May 22. On May 26, Emera Maine answered MCG's May 8 Motion to Compel, which MCG answered the next day.

On June 2, 2016, the FERC granted Maine Customer Group's Motion to Compel, and set the remaining issues with respect to Emera Maine's 2014 and 2015 Annual Updates for hearing and settlement judge procedures.<sup>76</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>77</sup>

**Hearing and Settlement Judge Procedures.** The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and continues to hold hearings 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 and December 1 before Judge Dring. Since the last Report, Judge Dring issued on May 23 a ninth status report (i) again indicating that the parties have reached a settlement in principal and are memorializing their agreement, and (ii) recommending that settlement judge procedures be continued.

**Settlement Agreement (-006).** On June 22, Emera Maine submitted an uncontested Joint Offer of Settlement ("Offer of Settlement") between itself, Houlton Water Company, Van Buren Light and Power District, Eastern Maine Electric Coop., ReEnergy Biomass Operations, the MPUC, and Maine OPA (collectively, the "Settling Intervenors"). If approved, the Offer of Settlement will resolve all issues pending in these proceedings. This settlement does not resolve the matters set for hearing and settlement judge procedures in *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (2016). FERC Staff filed its comments on the Offer of Settlement on July 12, 2017. In its comments, Staff did not oppose the settlement and advised of its belief "the proposed Settlement, in the aggregate, is fair, reasonable, and in the public interest". Although Staff denied "eight ways in which it believes the formula rate is insufficiently transparent," Staff stated it "does not oppose certification of the Settlement by the Settlement Judge and subsequent approval by the Commission." Reply Comments were due July 24, 2017; none were filed. On July 26, Judge Dring certified the Settlement to the Commission.<sup>78</sup> Accordingly, on July 27, Chief Judge Cintron terminated settlement judge procedures, subject to final action by the Commission, and cancelled the hearings ordered by the Commission. The Settlement is now pending before the Commission.

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: Westar Energy (IN15-8)**

On August 24, the FERC approved a Stipulation and Consent Agreement<sup>79</sup> that resolves its investigation into whether Westar Energy, Inc. ("Westar Energy") violated various provisions of the Southwestern Power Pool

<sup>76</sup> *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh'g denied*, 158 FERC ¶ 61,012 (Jan. 6, 2017).

<sup>77</sup> *Emera Maine*, 158 FERC ¶ 61,012 (Jan. 6, 2017) ("*January 6 Order*").

<sup>78</sup> *Emera Maine*, 160 FERC ¶ 63,008 (Jul. 26, 2017).

<sup>79</sup> *Westar Energy, Inc.*, 160 FERC ¶ 61,025 (Aug. 24, 2017) ("*Westar Order*").

(“SPP”) Tariff.<sup>80</sup> Under the Settlement, in which Westar Energy admitted it had inadvertently violated a number of SPP Tariff provisions, Westar Energy agreed to pay a **\$180,000 civil penalty** to the United States Treasury<sup>81</sup> (Westar Energy had already disgorged to SPP the \$60,000 in make-whole payments it had received but was not otherwise entitled to). Westar also agreed to be subject to monitoring that includes submission of annual compliance monitoring reports for two years, with the requirement of a third year at OE’s option.<sup>82</sup> 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: ATC (IN17-5)**

On August 28, the FERC approved a Stipulation and Consent Agreement<sup>83</sup> that resolves its investigation into whether American Transmission Company, LLC (“ATC”) violated FPA Sections 203 (by failing to seek pre-approval from the FERC before acquiring 22 jurisdictional facilities) and 205 (by failing to timely file with the FERC jurisdictional agreements prior to commencement and notice following termination, as required).<sup>84</sup> Under the Settlement, in which ATC admits the violations, ATC agreed to pay a **\$205,000 civil penalty**. During the pendency of the investigation, ATC paid roughly **\$1.4 million** in time-value refunds to its customers associated with agreements under which service commenced prior to making the required Section 205 filings. ATC also agreed to be subject an annual compliance report.<sup>85</sup> 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: City Power Marketing and Tsingas (IN15-5)**

On August 22, the FERC approved a Stipulation and Consent Agreement<sup>86</sup> that resolves its investigation into (and subsequent litigation in the US District Court for the District of Columbia<sup>87</sup> regarding) whether City Power Marketing, LLC (“City Power”) and K. Stephen Tsingas (“Tsingas”, and together with City Power, the “City Power Respondents”) violated the FERC’s Anti-Manipulation Rules by engaging in fraudulent Up To Congestion (“UTC”) transactions in PJM’s energy markets.<sup>88</sup> Under the Settlement, in which City Power Respondents neither admit nor deny the alleged violations, City Power agreed to pay a **\$9**

