

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of November 1, 2017

The following activity, as more fully described in the attached litigation report, has occurred since the report dated October 10, 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



3	Base ROE Complaint IV (2016) (EL16-64)	Oct 11	Trial Judge accepts corrections to FERC Staff's direct and answering testimony
		Oct 17	TOs file cross-answering testimony and exhibits
4	Base ROE Complaint Proceedings: (EL16-64; EL14-86; EL13-33; EL11-66)	Oct 20	Complainant-Aligned Parties and EMCOS oppose TOs' request for dismissal or consolidation of the ROE complaints

II. Rate, ICR, FCA, Cost Recovery Filings



* 6	Emera MPD OATT Attachment J Revision (ER18-210)	Nov 1	Emera files changes to permit adjustments to formula rate inputs (historical load, revenue, sales data) to reflect "known and measurable" anticipated changes, subject to a true-up; comment date Nov 22
* 7	2018 NESCOE Budget (ER18-85)	Oct 17 Oct 17-31 Oct 26	ISO-NE files budget for funding NESCOE's 2018 operations NESCOE, NEPOOL, National Grid intervene NEPOOL files comments supporting NESCOE Budget
* 7	2018 ISO-NE Administrative Costs and Capital Budgets (ER18-77)	Oct 17 Oct 17-31 Oct 26	ISO-NE files its 2018 administrative costs and capital budgets NEPOOL, NESCOE, National Grid intervene NEPOOL files comments supporting ISO-NE Budgets

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



* 9	Waiver Request: DR Auditing Requirements (CPower) (ER18-185)	Oct 30	CPower requests Tariff waiver to allow ISO-NE to use Jul 26 RTDR resource audit results as its July 2017 Demand Reduction Value, rather than Jul 19 results which, because of a "communications software anomaly", produced "zero" reduction performance results; comment date Nov 20
* 9	Small Generator Modeling Options Change (ER18-122)	Oct 20 Oct 23-31	ISO-NE and NEPOOL jointly file changes; comment date Nov 10 ConEd, National Grid intervene
9	NCPC Calculation Changes for Ramp Constrained Down Resources (ER17-2569)	Oct 17-20	Dominion, Eversource, National Grid, NRG/GenOn intervene
10	PRD: Full Integration Conforming Changes (ER17-2164)	Oct 17	FERC accepts changes, eff. Jun 1, 2018
8	FCA12 De-List Bids Filing (ER17-2110)	Oct 19	FERC accepts filing and grants waiver of requirement to provide access to privileged material in filing to intervenors who execute a non-disclosure agreement
10	Waiver Request: Dispatchable Resources RTU Req. (McCallum Enterprises) (ER17-1615)	Oct 11	McCallum requests FERC delay action on its waiver request for 90 days
12	FCM Resource Retirement Reforms (ER16-551)	Oct 30	FERC denies request for rehearing and clarification of the <i>Resource Retirement Reforms Order</i>

IV. OATT Amendments / TOAs / Coordination Agreements

13	<i>Force Majeure</i> Clarifications (ER17-2533)	Oct 24	FERC accepts changes, eff. Nov 21
13	Clustering Revisions (ER17-2421)	Oct 26 Oct 31	ISO-NE answers RENEW protest FERC accepts Clustering Revisions, eff. Nov 1
11	FCM Enhancements (ER16-2451)	Oct 25	FERC dismisses as moot NYTOs request for rehearing of <i>FCM Enhancements Order</i>

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

* 14	Eversource Reorganization Tariff Changes (ER18-132)	Oct 23	Eversource files conforming changes to Schedules 21-NSTAR and 21-ES; Schedules 20A-NSTAR and 20A-ES; and the Attachment F and Schedule 1 Implementation Rules to reflect references to NSTAR Electric (East) and NSTAR Electric (West); comment date Nov 13
14	Sched. 21-EM: Recovery of BHE/MPS Merger-Related Costs (ER15-1434 et al.)	Oct 11 Oct 13 Oct 26	Emera Maine requests expedited hearing procedures Intervenor/ FERC Trial Staff oppose request for shortened answer period; Chief Judge Cintron issues an order denying the request to shorten the answer period and identifying additional questions to be addressed in Oct 26 answers Emera Maine, Maine PUC/OPA, Maine Customer Group, FERC Trial Staff file responses to Oct 13 Order

VII. NEPOOL Agreement/Participants Agreement Amendments

15	130th Agreement/PA Amendment No. 10 (Prov. Member Clean-Up Amendments) (ER17-2522)	Oct 24	FERC accepts changes, eff. Sep 20
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VIII. Regional Reports

* 15	Capital Projects Report - 2017 Q3 (ER18-81)	Oct 17 Oct 25-31 Oct 26	ISO-NE files Q3 Report NEPOOL, National Grid intervene NEPOOL files comments supporting Q3 Report
* 15	LFTR Implementation: 36 th Quarterly Status Report (ER07-476)	Oct 14	ISO-NE files its 36th quarterly report

IX. Membership Filings

* 16	November 2017 Membership Filing (ER18-186)	Oct 31	New Member: Yellow Jacket Energy, LLC Termination: BNP Paribas; comment date Nov 21
16	October 2017 Membership Filing (ER17-2582)	Oct 31	FERC accepts (i) the memberships of American Power & Gas of MA; Celtic Power Analytics; Great American Power; IPKeys Power Partners; Nautilus Hydro; Nylon Corp. of America; Viridity Energy Solutions; and (ii) the termination of McGill-St.Laurent
16	September 2017 Membership Filing (ER17-2405)	Oct 19	FERC accepts (i) the memberships of Durgin and Crowell Lumber Co.; Marie's Way Solar I; Phoenix Energy New England; Syncarpha Lexington; and Tenaska Power Management; and (ii) the name change of Nautilus Power, LLC (f/k/a/ Essential Power, LLC)

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

18	NOPR: Revised Rel. Standard: CIP-003-7 (RM17-11)	Oct 19	FERC issues NOPR proposing to approve CIP-003-7 Changes; comment date Dec 26
18	GMD Work Plan (RM15-11)	Oct 19	FERC accepts NERC's May 30, 2017 GMD Work Plan
19	2018 NERC/NPCC Business Plans and Budgets (RR17-7)	Nov 1	FERC accepts 2018 NERC/NPCC budgets and business plans
19	Rules of Procedure Changes (RR17-6)	Oct 17	NERC answers System Operators' Jul 17 comments

XI. Misc. - of Regional Interest

* 20	203 Application: PSNH/Granite Shore (EC18-12)	Oct 27	PSNH and Granite Shore request authorization for Granite Shore to acquire PSNH's portfolio of generation assets; comment date Dec 11
20	203 Application: GenOn Reorganization (EC17-152)	Oct 31	FERC authorizes reorganization
21	203 Application: TerraForm/Brookfield (EC17-122)	Oct 16 Oct 25	Transaction consummated Brookfield files notice that transaction was consummated
* 22	D&E Agreement: Pootatuck Ring Bus Expansion (ER18-111)	Oct 19	UI files Ring Bus Expansion Agreement with Eversource; comment date Nov 9
22	TSA Cancellation: NSTAR/Belmont (ER17-2539)	Oct 20	FERC accepts cancellation notice, eff. Sep 30, 2017
23	IA: PSNH/Pontook (ER17-2449)	Oct 31	Eversource files amendment clarifying that the IA will not be designated under Schedule 21-ES; comment date Nov 21

XII. Misc. - Administrative & Rulemaking Proceedings

27	DOE-Initiated Proposal: Grid Reliability & Resilience Pricing Rule (RM18-1)	Oct 11 Oct 20-25	FERC posts <i>Federal Register</i> version of Proposed Rule; denies comment date extension requests NEPOOL, ISO-NE, and more than 500 parties file comments
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XIII. Natural Gas Proceedings

32	Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)	Oct 17	Algonquin Gas Transmission, National Grid Electric Distribution Companies, and Sequent Energy Management and Tenaska Marketing Ventures file answers to the requests for clarification of <i>Algonquin Order Following Technical Conference</i>
36	Non-NE Pipeline Proceedings Millennium Pipeline Valley Lateral Project (CP16-17)	Oct 27 Oct 30	FERC issues Notice to Proceed, granting Millennium's request to begin construction of the Valley Lateral NY DEC files Request for Stay of Oct 27 Notice to Proceed

XIV. State Proceedings & Federal Legislative Proceedings

38	Massachusetts Emissions Allowance Auctions: Stakeholder Input on Auction Design Parameters	Oct 30	MassEEA & MassDEP hold stakeholder meeting; additional comment date Nov 15
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XV. Federal Courts

39	Demand Curve Changes (17-1110**)	Oct 11	Court grants FERC motion to extend the remaining dates in the briefing schedule; final briefs due Feb 18, 2018
40	NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)	Oct 27	Oral argument held before Judges Griffith, Sentelle, Randolph

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: November 2, 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”),¹ state regulatory commissions, and the Federal Courts and legislatures through November 1, 2017. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings
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- **NEPGA PER Complaint / Settlement Agreement (EL16-120; ER17-2153)**

The PER Settlement remains pending before the FERC. As previously reported, the Settling Parties² submitted, filed July 28, 2017,³ 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.⁴ Under the

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, or the ISO New England Inc. (“ISO” or “ISO-NE”) Transmission, Markets and Services Tariff (the “Tariff”).