---

<sup>80</sup> As reported in previous Reports, FERC Staff preliminarily determined that Westar Energy included incorrect cost inputs in its mitigated energy offer curves and failed to timely update other cost inputs, as required by the SPP Tariff. As explained in the *Westar Order*, a Westar employee inadvertently increased variable operating and maintenance fuel charges, and Westar input inaccurate heat rate coefficients, resulting in incorrect mitigated energy offer curves and make-whole payments of approximately \$60,000 that it otherwise would not have earned. Westar also failed to update other fuel costs for other units which did not result in make-whole payments.

<sup>81</sup> *Id.* at P 2.

<sup>82</sup> *Id.*

<sup>83</sup> *American Transmission Co., LLC*, 160 FERC ¶ 61,030 (Aug. 28, 2017) (“*ATC Order*”).

<sup>84</sup> OE determined that ATC violated (i) FPA Section 203(a)(1)(B) by merging or consolidating facilities subject to the FERC’s jurisdiction without obtaining prior FERC authorization in 21 transactions undertaken between Aug. 8, 2006 and Feb. 13, 2014 and valued from \$1,513 to \$1.2 million and (ii) FPA Section 205 by commencing jurisdictional service under 42 agreements and terminating 6 jurisdictional contracts without providing the requisite notice between October 17, 2000 and May 26, 2011.

<sup>85</sup> *Id.*

<sup>86</sup> *Maxim Power Corp. et al.*, 156 FERC ¶ 61,223 (Sep. 26, 2016).

<sup>87</sup> *FERC v. Maxim Power Corp. et al.*, No. 3:15-cv-30113-MGM (D. Mass.).

<sup>88</sup> As previously reported, the FERC found that City Power Respondents violated its Anti-Manipulation Rules by engaging in fraudulent UTC transactions in PJM’s energy markets. *City Power Mkt’g, LLC and K. Stephen Tsingas*, 152 FERC ¶ 61,012 (July 2, 2015) (“*City Power Penalties Order*”). The *City Power Penalties Order* required City Power Respondents to jointly and severally disgorge unjust profits of **\$1,278,358** and to together pay **\$15 million** in civil penalties (City Power - \$14 million; Tsingas - \$1 million). At City Power Respondent’s election, the *City Power Penalties Order* proceeded to, and was in the midst of, a *de novo* review before the federal district court in the District of Columbia. The Settlement reduces the civil penalty amount to be paid by City Power by \$5 million.

*million civil penalty* to the United States Treasury and Tsingas agreed to pay a total of **\$2.72 million** (a **\$1.3 million disgorgement** to PJM and a civil penalty of **\$1.42 million**) as well as to a 3-year prohibition (whether directly or indirectly through consulting, advising, directing, or strategizing) on any trades (physical or financial or virtual) within the FERC's jurisdiction. 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 NOV, 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.

<b>XII. Misc. - Administrative &amp; Rulemaking Proceedings</b>
---

- **State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM (AD17-11)**

As previously reported, the FERC held a 2-day technical conference (on May 1-2) to foster further discussion regarding the development of regional solutions in the Eastern RTOs/ISOs that reconcile the competitive market framework with the increasing interest by states to support particular resources or resource attributes. FERC staff sought to "discuss long-term expectations regarding the relative roles of wholesale markets and state policies in the Eastern RTOs/ISOs in shaping the quantity and composition of resources needed to cost-effectively meet future reliability and operational needs". A more detailed summary of the technical conference was circulated with the last Report. Pre-conference comments from the conference's speakers, panelists and other interested parties are available in the FERC's eLibrary and through the tech conference's calendar entry. Those interested were invited to submit post-conference comments on or before June 22. Comments were received from over 80 parties, and were briefly summarized at the Summer Meeting. Reply comments, not exceeding 10 pages, were due, following a one-week extension granted by the FERC, on July 14, and were filed by over 30 parties. This matter is pending before the FERC.

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

On June 22, the FERC held a technical conference that discussed policy issues related to the reliability of the Bulk-Power System ("BPS"). Panel presentations covered the following topics: (i) an overview on the state of reliability; (ii) international perspectives; (iii) the potential for long-term and large-scale disruptions to the BPS; and (iv) grid security. Written comments were filed ahead of the conference by the Chairman of the Ohio Public Utilities Commission and by a representative of the Large Public Power Council. Speaker materials, as well as a transcript of the technical conference, are posted on the FERC's

eLibrary. Since the last report, on June 20, Environmental Defense Fund filed post-technical conference comments. This matter is pending before the FERC.

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

As previously reported, the FERC held a technical conference on November 9, 2016 to discuss the utilization of electric storage resources as transmission assets compensated through RTO/ISO transmission rates, for grid support services that are compensated in other ways, and for multiple services. On November 14, the FERC invited all those interested to file, on or before December 14, 2016, post-technical conference comments on the topics discussed in the November 1 Supplemental Notice of Technical Conference. Comments were filed by over 45 parties, including Avangrid, Brookfield, EEI, Energy Storage Association, Exelon, FirstLight, NEPGA, NextEra, PSEG, Solar City/Tesla, and UCS. This matter is pending before the FERC.

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

The FERC held a technical conference on a June 27-28, 2016 to discuss competitive transmission development process-related issues, including use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking issues. In addition, participants had the opportunity to discuss issues relating to interregional transmission coordination, regional transmission planning and other transmission development issues. Pre-technical conference comments were filed by over 20 parties, including by NESCOE, BHE US Transmission, LSPower, and NextEra Energy Transmission. Technical conference materials are available on the FERC's e-Library. Post-technical conference 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 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. Post-technical conference comments addressing (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 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

<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).

to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency. The 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 (RM17-3) and uplift allocation and transparency (RM17-2) 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 followed 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> Comments and reply comments were submitted by over 25 and 18 parties, respectively. This matter is pending before the FERC.

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

As previously reported, the FERC issued a NOPR<sup>93</sup> on December 15, 2016 proposing reforms designed to improve certainty,<sup>94</sup> promote more informed interconnection,<sup>95</sup> and enhance interconnection processes.<sup>96</sup> Based, in part, on input received in response to AWEA’s petition for changes to the *pro forma*

---

<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> *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>94</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>95</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 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>96</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.,

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 identified proposed reforms which it states could remedy potential shortcomings in the existing interconnection processes. The FERC also sought comment on whether any of its proposed reforms should be applied to the *pro forma* SGIP/SGIA.<sup>97</sup> 60 sets of comments on and answer to the *LGIP/LGIA Reforms NOPR* were submitted, including comments by: NEPOOL (approved at the April 7 Participants Committee meeting), ISO-NE, Avangrid, EDF Renewable, EDP Renewables, Eversource, Exelon, Invenegy, National Grid, NextEra, APPA/LPPC/NRECA, AWEA, EEI, ELCON, ESA, and Public Interest Organizations. This matter is pending before the FERC.

- **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>98</sup> The FERC stated that the reforms should lead to prices that more transparently reflect the marginal cost of serving load, which would 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 filed by numerous parties, including NEPOOL, ISO-NE and EEI. Reply comments were filed by MISO and the PJM IMM. Since the last Report, on August 18, the CAISO filed supplemental comments (providing additional information identifying challenges facing CAISO and the adverse impacts it believes the NOPR rules would have on its markets). The *Fast-Start Pricing NOPR* is pending before the FERC.

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

On January 19, 2017, 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>99</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

---

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>97</sup> *Id.* at P 11.

<sup>98</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>99</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*").



LMPs, and any procedure for changing those factors. Comments and reply comments on the *Uplift/Transparency NOPR* were filed by over 40 parties, including: ISO-NE, Brookfield, Calpine, DC Energy, Direct, Exelon, Potomac Economics, Saracen, EEI, APPA/NRECA, Appian Way Energy Partners, AWEA, ELCON, EPSA, Financial Marketers Coalition, and the IRC. This matter is pending before the FERC.

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

On November 23, 2016, 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>100</sup> Comments on the *Storage NOPR* 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. Since the last Report, comments were filed by the Harvard Environmental Policy Initiative. 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>101</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, 2016<sup>102</sup> and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

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

The FERC issued *Order 833*<sup>103</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

<sup>100</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>101</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

<sup>102</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>103</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*”).