² 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.

³ 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.

⁴ See *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017), *reh’g requested* (“*PER Complaint Order*”). The *PER Complaint Order* (i) granted in part NEPGA’s complaint 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. 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.” 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. 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.” 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

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 Adjustment⁵ 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. All parties in EL16-120 “are deemed to have intervened in Docket No. ER17-2153-000”.⁶

In comments filed August 16, the ISO neither supported nor objected to the proposed PER strike price methodology and requested that the Commission resolve how the Average Monthly PER will be calculated on and after June 1, 2018. NEPOOL, NEPGA, NESCOE, and Eversource filed comments supporting the PER Settlement. Comments by FERC Trial Staff indicated that it did not oppose the PER Settlement. In reply comments, NESCOE asked 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). NEPGA, NRG, HQUS, Dominion, and Verso jointly asked the FERC to approve the Settlement and order the ISO to make a compliance filing, but decline to address NESCOE’s request until some later date. Settlement Judge Young certified the uncontested settlement to the FERC on August 31, which remains pending before the Commission. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), Jamie Blackburn (202-218-3905; jblackburn@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On September 20, 2016, the FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint.⁷ As previously reported, EMCOS⁸ 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

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 Mar. 3, NESCOE and RESA answered NEPGA’s rehearing request. NEPGA answered those answers on Mar. 17. The FERC issued a tolling order on Mar. 16, 2017, affording it additional time to consider NEPGA’s request for rehearing, which remains pending.

⁵ 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).

⁶ 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.

⁷ *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*”).

⁸ “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.

considerations requiring submission of this Complaint: (1) the continuing decline of the market cost of equity capital, which makes TOs' 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."⁹ 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."¹⁰ 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.¹¹ 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."¹² 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, 2018.¹³ Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The FERC issued a tolling order on November 21, 2016, affording it additional time to consider the requests for rehearing, which remain pending.

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.

Since the last Report, the TOs filed, on October 17, their Cross-Answering Testimony. Complainants' Rebuttal Testimony and Exhibits are due November 15; updates to studies from prior testimony, November 21; final Joint Statement of Issues, November 28; final discovery requests, November 29; Prehearing Briefs, December 1; and answers to all outstanding discovery requests, December 5.

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Base ROE Complaints I-IV: TOs' Motion to Dismiss or Consolidate Complaints I-IV (EL16-64; EL14-86; EL13-33; EL11-66)**

On October 5, 2017, the TOs moved for dismissal of all four ROE complaints (captioned above) in light of the *Emera Maine*¹⁴ decision. Alternatively, the TOs asked that the FERC consolidate the four ROE

⁹ *Base ROE Complaint IV Order* at P 37.

¹⁰ *Id.* at P 38.

¹¹ 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.

¹² *Base ROE Complaint IV Order* at P 40.

¹³ *Id.* at P 44.

¹⁴ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*"). *Emera Maine* vacated the FERC's prior orders in the Base ROE Complaint I proceeding, and remanded the case for further proceedings consistent with its

complaints for decision and use expedited procedures to resolve them. The TOs stated that this motion was motivated in part by *Emera Maine*, but also by what they describe as the “enormous investment uncertainty” resulting from the various litigation proceedings. On October 20, Complainant-Aligned Parties and EMCOS submitted answers opposing TOs’ requests. These motions are pending before the FERC.

- **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”).¹⁵ 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”.¹⁶ 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.¹⁷ Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.¹⁸ The FERC-established refund date is January 4, 2016.¹⁹

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 re-scheduled to November 13, 2017. Judge Dring’s most recent status report was issued on October 5, 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).

- **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)²⁰ and third (EL14-86)²¹ complaints regarding the TOs’ 11.14% Base ROE, issued orders establishing trial-type, evidentiary

order. The Court agreed with both the TOs (that the FERC did not meet the Section 206 obligation to first find the existing rate unlawful before setting the new rate) and “Customers” (that the 10.57% ROE was not based on reasoned decision-making, and was a departure from past precedent of setting the ROE at the midpoint of the zone of reasonableness).

¹⁵ *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).

¹⁶ *Id.* at P 8.

¹⁷ *Id.* at P 11.

¹⁸ *Id.*

¹⁹ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

²⁰ 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%.

²¹ 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,

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;²² the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²³ 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.”²⁴ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²⁵ 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.²⁶ The Decision also lowered the ROE ceilings. Judge Sterner’s decision, if upheld by the FERC, would result in refunds totaling as much as \$100 million, largely concentrated in the EL13-33 refund period. Briefs on exceptions were filed by the TOs, Complainant-Aligned Parties (“CAPs”), EMCOS, and FERC Trial Staff on April 21, 2016; briefs opposing exceptions, on May 20, 2016. Judge Sterner’s findings and Initial Decision, and pleadings in response thereto, remain pending, and will be subject to challenge, before the FERC. The *2012/14 ROE Initial Decision* and its findings can be approved or rejected, in whole or in part.

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **Emera MPD OATT Attachment J Revision (ER18-210)**

On November 1, Emera filed changes to Attachment J of the MPD OATT to permit adjustments to formula rate inputs (historical load, revenue, sales data) to reflect “known and measurable” anticipated changes, subject to a true-up. Emera stated that, absent an ability to adjust its formula rate calculations to account for material losses of load, like that of Houlton Water Company expected to occur early next year, Emera Maine will suffer a significant under-recovery in its transmission revenue requirement. Comments on this filing are due on or before November 22. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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.

²² *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).

²³ *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).

²⁴ *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).

²⁵ *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).

²⁶ *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*”).

- **2018 NESCOE Budget (ER18-85)**

This proceeding was initiated by the ISO’s October 17 filing of the budget for funding NESCOE’s 2018 operations. The 2018 Operating Expense Budget for NESCOE is \$2,282,317. The amount to be recovered reflects true-ups from 2016 overcollections of \$752,672. Accordingly, if accepted, the NESCOE budget will result in a charge of \$0.00648 per kilowatt of Monthly Network Load. The 2018 NESCOE budget was supported by the Participants Committee at its October 13, 2017 meeting. Comments and any interventions are due on or before November 7. Thus far, NEPOOL filed comments supporting NESCOE’s 2018 Budget, and doc-less interventions were filed by NESCOE and National Grid. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2018 ISO-NE Administrative Costs and Capital Budgets (ER18-77)**

On October 16, the ISO filed for recovery of its 2018 administrative costs (the “2018 Revenue Requirement”) and submitted its capital budget and supporting materials for calendar year 2018 (“2018 Capital Budget”, and together with the 2018 Revenue Requirement, the “2018 ISO Budgets”). The 2018 ISO Budgets were filed together pursuant to the Settlement Agreement entered into to resolve challenges to the 2013 ISO Budgets. In the October 16 filing, the ISO reported that the 2018 Revenue Requirement, after true-up for 2016, is \$195.5 million. Of that total, the ISO’s administrative costs (i.e., the 2018 Core Operating Budget) comprise \$164.2 million; depreciation and amortization of regulatory assets, \$31 million; and 2016 true-up, that increases the 2018 Revenue Requirement by \$400,000 as a result of a 2016 undercollection.

The ISO further reported that the 2018 Capital Budget, like the 2017 Capital Budget, is \$28 million and is comprised of the following (with 2018 projected costs and target completion dates, if available, in parentheses):

▶ Non-Project Capital Expenditures	(\$4 million)	▶ 2018 Issue Resolution Phase I (Jun 2018)	(\$800,000)
▶ CASPR (Dec 2018)	(\$3 million)	▶ 2018 Issue Resolution Phase II (Dec 2018)	(\$700,000)
▶ Other Emerging Work	(\$2.2 million)	▶ FCM PFP (Jun 2018)	(\$600,000)
▶ Price Responsive Demand (Q2 2018)	(\$2.1 million)	▶ Enterprise Application Integration (Sep 2018)	(\$600,000)
▶ FCA13 (Jun 2019)	(\$2 million)	▶ Capitalized Interest	(\$500,000)
▶ Storage Device Alternatives (Dec 2018)	(\$1.8 million)	▶ FERC Form 1, 3-Q, 714 (Dec 2018)	(\$500,000)
▶ nGem Software Development (Jun 2019)	(\$1.8 million)	▶ Balance of Planning Period (“BoPP”) FA Project (Dec 2018)	(\$400,000)
▶ Operational Load Forecast: PV Integration (Dec 2018)	(\$1 million)	▶ IMM Data Analysis Phase I (Apr 2018)	(\$400,000)
▶ Energy Manag. Platform 3.2 Upgrade and Customs Reduction (Dec 2018)	(\$1 million)	▶ FCM Improvements (Aug 2017)	(\$300,000)
▶ Identity and Access Management (Sep 2018)	(\$800,000)	▶ Customer Contact Center Solution (Feb 2018)	(\$200,000)
		▶ CIMNET Simultaneous Feasibility Test w/ Data Transfer Enhancements (Dec 2018)	(\$200,000)

The 2018 ISO Budgets were supported by the Participants Committee at its October 13, 2017 meeting. Comments on this filing are due November 6, 2017. NEPOOL filed comments supporting the 2018 Budgets on October 26. Doc-less interventions have thus far been filed by NESCOE and National Grid. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

On October 19, the FERC accepted the ISO's July 19 filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted in connection with the March 24, 2017 FCA12 Existing Capacity Retirement Deadline.²⁷ As previously reported, the ISO reported that 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 determinations regarding those 20 bids was described in a confidentially filed version of the filing as required under §13.8.1(a) of Market Rule 1. The FERC found that the filing met the Market Rule requirements under which the IMM had to determine whether the bids were consistent with: (1) the net present value of the resource's expected cash flows; (2) reasonable expectations about the resource's Capacity Performance Payments; and (3) the resource's reasonable opportunity costs.²⁸

The *FCA12 De-List Bids Order* also granted a waiver of the FERC procedural requirement to provide access to privileged material in filing to intervenors who execute a non-disclosure agreement. Public Citizen had filed a protest on the basis that, absent such access, it would be unable to determine the just and reasonableness of the De-List Bids, and because it was not a Market Participant, releasing privileged information to it would not raise a concern that the information could be used to gain a competitive advantage (a basis upon which previous requests for access to confidential FCA-related information had been denied). The FERC disagreed that Public Citizen's status as a non-Market Participant rendered its previous determinations inapplicable.²⁹ The FERC reiterated that "the potential for harm to the FCM and to New England customers from any disclosure of this protected information could be significant." The FERC added, as it had in the *FCA8 Order*, that some resource retirement information is already available publicly and objections regarding the justness and reasonableness of the FCA12 auction results can be raised when the results of that auction are filed.³⁰

The FCA12 De-List Bids Filing was accepted effective as of September 18, 2017, as requested. Unless the *FCA12 De-List Bids Order* is challenged, with any challenges due on or before November 20, 2017, this proceeding will be concluded. If you have any questions, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On October 6, 2017, the FERC rejected the TOs' June 5, 2017 filing in this proceeding,³¹ which was designed to reinstate TOs' transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*³² decision. The FERC required the TOs to continue collecting their ROEs currently on file, subject to a future FERC order.³³ The FERC explained that it will "order such refunds or surcharges as necessary to replace the rates set in the now-vacated order with the rates that the Commission ultimately determines to be just and reasonable in its order on remand" so as to "put the parties in the position that they would have been in but for [its] error." For the time being, so as not to "significantly complicate the

²⁷ *ISO New England Inc.*, 161 FERC ¶ 61,061 (Oct. 19, 2017) ("*FCA12 De-List Bids Order*").

²⁸ *Id.* at P 15.

²⁹ *See ISO New England Inc.*, 148 FERC ¶ 61,137, at P 21 (Aug. 21, 2014) ("*FCA8 Order*"), 148 FERC ¶ 61,137 at P 19 ("We agree with ISO-NE that public release of the confidential information could result in serious adverse impacts to future Forward Capacity Auctions, and harm New England market participants and consumers.") and P 21 ("we find persuasive arguments . . . that revealing resource specific bid data would result in such harm to the Forward Capacity Market that it cannot be provided to parties, even through a non-disclosure agreement").

³⁰ *FCA12 De-List Bids Order* at P 17.

³¹ *ISO New England Inc. et al.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

³² *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

³³ *Order Rejecting Filing* at P 1.

process of putting into effect whatever ROEs the Commission establishes on remand” or create “unnecessary and detrimental variability in rates,” the FERC has temporarily left in place the ROEs set in *Opinion 531-A*, pending an order on remand.³⁴ If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **Waiver Request: 2017/18 Winter Reliability Program Participation Notice Deadline (Braintree) (EL18-5)**

On October 5, 2017, Braintree requested a limited waiver of the Notice Deadline for Participation in the 2017/18 Winter Reliability Program. The Tariff deadline (set forth in Tariff Section III.K.1(e)) was Sunday, October 1. Braintree submitted its notice before the start of the Business Day on Monday, October 2 (under the mistaken belief that the deadline would have been extended to the next Business Day given that the October 1 deadline fell on a weekend day), but its notice was rejected. Comments on Braintree’s waiver request were due on or before October 26; none were filed. NEPOOL submitted a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Waiver Request: DR Auditing Requirements (CPower) (ER18-185)**

On October 30, 2017, Enerwise Global Technologies Inc. d/b/a CPower Corp. (“CPower”) requested a one-time waiver of Tariff Sections III.13.6.1.5.4.1(c) and III.13.6.1.5.4.5 to allow the ISO to use July 26 Real-Time Demand Response (“RTDR”) resource audit results as CPower’s July 2017 Demand Reduction Value, rather than Jul 19 results which, because of a “communications software anomaly”, produced “zero” reduction performance results. The communication software anomaly can be traced to an earlier July 12 outage at CPower’s leased data center, following which CPower’s Remote Terminal Unit (“RTU”) communications service was not fully and properly restored, preventing a July 19, 2017 dispatch signal sent as part of an audit to not be received, ultimately producing “zero” reduction performance. Following full restoration of the RTU service, a subsequent audit was requested and performed on July 26. The requested waiver would permit the July 26 Audit results to replace the zero July 19 Audit results as the Demand Reduction Value (and mitigate the financial impacts of the July 19 results). Comments on CPower’s waiver request are due on or before November 20. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Small Generator Modeling Options Change (ER18-122)**

On October 20, 2017, the ISO and NEPOOL jointly filed changes to provide an exception to the electronic dispatchability requirements for small generators that are currently modeled in the ISO’s network model but are not capable of electronic dispatch (the “Small Generator Modeling Options Change”). A December 20, 2017 effective date was requested. The Small Generator Modeling Options Change was supported unanimously by the Participants Committee at its September 15 meeting (Consent Agenda Item #2). Comments on this filing are due on or before November 10. Thus far, doc-less interventions were filed by ConEd and National Grid. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **NCPC Calculation Changes for Ramp Constrained Down Resources (ER17-2569)**

As previously reported, the ISO and NEPOOL jointly filed on September 29, 2017 changes to the cost-related eligible quantity NCPC calculation in order to avoid providing financial incentives for resources to deviate from dispatch instructions. A December 1, 2017 effective date was requested. The NCPC Calculation Changes were supported unanimously by the Participants Committee at the September 15 meeting (Consent Agenda Item #1). Comments on this filing were due on or before October 22; none were filed. Doc-less interventions were filed by Dominion, Eversource, National Grid, and NRG/GenOn. This matter is pending before the FERC. If you

³⁴ *Id.* at P 36.

have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On October 18, 2017, the FERC accepted a final package of Tariff revisions required to implement the full integration of price-responsive demand (“PRD”) into the New England Markets (“PRD Revisions”). The PRD Revisions were accepted effective as of June 1, 2018, as requested. Unless the October 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Waiver Request: Dispatchable Resources RTU Requirement (McCallum Enterprises) (ER17-1615)**

The May 9 request of McCallum Enterprises, owner of the 7 MW Derby Hydroelectric Project in Shelton and Derby, Connecticut, 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”), remains pending. McCallum asserts that, based on the specific facts related to the Derby Project, that it is both unreasonable and unnecessary for it to be required to incur the expenses associated with an RTU and 24x7x365 staff monitoring. McCallum asks that it be allowed to continue to utilize a telephone-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. On October 11, McCallum requested the FERC delay action on its waiver request for 90 days so that it might have time to “provide FERC with relevant information required for the Commission’s consideration regarding McCallum’s request.” As noted, 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).