Infrastructure Information (CEII) procedures. *Order 833* became effective February 21, 2017.<sup>104</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>105</sup> To implement these requirements, the Commission proposes to revise the *pro forma* LGIA and the *pro forma* SGIA. The *Primary Frequency Response NOPR* follows the FERC's *Frequency Response NOI*<sup>106</sup> from early 2016. Comments on the *Primary Frequency Response NOPR* were filed by over 30 parties, including AWEA, EEI, ELCON, EPSA, ESA, First Solar, the IRC, NRECA, and UCS. Supplemental comments were filed by ELCON. On August 18, 2017, the FERC issued a request for supplemental comments related to whether and when electric storage resources should be required to provide primary frequency response, and the costs associated with primary frequency response capabilities for small generating facilities. Supplemental comments are currently due on or before September 14, 2017.<sup>107</sup> On August 30, APPA, EEI and NRECA ("Joint Associations") requested an extension of the period for filing supplemental comments to October 9, 2017. On September , the FERC granted Joint Associations' motion and extended the deadline for filing comments to October 10, 2017.

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

On November 17, 2016, the FERC issued *Order 831*<sup>108</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 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>109</sup> Market Rule changes implementing *Order 831* are required to be filed within 75 days of that effective date, or by May 8, 2017.<sup>110</sup> (Support for ISO-NE's proposed compliance changes is on the May 5 Consent Agenda, Item # 1.) On December 19, 2017, American Municipal Power Inc. ("AMP") and APPA, Exelon, NYISO, and 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. New England's Tariff revisions in response to requirements of *Order 831*, requesting an October 1,

<sup>104</sup> *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

<sup>105</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>106</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOI*").

<sup>107</sup> Notice of the Request for Supplemental Comments was published in the *Fed. Reg.* on Aug. 24, 2017 (Vol. 82, No. 163) pp. 40,081-40,085.

<sup>108</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*.

<sup>109</sup> *Order 831* was published in the *Fed. Reg.* on Dec. 5, 2016 (Vol. 81, No. 233) pp. 87,770-87,800.

<sup>110</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).

2019 effective date, were filed on May 8 and remain pending before the FERC (*see* ER17-1565, Section III above).

### 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)).

- **Technical Conference: Natural Gas Index Liquidity, Price Discovery & Price Formation (AD17-12)**

The FERC held a technical conference on June 29 on developments in natural gas index liquidity and transparency. The purpose of the technical conference was to understand the state of liquidity in the physical natural gas markets, to explore current trends in physical natural gas trading and price reporting and how the use of natural gas indices have evolved over time, to obtain industry's views on the current level of confidence in natural gas indices and price formation, and finally, to consider whether there is a need to improve natural gas market liquidity and price reporting and, if so, how. Post-technical conference comments were filed on July 31 by AGA, INGAA, the PJM IMM, Rice Energy Marketing, and Tenaska Marketing Ventures. A transcript of the technical conference is available on the FERC's eLibrary. This matter is pending before the FERC.

- **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>111</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 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>112</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>113</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>114</sup> Furthermore, the FERC found that

<sup>111</sup> *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

<sup>112</sup> *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

<sup>113</sup> *Id.* at P 27.

<sup>114</sup> *Id.* at P 34.

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>115</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, 2016, 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, 2016; none were filed. The compliance filing remains 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>116</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>117</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 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>118</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>119</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

---

<sup>115</sup> *Id.* at P 35

<sup>116</sup> *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) (“*BP Penalties Order*”).

<sup>117</sup> *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

<sup>118</sup> *BP Penalties Order* at P 3.

<sup>119</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).

for rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.<sup>120</sup>

**Total Gas & Power North America, Inc. et al. (IN12-17).** On April 28, 2016, the FERC issued a show cause order<sup>121</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>122</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. Respondents filed their answer on July 12, 2016. OE Staff replied to Respondents’ answer on September 23, 2016. Respondents answered OE’s September 23 answer on January 17, 2017, and OE Staff responded to that answer on January 27, 2017. This matter remains pending before the FERC.

#### Staff Notices of Alleged Violations (IN\_\_ - \_\_)

**Rover.** On July 13, 2017, the FERC issued a notice that Staff has preliminarily determined that, between February 2015 and September 2016, Rover Pipeline, LLC and Energy Transfer Partners, L.P. (collectively, “Rover”) violated Section 7 of the Natural Gas Act by failing to fully and forthrightly disclose all relevant information to the FERC in Rover’s application for a Certificate of Public Convenience and Necessity and attendant filings in Docket No. CP15-93. Staff alleges that Rover falsely promised it would avoid adverse effects to a historic resource that it was simultaneously working to purchase and destroy, and subsequently made several misstatements in its docketed responses to FERC questions about why it had purchased and demolished the resource.

**National Energy & Trade, L.P.** The FERC issued a second notice on August 3 that Staff has preliminarily determined that National Energy & Trade, L.P. (“National Energy”) violated the FERC’s Prohibition of Natural Gas Market Manipulation by fraudulently trading physical basis at (i) Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of its financial basis position (by selling physical basis at Tetco M3 at arbitrarily low prices early in the morning to benefit a large short financial basis position acquired before bidweek, a large part of which it repurchased after making its physical basis sales) and (ii) at Henry Hub during the April 2014 bidweek to increase the value of its financial exposure (by trading physical basis after the close of the NYMEX solely to benefit National Energy’s exposure to the Henry Hub Inside FERC index).

<sup>120</sup> *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) (“*Order Staying BP Disgorgement*”)

<sup>121</sup> *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

<sup>122</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.

Recall that Notices of Alleged Violations (“NoVs”) are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff’s conclusions regarding the subject’s conduct.<sup>123</sup> NoVs are designed to increase the transparency of Staff’s nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **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>124</sup>
- ▶ Authorization to proceed with construction of certain Projects segments granted on Mar. 27 and Apr. 13, 2017.
- ▶ Construction began May 1, 2017. Detailed information regarding construction activities will be provided in the weekly construction reports filed in this docket.

- ***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.
- ▶ Environmental Assessment (EA) issued on Oct. 23, 2015.
- ▶ Certificate of public convenience and necessity granted Mar. 11, 2016.<sup>125</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.

---

<sup>123</sup> See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh’g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

<sup>124</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 denied*, 160 FERC ¶ 61,016 (Aug. 21, 2017) (“*Atlantic Bridge Project Order*”).

<sup>125</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).

- ▶ 650,000 Dth/d of firm capacity from Susquehanna County, PA (Marcellus Shale) through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
- ▶ New 122-mile interstate pipeline.
- ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
- ▶ Final EIS completed on Oct 24, 2014.
- ▶ Certificates of public convenience and necessity granted Dec 2, 2014.
- ▶ On April 22, 2016, New York State Department of Environmental Conservation denied Constitution’s application for a Section 401 permit under the Clean Water Act. The decision effectively guarantees that the Constitution Pipeline project will, at best, be delayed by several years.
- ▶ On May 16, 2016, the New York Attorney General filed a complaint against Constitution at the FERC (CP13-499) seeking a stay of the December 2014 order granting the original certificates, as well as alleging violations of the order, the Natural Gas Act, and the Commission’s own regulations due to acts and omissions associated with clear-cutting and other construction-related activities on the pipeline right of way in New York.
- ▶ Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays.
  - On October 13, 2016, the FERC approved Constitution’s request to proceed to remove the felled trees in Pennsylvania, which removal is currently on-going.

#### 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)).

- **Demand Curve Changes (17-1110\*\*)**  
**Underlying FERC Proceedings: ER14-1639<sup>126</sup>**  
**Petitioners: NextEra, NRG, PSEG**

On April 3, 2017, NextEra, NRG and PSEG (“Petitioners”) again petitioned the DC Circuit Court of Appeals for review of the FERC’s Demand Curve orders, which, as previously reported, had been remanded back to the FERC at the FERC’s request following the first appeal by Petitioners. Petitioners’ statement of issues and other initial procedural submissions, as well as the FERC’s initial submissions, were filed May 8. The Clerk granted on June 2 the interventions filed by NEPOOL, NESCOE, CT PURA, and CPV, and ordered the parties by July 7 to submit proposed briefing schedule and formats. The parties submitted their proposal on July 7 and on July 10, the Clerk ordered that the following schedule would apply: Petitioners’ Brief to be filed September 8; Respondent’s Brief, November 7, 2017; Respondent-Intervenors’ Brief(s), November 28, 2017; Petitioners’ Reply Brief, December 28, 2017; Joint Deferred Appendix, January 11, 2018; and Final Briefs, January 18, 2018.

<sup>126</sup> 147 FERC ¶ 61,173 (May 30, 2014) (*Demand Curve Order*); 150 FERC ¶ 61,065 (Jan. 30, 2015) (*Demand Curve Clarification Order*); 155 FERC ¶ 61,023 (Apr. 8, 2016) (*Demand Curve Remand Order*); 158 FERC ¶ 61,138 (Feb. 3, 2017) (*Demand Curve Remand Rehearing Order*).