- **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).

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

On October 6, the FERC accepted the updated FCM Cost of New Entry (“CONE”), Net CONE and Offer Review Trigger Price (“ORTP”) values filed by the ISO in January.³⁵ In accepting the changes, the FERC disagreed with the challenges to the ISO’s choice of reference technology (gas-fired simple cycle combustion-turbine) and on-shore wind capacity factor (32%). The changes were accepted effective as of March 15, 2017, as requested. Unless the *CONE/ORTP Updates Order* is challenged, with any challenges due on or before November 6, 2017, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On October 25, the FERC dismissed as moot³⁶ Indicated NYTOs request for rehearing of the FERC’s *FCM Enhancements Order*.³⁷ As previously reported, the FERC accepted, effective as of October 19, 2016, changes to the Tariff (the “FCM Enhancements”) that increased Market Participant opportunities to enter into reconfiguration auctions and bilateral contracts for the exchange of Capacity Supply Obligations (“CSOs”).³⁸ The FERC accepted the FCM Enhancements over the objection of the NYTOs and NYISO, who asked for a delay in the implementation of the FCM Enhancements so that New York could have time to develop market rule changes to address potential market impacts that could arise under NYISO’s then current market rules given implementation of the FCM Enhancements.³⁹ Rather than defer the effective date of what it found to be an otherwise just and reasonable proposal, however, the FERC instead encouraged NYISO stakeholders to timely complete discussions underway to address the identified flaw in the New York rules. NYISO subsequently filed rules to address the flaw,⁴⁰ described in prior reports, which have been accepted and implemented.⁴¹ Unless the *FCM Enhancements Rehearing Order* is challenged on appeal in Federal Court,

³⁵ *ISO New England Inc.*, 161 FERC ¶ 61, 035 (Oct. 6, 2017) (“*CONE/ORTP Updates Order*”).

³⁶ *ISO New England Inc. and New England Power Pool Participants Comm. and NY Indep. Sys. Op., Inc.*, 161 FERC ¶ 61,100 (Oct. 25, 2017) (“*FCM Enhancements Rehearing Order*”).

³⁷ *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 dismissed*, 161 FERC ¶ 61,100 (Oct. 25, 2017).

³⁸ The FCM Enhancements (i) modified 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) provided Import Capacity Resources backed by one or more External Resources the opportunity to provide capacity beginning one or two years after participating in their first FCA (previously available only to generators and demand response); and (iii) established 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 also included several smaller improvements, 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.

³⁹ Under New York’s then-existing capacity market design, a generator exporting capacity from a NYISO locality would be treated in the NYISO capacity market auction as though it no longer existed, which could artificially increase capacity market clearing prices.

⁴⁰ To correct the identified pricing inefficiency, NYISO revised its rules to allow capacity market prices to reflect the impact of capacity exports from certain Localities through the use of a “Locality Exchange Factor.”

⁴¹ *NY Indep. Sys. Op., Inc.*, 158 FERC ¶ 61,064 (Jan. 27, 2017), *reh’g denied and clarif. granted in part*, 161 FERC ¶ 61,101 (Oct. 25, 2017).

with any such challenge due on or before December 26, 2017, this matter will be concluded. If you have any questions concerning these proceedings, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On October 30, the FERC denied⁴² NEGPA, NextEra and Exelon’s (“Petitioners”) request for rehearing and clarification of the *Resource Retirement Reforms Order*.⁴³ As previously reported, the *Retirement Reforms Order* conditionally accepted, effective March 1, 2016, changes to the FCM rules for resource retirements proposed by the ISO and its Internal Market Monitor (“IMM”) (the “ISO/IMM Proposal”). The FERC conditioned its acceptance of the ISO/IMM Proposal on the filing of Tariff revisions “establishing a materiality threshold for determining whether or not a particular proxy de-list bid will replace a Retirement Bid in an FCA,”⁴⁴ which were filed with and later accepted by the FERC.⁴⁵ Petitioners jointly requested rehearing of the *Resource Retirement Reforms Order*. In denying rehearing, the FERC explained, as it had in the *Resource Retirement Reforms Order*, that the “tariff changes add steps to the bid review process but do not fundamentally alter the process in a manner that infringes on Petitioners’ rights to file rates under section 205 of the FPA.”⁴⁶ The FERC rejected Petitioners’ “implicit contention that [the ISO] does not provide a jurisdictional service and that the FCA is the suppliers’, instead of [the ISO’s], rate.”⁴⁷ The FERC disagreed that its *Resource Retirement Reforms Order* described the IMM as possessing “unfettered license to review all bids” nor that the Tariff changes oblige the FERC to accept as just and reasonable an IMM-mitigated bid in lieu of a more accurate supplier-initiated bid.⁴⁸ The FERC disagreed that the two-run mechanism “unduly discriminates against suppliers who clear in the first and second round runs of the Forward Capacity Auction but are paid only the first round’s clearing price”, finding the mechanism “necessary to ensure that non-retiring suppliers themselves are not unduly discriminated against due to a retiring supplier’s exercise of market power.”⁴⁹ In addition, the FERC explained that it was persuaded of the need and reasonableness of addressing possible price distortion despite the risk of lower capacity prices resulting from possible over-mitigation.⁵⁰ Unless the *Resource Retirement Reforms Rehearing Order* is challenged on appeal in Federal Court, with any such challenge due on or before December 29, 2017, this matter will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁴² *ISO New England Inc.*, 161 FERC ¶ 61,115 (Oct. 30, 2017), *reh’g and clarif. denied* (“*Resource Retirement Reforms Rehearing Order*”).

⁴³ *ISO New England Inc.*, 155 FERC ¶ 61,029 (Apr. 12, 2016) (“*Resource Retirement Reforms Order*”), *reh’g and clarif. denied*, 161 FERC ¶ 61,115 (Oct. 30, 2017). As previously reported, the ISO/IMM Proposal requires (i) that capacity suppliers with existing resources to submit a price for the retirement of a resource (to replace the existing Non-Price Retirement Request process), (ii) the use of a Proxy De-List Bid, and (iii) notice of the potential retirement and proposed retirement price to be submitted prior to the commencement of an FCA’s qualification process for new resources. The ISO/IMM Proposal was considered but not supported by the Participants Committee at its Dec. 4, 2015 meeting.

⁴⁴ *Id.* at P 62.

⁴⁵ *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

⁴⁶ *Resource Retirement Reforms Rehearing Order* at P 15.

⁴⁷ *Id.* at P 17.

⁴⁸ *Id.* at P 18.

⁴⁹ *Id.* at P 22.

⁵⁰ *Id.* at P 25.

- **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.⁵¹ 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.⁵² 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).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Force Majeure Clarifications (ER17-2533)**

On October 24, the FERC accepted clarifications to the ISO Tariff's *Force Majeure* provisions jointly filed by the ISO and NEPOOL. The clarifications were accepted effective as of November 21, 2017, as requested. Unless the October 24 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).

- **Attachment K Revisions (Updates to Appendix 3 List of QTPS) (ER17-2514)**

Revisions to Appendix 3 to Attachment K of the OATT jointly filed by the ISO and NEPOOL on September 20 remain pending. As previously reported, the revisions update the list of Qualified Transmission Project Sponsors ("QTPS") to add: Belmont, Holyoke, CTMEEC, Grid America Holdings, Hudson, Middleborough, Norwood, and Taunton. A November 20, 2017 effective date was requested. The Attachment K Revisions were supported by the Participants Committee at its September 15 meeting (Consent Agenda Item #9). Comments on this filing were due on or before October 11; none were filed. Doc-less interventions were filed by NRG/GenOn and National Grid. As noted, this matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On October 31, the FERC accepted, without change or condition, the "Clustering Revisions" (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.⁵³ The Clustering Revisions were accepted effective as of November 1, 2017, as requested. Unless the

⁵¹ *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).