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**  
**Underlying FERC Proceedings: ER16-1041<sup>127</sup> ER15-1137<sup>128</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, consolidated by the Court on January 31, 2017. With Final Briefs submitted on June 26, 2017, all briefing is complete and this matter is before the Court.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**  
**Underlying FERC Proceeding: ER14-1050;<sup>129</sup> EL14-52;130 EL15-25<sup>131</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. Oral argument has been scheduled for October 27, 2017 at 9:30 a.m. The composition of the argument panel will usually be revealed 30 days prior to the date of oral argument.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>132</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 eighth such report filed, was filed on August 14, 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.

- **FCM Pricing Rules Complaints (15-1071\*\*, 16-1042) (consol.)**  
**Underlying FERC Proceeding: EL14-7,<sup>133</sup> EL15-23<sup>134</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. Oral argument has been scheduled for October 6, 2017 at 9:30 a.m. before Judges Srinivasan, Wilkins and Sentelle.

<sup>127</sup> 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).

<sup>128</sup> 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

<sup>129</sup> 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

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

<sup>131</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

<sup>132</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

<sup>133</sup> 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

<sup>134</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).



## Other Federal Court Developments of Interest

- ***Sierra Club, et al v. FERC (16-1329) (Aug. 22, 2017)***

In a case that will influence the FERC's review of pipeline applications, the DC Circuit held that "the FERC must consider not only the direct effects, but also the indirect environmental effects, of [projects] under consideration." Addressing an appeal by environmental groups and landowners challenging FERC's approval of the construction and operation of three new interstate natural-gas pipelines in the southeastern United States, the Court found that the FERC's environmental impact statement ("EIS") was not adequate as it did not contain enough information on the greenhouse-gas emissions that will result from burning the gas that the pipelines will carry. On remand, the Court directed the FERC to explain in its EIS, as an aid to the relevant decision-makers, whether the FERC position's on the Social Cost of Carbon still holds, and why. "The FERC must consider not only the direct effects, but also the indirect environmental effects, of the project under consideration. *See* 40 C.F.R. § 1502.16(b). "Indirect effects" are those that "are caused by the [project] and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). The phrase "reasonably foreseeable" is the key here. Effects are reasonably foreseeable if they are 'sufficiently likely to occur that a person of ordinary prudence would take [them] into account in reaching a decision.'"

- ***NRG Power Marketing, LLC et al. v. FERC (15-1452) (Jul. 7, 2017)***

In a decision that may ultimately impact how the FERC approaches future orders on filings that it does not find just and reasonable as filed, the DC Circuit emphasized, in response to appeals from FERC orders conditionally accepting changes to PJM's MOPR mechanism, that Section 205 of the Federal Power Act does not allow FERC to make modifications to a proposal that transform the proposal into an entirely new rate of FERC's own making. The Court held that the FERC contravened the limitation on its Section 205 authority (a "passive and reactive role") by directing modifications that created a new rate scheme that was significantly different from PJM's proposal and from PJM's prior rate design and remanded the matter back to FERC. Since the Commission's quorum was restored, we have noted an uptick in the number of orders that have rejected filings, but go on to provide suggestions as to the kinds of changes that might make a subsequent filing acceptable (rather than accept those filings subject to conditions or compliance filings).

**INDEX**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of September 7, 2017**

***I. Complaints/Section 206 Proceedings***

206 Proceeding: RNS/LNS Rates and Rate Protocols ..... (EL16-19) ..... 5  
 Base ROE Complaints II & III (2012 & 2014) (Consolidated) ..... (EL13-33 and EL14-86)..... 6  
 Base ROE Complaint IV (2016)..... (EL16-64) ..... 4  
 NEPGA PER Adjustment Complaint / Settlement Agreement..... (EL16-120; ER17-2153) ..... 2