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

⁵³ *ISO New England Inc.*, 161 FERC ¶ 61,123 (Oct. 31, 2017) ("*Clustering Revisions Order*").

Clustering Revisions Order is challenged, with any changes due on or before November 30, 2017, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Eversource Reorganization Tariff Changes (ER18-132)**

On October 23, 2017, Eversource filed tariff revisions to the following portions of Section II of the ISO Tariff to reflect the new references to NSTAR Electric (East) and NSTAR Electric (West), which will be used to refer to the transmission services and rates previously provided separately by NSTAR Electric and WMECO, that will continue to be provided as if NSTAR Electric and WMECO were separate legal entities, until such future time as a filing can be made to allow for one set of books and records and to adjust rates as may be necessary: Schedules 21-NSTAR and 21-ES, Schedules 20A-NSTAR and 20A-ES, and the Attachment F and Schedule 1 Implementation Rules. Comments on this filing are due on or before November 13. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **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,⁵⁴ 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.⁵⁵ 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.⁵⁶ The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures.⁵⁷ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁵⁸

⁵⁴ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) ("*June 2 Order*").

⁵⁵ *Id.* at P 24.

⁵⁶ *Id.* at PP 25-26.

⁵⁷ *Id.* at P 27.

⁵⁸ *Id.* at P 21; Ordering Paragraph (B).

Settlement Judge Procedures. ALJ John Dring is the settlement judge for these proceedings. There have been four settlement conferences: June 29, October 25, and December 1, 2016, and September 6, 2017. In a September 21 status report, Judge Dring indicated that there is “sufficient reason to continue settlement negotiations,” which are on-going. On November 1, Judge Dring scheduled a settlement conference for November 9.

Hearing Procedures? On October 11, Emera Maine requested that the Chief Judge establish an expedited hearing under specific terms and conditions set forth in Exhibit A to its October 11 motion (“Expedited Hearing”). The October 11 motion also asked that the answer period to its request be shortened to five days and that an order ruling on the motion be issued no later than October 18, 2017. On October 13, the Maine Customer Group, MPUC, ReEnergy Biomass Operations LLC, and FERC Trial Staff (collectively, “Intervenors and FERC Trial Staff”), filed an answer opposing the October 11 motion’s request for a shortened answer period. On October 13, Chief Judge Cintron issued an order (“October 13 Order”) which denied the request to shorten the answer period and identified additional questions that all participants in the proceeding were permitted the opportunity to address in their answers to the October 11 motion. Responses to the October 13 Order were filed by Emera Maine, Maine PUC/OPA, Maine Customer Group, and FERC Trial Staff and are pending before Chief Judge Cintron. As noted above, a settlement conference has been scheduled for November 9.

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

VII. NEPOOL Agreement/Participants Agreement Amendments

- **130th Agreement/PA Amendment No. 10 (Provisional Member Clean-Up Amendments) (ER17-2522)**

On October 24, 2017, the FERC accepted changes reflecting (i) several clean-up changes needed to conform the NEPOOL and Participants Agreements to the current Provisional Member arrangements (the “Clean-Up Amendments”); and (ii) an amendment to the NEPOOL Agreement to change the Data-Only Participant application fee so that it is the same amount as the annual fee assessed to such Participants (“Data-Only Participant Application Fee Amendment”). The changes were accepted effective as of September 20, 2017, as requested. Unless the October 24 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).

VIII. Regional Reports

- **Capital Projects Report - 2017 Q3 (ER18-81)**

On October 16, the ISO filed its Capital Projects Report and Unamortized Cost Schedule covering the third quarter (“Q3”) 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) Customer Contact Center Solution (\$694,600); and (ii) Regulation Sub-Hourly Settlements (\$440,000). Projects with a significant changes were (i) BoPP FAP (2017 Budget decrease of \$387,700, reallocation to 2018, with total project costs remaining at \$658,500); (ii) Transmart Technical Architecture Update (2017 Budget decrease of \$372,700 with a total project cost of \$50,000); (iii) IMM Data Analysis Phase I (2017 Budget decrease of \$126,900, for total project costs of \$1.16 million); and (iv) IT Asset Workflow (2017 Budget increase of \$150,000, for a total project cost of \$944,500). Comments on this filing are due on or before November 6. NEPOOL filed comments on October 28 supporting the Q3 Report. A doc-less intervention has been filed by National Grid. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **LFTR Implementation: 36th Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the thirty-sixth of its Quarterly Status Reports regarding LFTR implementation on October 16, 2017. The ISO again reported its plan to focus on implementation of the monthly reconfiguration auctions

(accepted in ER12-2122). The ISO reported on its efforts to develop a financial assurance design for the monthly reconfiguration auctions, a revised version of which will be considered at the November 3 meeting (Agenda Item #9) and re-filed thereafter. The ISO reported that it will subsequently renew efforts to address the financial assurance issues associated with LFTRs. These status reports are not noticed for public comment and no comments have been filed.

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

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).

- **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*⁵⁹ and *531-B*⁶⁰ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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).

IX. Membership Filings

- **November 2017 Membership Filing (ER18-186)**

On October 31, NEPOOL requested that the FERC accept (i) the membership of Yellow Jacket Energy, LLC (Related Person to Bloom Energy (AR Sector)); and (ii) the termination of the Participant status of BNP Paribas Energy Trading GP. Comments on the November Membership filing are due on or before November 21.

- **October 2017 Membership Filing (ER17-2582)**

On October 31, the FERC accepted (i) the memberships of: American Power & Gas of MA (Supplier Sector); Celtic Power Analytics (Supplier Sector); Great American Power (Supplier Sector); IPKeys Power Partners (AR LR Small Group Seat); Nautilus Hydro (Related Person to Pawtucket Power Holdings (Generation Sector Group Seat)); Nylon Corporation of America (MPEU, End User Sector); and Viridity Energy Solutions (AR LR Small Group Seat); and (ii) the termination of the Participant status of McGill-St. Laurent. Unless the October 31 order is challenged, this proceeding will be concluded.

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

On October 19, the FERC accepted (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). Unless the October 19 order is challenged, this proceeding will be concluded.

⁵⁹ *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁶⁰ *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

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

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

- **FERC Staff Report on CIP v5 Reliability Standards Audits (not docketed)**

On October 6, 2017, FERC Staff issued a report offering recommendations to help those subject to the Critical Infrastructure Protection (“CIP”) Reliability Standards to assess their risk, compliance with those standards and their overall cyber security. The report describes the lessons learned from FERC-led audits completed in fiscal years 2016 and 2017, including insights into the cyber security and CIP compliance issues encountered by the audited entities. Among staff’s recommendations:

- Ensure that all shared facility categorizations are coordinated between the owners of the shared facility through clearly defined and documented responsibilities for CIP reliability standards compliance;
- Ensure that policies and testing procedures for all electronic communications protocols are afforded the same rigor; and
- For each remote cyber asset conducting Interactive Remote Access, disable all other network access outside of the connection to the bulk electric system cyber system that is being remotely accessed, unless there is a documented business or operational need.

- **Revised Reliability Standards: CIP-005-6, CIP-010-3, CIP-013-1 (RM17-13)**

On September 26, 2017, NERC filed revised CIP Reliability Standards -- CIP-005-6 (Cyber Security – Electronic Security Perimeter(s)), CIP-010-3 (Cyber Security – Configuration Change Management and Vulnerability Assessments) and CIP-013-1 (Cyber Security – Supply Chain Risk Management) (together, the “Supply Chain Cybersecurity Risk Management Changes”). In addition, the FERC proposed to approve the associated VRFs, VSLs, implementation plans, effective dates, and retirements of the applicable currently-effective versions of the Standards immediately prior to the effective dates of the new Standards. The Supply Chain Cybersecurity Risk Management Changes are designed to further mitigate cybersecurity risks associated with the supply chain for BES Cyber Systems, consistent with *Order 829*. NERC proposes that the Supply Chain Cybersecurity Risk Management Changes become effective on the first day of the first calendar quarter that is 18 calendar months after the effective date of the Commission’s order approving the Changes. As of the date of this Report, the Supply Chain Cybersecurity Risk Management Changes have not been noticed for public comment.