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

2017/18 Power Year Transmission Rate Filing ..... (ER09-1532; RT04-2)..... 9  
 206 Proceeding: RNS/LNS Rates and Rate Protocols ..... (EL16-19) ..... 5  
 Base ROE Complaints II & III (2012 and 2014) (Consolidated)..... (EL13-33 and EL14-86)..... 6  
 Base ROE Complaint IV (2016)..... (EL16-64) ..... 4  
 Exelon Request for Additional Cost Recovery ..... (ER17-933) ..... 8  
 FCA12 De-List Bids Filing ..... (ER17-2110) ..... 7  
 NEPGA PER Adjustment Complaint / Settlement Agreement..... (EL16-120; ER17-2153) ..... 2  
 NESCOE 5-year (2018-2022) *Pro Forma* Budget ..... (ER17-2062) ..... 8  
 TOs Opinion 531-A Compliance Filing Undo..... (ER15-414-002)..... 9

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

2013/14 Winter Reliability Program Remand Proceeding ..... (ER13-2266) ..... 13  
 CONE & ORTP Updates ..... (ER17-795) ..... 10  
 FCM Enhancements ..... (ER16-2451) ..... 11  
 FCM Resource Retirement Reforms..... (ER16-551) ..... 12  
 NEPGA PER Adjustment Complaint / Settlement Agreement..... (EL16-120; ER17-2153) ..... 2  
*Order 831* (Modified Energy Market Offer Caps) Revisions ..... (ER17-1565) ..... 10  
 PRD: Full Integration Conforming Changes ..... (ER17-2164) ..... 9  
 Waiver Request: Dispatchable Resources RTU Requirement (McCallum Enterprises) ..... (ER17-1615) ..... 9

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

Clustering Revisions..... (ER17-2421) ..... 13  
 Tariff Section II.44 Conforming Change..... (ER17-2118) ..... 14

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

**No Activity to Report**

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

Schedule 21-CMP Annual Informational Filing..... (ER09-938) ..... 15  
 Schedule 21-EM: Bangor Hydro/Maine Public Service Merger-Related Costs Recovery ... (ER15-1434 et al.) ..... 14  
 Schedule 21-ES: PSNH/Pontook IA..... (ER17-2449) ..... 14  
 Schedule 21-FG&E Annual Informational Filing..... (ER09-1498) ..... 15  
 Schedule 21-NSTAR: Annual Informational Filing CWIP Supplement ..... (ER09-1243; ER07-549)..... 15

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

131st Agreement (Small Standard Offer Service Provider Amendments) ..... (ER17-2425) ..... 15

**VIII. Regional Reports**

Capital Projects Report - 2017 Q2.....	(ER17-2289).....	16
IMM Quarterly Markets Reports - 2017 Spring .....	(ZZ17-4) .....	16
ISO-NE FERC Form 3Q (2017/Q2).....	(not docketed).....	16
<i>Opinion 531-A</i> Local Refund Report: FG&E.....	(EL11-66).....	16
<i>Opinions 531-A/531-B</i> Local Refund Reports.....	(EL11-66).....	16
<i>Opinions 531-A/531-B</i> Regional Refund Reports.....	(EL11-66).....	16

**IX. Membership Filings**

August 2017 Membership Filing .....	(ER17-2184).....	17
July 2017 Membership Filing .....	(ER17-2039).....	17
September 2017 Membership Filing.....	(ER17-2405).....	17

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

2018 NERC/NPCC Business Plans and Budgets.....	(RR17-7).....	19
Annual NERC CMEP Filing .....	(RR15-2).....	20
New Rel. Standards: PRC-027-1 and PER-006-1.....	(RM16-22).....	18
NOPR: Revised Rel. Standards: BAL-005-1 & FAC-001-3 .....	(RM16-13).....	18
NOPR: Revised Rel. Standard: MOD-001-2.....	(RM14-7).....	19
NOPR: Revised Rel. Standard: PRC-012-2.....	(RM16-20).....	18
Rules of Procedure Changes (Sections 600 and 900).....	(RR17-6).....	20
Revised Rel. Standard: CIP-003-7.....	(RM17-11).....	17
Revised Rel. Standards (Errata): VAR-001-4.1, VAR-002-4.....	(RD17-7).....	17
Revised VRFs for Rel. Standard BAL-002-2 .....	(RD17-6).....	17

**XI. Misc. Regional Interest**

203 Application: Dynegy (Dighton/ Milford)/Marco DM Holdings .....	(EC17-146).....	20
203 Application: CPV Towantic/Archmore .....	(EC17-158).....	20
203 Application: GenOn Reorganization .....	(EC17-152).....	20
203 Application: Green Mountain Power/ENEL Hydros.....	(EC17-76).....	21
203 Application: Green Mountain Power/VT Transco (Highgate).....	(EC17-86).....	21
203 Application: NAPG/Mercuria.....	(EC17-144).....	21
203 Application: NSTAR/WMECO Merger .....	(EC17-62).....	21
203 Application: PSNH/FPL Energy Wyman IV .....	(EC17-132).....	21
D&E Agreement: NSTAR/Essential Power Newington.....	(ER17-1915).....	22
Emera MPD OATT Changes.....	(ER15-1429; EL16-13).....	23
FERC Audit of ISO-NE.....	(PA16-6).....	26
FERC Enforcement Action: Formal Investigation (MISO Zone 4 Planning Resource Auction Offers) .....	(IN15-10).....	26
FERC Enforcement Action: ATC.....	(IN17-5).....	25
FERC Enforcement Action: City Power Marketing and Tsingas .....	(IN15-5).....	25
FERC Enforcement Action: Westar Energy .....	(IN15-8).....	24
IA: CMP/Bucksport.....	(ER17-2198).....	22
LCC Agreement: National Grid.....	(ER17-2339).....	22
LCC Agreement: NSTAR/Reading .....	(ER17-2324).....	22
Maine Power Express Negotiated Rates Determination Request .....	(ER16-1619).....	23
MOPR-Related Proceedings (NYISO, PJM).....	(EL13-62; EL16-49).....	21
NYISO Tariff Revisions in Response to FCM Enhancements .....	(ER17-446).....	12

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

BPS Reliability Technical Conference ..... (AD17-8) ..... 26  
 Competitive Transmission Development Rates ..... (AD16-18) ..... 27  
 Electric Storage Resource Utilization in RTO/ISO Markets ..... (AD16-25) ..... 27  
 NOI: FERC’s Policy for Recovery of Income Tax Costs & ROE Policies ..... (PL17-1) ..... 28  
 NOPR: Data Collection for Analytics & Surveillance and MBR Purposes ..... (RM16-17) ..... 30  
 NOPR: Electric Storage Participation in RTO/ISO Markets ..... (RM16-23; AD16-20) ..... 30  
 NOPR: Fast-Start Pricing in RTO/ISO Markets ..... (RM17-3) ..... 29  
 NOPR: LGIA/LGIP Reforms ..... (RM17-8) ..... 28  
 NOPR: Primary Frequency Response -  
     Essential Reliability Services and the Evolving Bulk-Power System ..... (RM16-6) ..... 31  
 NOPR: Uplift Cost Allocation and Transparency in RTO/ISO Markets ..... (RM17-2) ..... 29  
*Order 831*: Price Caps in RTO/ISO Markets ..... (RM16-5) ..... 31  
*Order 833*: Critical Energy/Electric Infrastructure Information (CEII) Procedures ..... (RM16-15) ..... 30  
 Price Formation in RTO/ISO Energy and Ancillary Services Markets ..... (AD14-14) ..... 27  
 PURPA Implementation ..... (AD16-16) ..... 27  
 Reactive Supply Compensation in RTO/ISO Markets ..... (AD16-17) ..... 27  
 State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM ..... (AD17-11) ..... 26

***XIII. Natural Gas Proceedings***

Algonquin EDC Capacity Release Bidding Requirements Exemption Request ..... (RP16-618) ..... 32  
 Enforcement Action: BP Initial Decision ..... (IN13-15) ..... 33  
 Enforcement Action: Total Gas & Power North America, Inc. .... (IN12-17) ..... 33  
 New England Pipeline Proceedings ..... 35  
 Technical Conference: Natural Gas Index Liquidity, Price Discovery & Price Formation .. (AD17-12) ..... 32  
 Sierra Club, et al v. FERC ..... (16-1329) ..... 38

***XIV. State Proceedings & Federal Legislative Proceedings***

**No Activity to Report**

***XV. Federal Courts***

Base ROE Complaints II & III (2012 & 2014) ..... 15-1212 (DC Cir.) ..... 37  
 Demand Curve Changes ..... 17-1110 (DC Cir.) ..... 36  
 FCM Pricing Rules Complaints ..... 15-1071/16-1042 (DC Cir.) .37  
 FCA10 Results and FCA9 Results ..... 16-1068/16-1408 (DC Cir.) .37  
 NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings ..... 16-1023/1024 (DC Cir.) ..... 37  
*NRG Power Marketing, LLC et al. v. FERC* ..... (15-1452) ..... 38  
*Sierra Club, et al v. FERC* ..... (16-1329) ..... 38