- **NOPR: Revised Reliability Standards: EOP-004-4, EOP-005-3, EOP-006-3, EOP-008-2 (RM17-12)**

On September 20, 2017, the FERC issued a NOPR proposing to approve Emergency Preparedness and Operations (“EOP”) Reliability Standards EOP-004-4 (Event Reporting), EOP-005-3 (System Restoration from Blackstart Resources), EOP-006-3 (System Restoration Coordination), and EOP-008-2 (Loss of Control Center Functionality) (together, the “EOP Changes”).⁶¹ In addition, the FERC proposed to approve the associated VRFs, VSLs, implementation plans, effective dates, and retirements of the currently-effective versions of the Standards immediately prior to the effective dates of the new Standards. The EOP Changes are designed to incorporate several recommendations resulting from a periodic review of the Standards, changes to eliminate inaccurate or duplicate reporting of events identified in the Department of Energy’s (“DOE”) Electric Emergency Incident and Disturbance Report (OE-417) and Attachment 1 to EOP-004, and to improve the Standards by enhancing the requirements for emergency operations, including the communication and coordination amongst reporting entities. Comments on the *EOP NOPR* are due on or before November 27, 2017.⁶²

⁶¹ *Emergency Preparedness and Ops. Rel. Standards*, 160 FERC ¶ 61,072 (Sep. 20, 2017) (“*EOP NOPR*”).

⁶² The *EOP NOPR* was published in the Fed. Reg. on Sep. 26, 2017 (Vol. 82, No. 185) pp. 44,746-44,750.

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

On October 19, 2017 the FERC issued a NOPR proposing to approve changes to Reliability Standard CIP-003 (Cyber Security - Security Management Controls), its associated implementation plan, VRFs, VSLs, and revised NERC 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” (“CIP-003 Changes”).⁶³ 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 (e.g., thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from 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. In addition, the FERC proposes to direct NERC to develop certain modifications to the NERC Reliability Standards to provide clear, objective criteria for electronic access controls for low impact BES Cyber Systems; and address the need to mitigate the risk of malicious code that could result from third-party transient electronic devices. 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. Comments on the *CIP-003-7 NOPR* are due on or before December 26, 2017.⁶⁴

- **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.

- **GMD Work Plan (RM15-11)**

On October 19, the FERC accepted NERC’s May 30, 2017 geomagnetic disturbance (“GMD”) research work plan (“GMD Work Plan”).⁶⁵ The GMD Work Plan, filed in accordance with *Order 830*,⁶⁶ identified nine GMD-related research areas: (1) further analyze spatial averaging used in the benchmark GMD event definition; (2) further analyze latitude scaling; (3) improve earth conductivity models for GIC studies; (4) study GIC field orientation for transformer thermal impact assessments; (5) further analyze 75 amperes per phase criterion used for transformer thermal impact assessments; (6) Section 1600 data request; (7) geoelectric field evaluation and calculation tool; (8) improve harmonics analysis capability; and (9) harmonic impact studies. In accepting the GMD Work Plan, the FERC (1) directed NERC to file for FERC review a final, or otherwise updated, GMD Work Plan within six months of the date of the order and in the interim continue to communicate with FERC staff on NERC’s progress; (2) reiterated the directive in *Order 830* that the GMD Work Plan should evaluate the

⁶³ *Rev. Critical Infrastructure Protection Rel. Standard CIP-003-7 – Cyber Security – Security Management Controls*, 161 FERC ¶ 61,047 (Oct. 19, 2017) (“*CIP-003-7 NOPR*”).

⁶⁴ The *CIP-007-3 NOPR* was published in the Fed. Reg. on Oct. 26, 2017 (Vol. 82, No. 206) pp. 49,541-49,549.

⁶⁵ *Rel. Standard for Trans. Sys. Planned Performance for Geomagnetic Disturbance Events*, 161 FERC ¶ 61,048 (Oct. 19, 2017).

⁶⁶ *Rel. Standard for Trans. Sys. Planned Performance for Geomagnetic Disturbance Events*, Order No. 830, 156 FERC ¶ 61,215 (2016), *reh’g denied*, Order No. 830-A, 158 FERC ¶ 61,041 (2017) (“*Order 830*”).

present reliance on single station readings for the purpose of geomagnetic scaling; (3) as requested by NERC, provided guidance on what research tasks should receive priority in the GMD Work Plan; and (4) addressed other issues, including those raised in the comments.

- **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, NOPR⁶⁷ 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 Standards⁶⁸ 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, 2014,⁶⁹ 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 November 1, 2017, the FERC accepted NERC's proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2018.⁷⁰ FERC regulations⁷¹ 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 reported 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 statutory funding will be \$15.11 million (a U.S. assessment per kWh (2016 NEL) of \$0.0000450); its non-statutory functions funding, \$1.07 million. Unless the November 1 order is challenged, this proceeding will be concluded.

- **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

⁶⁷ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) ("*ATC NOPR*").

⁶⁸ 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.

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

⁷⁰ *N. Amer. Rel. Corp.*, 161 FERC ¶ 61,131 (Nov. 1, 2017)

⁷¹ 18 CFR § 39.4(b) (2014).

(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. On October 17, NERC answered System Operators’ comments. This matter remains pending before the FERC.

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

NERC’s February 22, 2017 compliance filing reviewing the progress of its risk-based Compliance Monitoring and Enforcement Program (“CMEP”) program remains pending. 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 (“FFT”). Comments on this filing were submitted by the ISO/RTO Council (“IRC”), AEP, EEI, 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 remains pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: PSNH/Granite Shore (EC18-12)**

On October 27, PSNH and Granite Shore Power LLC (“Granite Shore”)⁷² requested authorization for a proposed transaction pursuant to which Granite Shore will acquire PSNH’s portfolio of generation assets (the “Granite Shore Transaction”).⁷³ Applicants requested an order authorizing the Granite Shore Transaction on or before December 22, 2017. Comments on the application are due on or before December 11, 2017.

- **203 Application: Calpine/ECP (EC17-182)**

On September 15, Calpine Corporation (“Calpine”) requested authorization for a proposed transaction pursuant to which it will become an indirect, wholly-controlled subsidiary of ECP Control Co, LLC (“ECP”) (the “Calpine/ECP Transaction”). Applicants requested an order authorizing the Calpine/ECP Transaction on or before January 15, 2018. Comments on the application are due on or before November 14, 2017. Thus far a doc-less intervention has been filed by Public Citizen.

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

On October 31, the FERC approved certain conversions of GenOn notes into common equity of, and corporate structure changes that will result in, a “reorganized GenOn”.⁷⁴ 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 likely not be a subsidiary of, and GenOn Energy Management will thus likely no longer be a Related Person to, NRG. Among other conditions, the order required notice within 10 days of the consummation of the transaction. Subject to that notice, this proceeding will be concluded.

⁷² Granite Shore is a Related Person to Supplier Sector members Castleton Commodities Merchant Trading LP, Rensselaer Generating LLC, and Roseton Generating LLC.

⁷³ PSNH’s generation portfolio (1,130 MW) includes the following facilities: Merrimack, Schiller, Newington, White Lake, and Lost Nation.

⁷⁴ *GenOn Energy Inc., et al.*, 161 FERC ¶ 62,063 (Oct. 31, 2017).

- **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").⁷⁵ 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: TerraForm /Brookfield (EC17-122)**

As authorized by the FERC on August 22,⁷⁶ Brookfield, through its indirectly, partially-owned affiliate Orion US Holdings I, LP (together, Brookfield), acquired on October 16, 2017 an indirect ownership interest in TerraForm and its affiliates, including each of the TerraForm companies that are NEPOOL Participants. Brookfield reported that the transaction was consummated in an October 25 notice, concluding this proceeding.

- **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.⁷⁷ Among other conditions, the order required notice within 10 days of the consummation of the transaction. On October 6, 2017, the Applicants notified the FERC that the transaction has been consummated and all but one of the conditions to be satisfied subsequent to the transaction (issuance of a Presidential Permit) have been satisfied. Applicants committed to submit a subsequent notice when the Presidential Permit has been received. For purposes of this Report, reporting on this proceeding has now 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.⁷⁸ 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: WMECO /NSTAR 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.⁷⁹ 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. Since the last Report, Eversource submitted an informational filing notifying the FERC that, while there will be no rate changes filed to accomplish the merger, NSTAR will temporarily keep separate books and records for transmission service and ratemaking purposes, and will continue to provide transmission service and charge customers rates as if the transmission assets were owned by legally separate entities, until it makes an application with the FERC to consolidate rates. Until that time, NSTAR Electric will use "NSTAR Electric (East)" and

⁷⁵ *Public Service Co. of NH and FPL Energy Wyman IV LLC*, 160 FERC ¶ 62,186 (Aug. 28, 2017).

⁷⁶ *Bishop Hill Energy LLC et al.*, 160 FERC ¶ 62,162 (Aug. 22, 2017).

⁷⁷ *Green Mountain Power Corp. and Vermont Transco, LLC*, 159 FERC ¶ 62,191 (May 19, 2017).

⁷⁸ *Green Mountain Power Corp.*, 159 FERC ¶ 62,144 (May 9, 2017).

⁷⁹ *NSTAR Elec. Co. and W. Mass. Elec. Co.*, 158 FERC ¶ 62,155 (Mar. 2, 2017) ("*NSTAR/WMECO Merger Order*").

“NSTAR Electric (West)” to refer to the transmission services and rates previously provided separately by NSTAR Electric and WMECO, respectively.

- **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 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 NYPSC. In each case, EPSA reiterated its position that unless addressed, the ZEC programs will adversely impact the respective markets. Answers to the EPSA motions to lodge were filed by Exelon and the NYPSC in the NYISO Proceeding and by Exelon, First Energy, the Load Group, NRECA, Talen Companies, and the Illinois Commerce Commission in the PJM Proceeding. These proceedings remain pending before the FERC. If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **D&E Agreement: Pootatuck Ring Bus Expansion (ER18-111)**

On October 29, The United Illuminating Company (“UI”) filed a Design and Engineering Agreement (“D&E Agreement”) between UI and Eversource for the planned Pootatuck Substation Ring Bus Expansion. The “Ring Bus Expansion” (relocation of the existing line structure and reconfiguration of the Pootatuck Substation into a four-breaker “ring” bus expansion) is designed to address conditions created under certain contingencies in which UI transmission loads could be subject to overloads or voltage collapse conditions. An October 20, 2017 effective date was requested. Comments on this filing are due on or before November 9. Thus far, a doc-less intervention was filed by Eversource. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA: New England Power/Wheelabrator Millbury (ER17-2557)**

On September 28, 2017, New England Power Company (“NEP”) filed a two-party LGIA with Wheelabrator Millbury to replace and expiring agreement governing and to provide for continuing interconnection service to Wheelabrator’s 45.24 MW generation facility located in Millbury, Massachusetts. The previous interconnection agreement expired on September 25, 2017. New England Power states that the LGIA is consistent with the ISO Tariff’s Schedule 22 *pro forma* LGIA, other than changes to reflect the 2-party nature of the Agreement. A September 26, 2017 effective date was requested. Comments on this filing were due on or before October 19, 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; 860-275-0533).

- **TSA Cancellation: NSTAR/Belmont (ER17-2539)**

On October 20, the FERC accepted NSTAR’s September 22 notice of cancellation of a Transmission Service Agreement (“TSA”) between itself and Belmont Municipal Light Department. Belmont no longer requires transmission service under the TSA as it is directly connected to the PTF. The notice was accepted effective as of September 30, 2017, as requested. This proceeding is now concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA: PSNH/Pontook (ER17-2449)**

On September 7, 2017, as amended on October 31, 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. The October 31 amendment clarified that the IA will not be designated under Schedule 21-ES. Comments on the amendment filing are due on or before November 21, 2017. If you have any questions concerning this matter, please contact Pat Gerity (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,⁸⁰ authorizing MPX to sell transmission rights at negotiated rates, permits MPX to sell the Maine Power Express merchant transmission project's⁸¹ 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; 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.⁸² 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"⁸³ 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

⁸⁰ *Maine Power Express*, 156 FERC ¶61,002 (July 1, 2016).

⁸¹ 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.

⁸² *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

⁸³ 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").

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

On June 2, 2016, the FERC granted Maine Customer Group's Motion to Compel, and set the remaining issues with respect to Emera Maine's 2014 and 2015 Annual Updates for hearing and settlement judge procedures.⁸⁴ 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.*⁸⁵

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.⁸⁶ Accordingly, on July 27, Chief Judge Cintron terminated

⁸⁴ *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh'g denied*, 158 FERC ¶ 61,012 (Jan. 6, 2017).

⁸⁵ *Emera Maine*, 158 FERC ¶ 61,012 (Jan. 6, 2017) ("*January 6 Order*").

⁸⁶ *Emera Maine*, 160 FERC ¶ 63,008 (Jul. 26, 2017).

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; 860-275-0533).

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

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

Unlike a staff 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.

XII. Misc. - Administrative & Rulemaking Proceedings

- **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 filed by over 30 parties. This matter remains 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. This matter remains pending before the FERC.

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

A workshop to discuss compensation for Reactive Supply and Voltage Control (Reactive Supply) in RTO/ISO markets was held on June 30, 2016. The workshop explored the types of costs incurred by generators for providing Reactive Supply capability and service; whether those costs are being recovered solely as compensation for Reactive Supply or whether recovery is also through compensation for other services; and different methods by which generators receive compensation for Reactive Supply (e.g., FERC-approved revenue requirements, market-wide rates, etc.). The workshop also explored potential adjustments in compensation based on changes in Reactive Supply capability and potential mechanisms to prevent overcompensation for Reactive Supply. Technical conference materials are available on the FERC's e-Library. Written comments were 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.

Xcel Energy Services filed supplemental comments addressing the reasons why RTO energy market prices can be negative and the implications to wholesale and retail customers if QFs were required to be compensated at long-term fixed prices during periods when market prices are negative. In addition, the written testimony of the following individuals who appeared before the House Subcommittee on Energy on September 6, addressing "Powering America: Reevaluating PURPA's Objectives and its Effects on Today's

Consumers” is posted in eLibrary: S. Thomas, PE (for the Industrial Energy Consumers of America); T. Kouba (for Alliant Energy Corporate Services); and F. Prager (for Xcel Energy Services).

- **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:⁸⁷ (1) pricing of fast-start resources; (2) commitments 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.⁸⁸ The NOI followed the D.C. Circuit’s *United Airlines*⁸⁹ 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”.⁹⁰ Comments and reply comments were submitted by over 25 and 18 parties, respectively. This matter is pending before the FERC.

- **DOE-Initiated Proposal: Grid Reliability & Resilience Pricing Rule (RM18-1)**

On September 28, exercising rarely-used authority under §403(a) of the Department of Energy (“DOE”) Organization Act, Secretary of Energy Rick Perry sent to the FERC a proposal in the form of a NOPR that would, if adopted by the FERC, require RTO/ISOs to develop and implement market rules for the full recovery of costs and a fair rate of return for “eligible units” that (i) are able to provide essential energy and ancillary reliability services, (ii) have a 90-day fuel supply on site in the event of supply disruptions caused by emergencies, extreme weather, or natural or man-made disasters, (iii) are compliant with all applicable environmental regulations, and (iv) are not subject to cost-of-service rate regulation by any State or local authority. Secretary Perry established an aggressive 60-day timeframe for FERC action on the NOPR, with the aim of having new compensation mechanisms in place by winter.

On October 2, the FERC issued a notice inviting initial comments on the DOE proposal to be submitted by October 23, with reply comments due November 7. On October 4, the Director of the Office of Energy Policy and Innovation issued a list of questions to be addressed (to assist FERC Staff in its understanding of the implications of the proposed rule) related to the need for reform, eligibility, implementation, rates, and other. A number of requests to extend the proposed deadlines were filed, but denied.

More than 450 comments were submitted by October 23 in response to the DOE NOPR. Those filings raise and discuss an exceptionally broad spectrum of process, legal, and substantive arguments. NEPOOL’s comments made the following three requests of FERC in considering its response to the DOE NOPR: (1) if FERC is inclined to issue a rule in response to the DOE NOPR, FERC should provide adequate time and process for meaningful stakeholder consideration and input on a FERC proposed rule before finalizing that rule; (2) if FERC concludes that changes to organized markets are needed, FERC should not mandate a single solution, but instead should allow sufficient flexibility, both procedurally and substantively, for each region with an organized

⁸⁷ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

⁸⁸ *Inquiry Regarding the FERC’s Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2017).

⁸⁹ *United Airlines Inc., et al. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (“*United Airlines*”).

⁹⁰ *Id.* at 137.

market to address the concerns raised in the DOE NOPR with reference to the specific and unique circumstances of that region; and (3) FERC should ensure that there is adequate time for compliance with any final rule that might apply to New England so that New England can follow its FERC-approved stakeholder process in designing and finalizing any such compliance. A summary of the initial comments filed was circulated under separate cover and can be found with the posted materials for the November 3 meeting. Reply comments are due November 7.

DOE set out a very expedited timeline final FERC action on the proposal and for ISOs/RTOs to implement the new requirements. DOE directed the FERC to take final action on the proposal within 60 days from the NOPR's publication⁹¹ (or, alternatively, to issue the proposal as an interim final rule effective immediately). Under DOE's proposed schedule, the final rule would take effect within 30 days of publication of the final rule in the Federal Register, and the ISOs/RTOs would have to make compliance filings within 15 days of the effective date. The NOPR further proposed that compliance filings take effect 15 days after they are due and that RTO/ISOs would have to implement the NOPR by late January 2018.

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

As previously reported, the FERC issued a NOPR⁹² on December 15, 2016 proposing reforms designed to improve certainty,⁹³ promote more informed interconnection,⁹⁴ and enhance interconnection processes.⁹⁵ Based, in part, on input received in response to AWEA's petition for changes to the *pro forma* LGIP/LGIA, and the FERC's May 13, 2016 technical conference to explore generator interconnection issues

⁹¹ The DOE NOPR was published in the Fed. Reg. on Oct. 10, 2017 (Vol. 82, No. 194) pp. 46,940-46,948.

⁹² *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).

⁹³ 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.

⁹⁴ 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.

⁹⁵ The FERC proposes to: (1) allow interconnection customers to limit their requested level of interconnection service below their generating facility capacity; (2) require transmission providers to allow for provisional agreements so that interconnection customers can operate on a limited basis prior to completion of the full interconnection process; (3) require transmission providers to create a process for interconnection customers to utilize surplus interconnection service at existing interconnection points; (4) require transmission providers to set forth a separate procedure to allow transmission providers to assess and, if necessary, study an interconnection customer's technology changes (e.g., incorporation of a newer turbine model) without a change to the interconnection customer's queue position; and (5) require transmission providers to evaluate their methods for modeling electric storage resources for interconnection studies and report to the Commission why and how their existing practices are or are not sufficient. *Id.* at P 8.

(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.⁹⁶ 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, Invenenergy, 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.⁹⁷ 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 off-line 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. 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* remains 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.⁹⁸ In addition, the FERC proposed to revise its regulations to enhance transparency by requiring that each RTO/ISO post uplift costs paid (dollars) and operator-initiated commitments (MWs) on its website; and define in its tariff its transmission constraint penalty factors, as well as the circumstances under which those penalty factors can set LMPs, and any procedure for changing those factors. Comments 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,

⁹⁶ *Id.* at P 11.

⁹⁷ *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*”).

⁹⁸ *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*”).

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)**

The FERC's *Storage NOPR* remains pending. As previously reported, on November 23, 2016, the FERC issued the *Storage 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."⁹⁹ 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, Harvard Environmental Policy Initiative, IPKeys, MA DPU, MIT, MMWEC, NARUC, NERC, NESCOE, NextEra, NRG, SEIA, UCS. Since the last Report, supplemental comments were filed by the Advanced Energy Management Alliance. In addition, on September 22, a number of US Senators¹⁰⁰ requested that this rulemaking proceed towards completion as quickly as possible. Chairman Chatterjee responded to each on October 5, noting that the comments received are being reviewed and relaying his personal commitment to address the issues raised in the NOPR as the rulemaking proceeds forward. This matter remains 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.¹⁰¹ 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, 2016¹⁰² 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)**

Rehearing of *Order 833*¹⁰³ remains pending. As previously reported, *Order 833* amended FERC regulations to implement provisions of the Fixing America's Surface Transportation ("FAST") Act that pertain to

⁹⁹ *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) ("*Storage NOPR*").

¹⁰⁰ Senators Whitehouse (RI), Booker (NJ), Markey (MA), Wyden (OR), Warren (MA), and Sanders (VT).

¹⁰¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

¹⁰² The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

¹⁰³ *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*").

the designation, protection and sharing of Critical Electric Infrastructure Information (“CEII”) and amend other regulations that pertain to CEII. The amended procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures. *Order 833* became effective February 21, 2017.¹⁰⁴ 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)**

The *Primary Frequency Response NOPR*¹⁰⁵ remains pending. The *Primary Frequency Response NOPR*, issued on November 17, 2016, proposes 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. 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*¹⁰⁶ 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.¹⁰⁷ Supplemental comments were filed by over 20 parties, including the AES Companies, NERC, Western Interconnection Advisory Body, Magnum CAES, NRECA, Arizona Public Service, Tri-State Generation, and North American Generator Forum, Independent Transmission Company (“ITC”), the IRC, NYTOs, SoCal Edison, San Diego Gas & Electric, and the Energy Storage Association (“ESA”).

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

Requests for rehearing and/or clarification of *Order 831*¹⁰⁸ remain pending 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, 2017.¹⁰⁹ 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, 2017, 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, 2019 effective date, were filed on May 8, 2017, and remain pending before the FERC (*see* ER17-1565, Section III above).

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

¹⁰⁵ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016) (“*Primary Frequency Response NOPR*”).

¹⁰⁶ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) (“*Frequency Response NOI*”).

¹⁰⁷ 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.

¹⁰⁸ *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*.

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

XIII. Natural Gas Proceedings

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

- **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, Tenaska Marketing Ventures and others. 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.¹¹⁰ 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.¹¹¹ 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.¹¹² 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.¹¹³ Furthermore, the FERC found that exemption proponents had not shown why such a broad exemption was necessary in order for EDCs to have a sufficient ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of

¹¹⁰ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

¹¹¹ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

¹¹² *Id.* at P 27.

¹¹³ *Id.* at P 34.

increasing electric reliability.¹¹⁴ 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 (INI3-15). On July 11, 2016, the FERC issued *Opinion 549*¹¹⁵ 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”).¹¹⁶ 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.”¹¹⁷ 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.¹¹⁸ 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, 2016, BP submitted a motion for modification of the *BP Penalties Order’s* disgorgement directive because it cannot comply with the disgorgement directive as ordered. BP explained that the entity to which disgorgement was to be directed, the Texas Low Income Home Energy Assistance Program (“LIHEAP”), is not set up to receive or disburse amounts received from any person other than the Texas Legislature. In response, on September 12, the FERC stayed the disgorgement directive (until an order on BP’s pending request for rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.¹¹⁹

¹¹⁴ *Id.* at P 35

¹¹⁵ *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) (“*BP Penalties Order*”).

¹¹⁶ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

¹¹⁷ *BP Penalties Order* at P 3.

¹¹⁸ *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).

¹¹⁹ *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) (“*Order Staying BP Disgorgement*”).

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹²⁰ 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 2012.¹²¹

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.

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.¹²² 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.

¹²⁰ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

¹²¹ 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.

¹²² *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).

- ▶ 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, 2017.¹²³
 - ▶ 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 can be found 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, 2016.¹²⁴
 - ▶ Construction began 4th Quarter 2016.
 - ▶ In-service: Nov. 2017 (anticipated).
 - **Constitution Pipeline (CP13-499) and Wright Interconnection Project (CP13-502)**
 - ▶ Constitution Pipeline Company and Iroquois Gas Transmission (Wright Interconnection) concurrently filed for Section 7(c) certificates on June 13, 2013.
 - ▶ 650,000 Dth/d of firm capacity from Susquehanna County, PA (Marcellus Shale) through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
 - ▶ New 122-mile interstate pipeline.
 - ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
 - ▶ Final EIS completed on Oct 24, 2014.
 - ▶ Certificates of public convenience and necessity granted Dec 2, 2014.
 - By letter order issued July 26, 2016, the Director of the Division of Pipeline Certificates (Director) granted Constitution's requested two-year extension of time to construct the project.
 - Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays (see below).
 - ▶ On April 22, 2016, New York State Department of Environmental Conservation (NY DEC) denied Constitution's application for a Section 401 permit under the Clean Water Act.

¹²³ 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”).

¹²⁴ *Tennessee Gas Pipeline Co., LLC*, 154 FERC ¶ 61,191 (Mar. 11, 2016) (order issuing certificate); *reh'g requested*. See also 154 FERC ¶ 61,263 (Mar. 30, 2016) (order denying stay); 155 FERC ¶ 61,087 (Apr. 22, 2016) (order denying stay).

- On August 18, 2017, the 2nd Circuit denied Constitution’s petition for review of the NY DEC decision, concluding that (1) the court lacked jurisdiction over the Constitution’s claims to the extent that they challenged the timeliness of the decision; and (2) the NY DEC acted within its statutory authority in denying the certification, and its denial was not arbitrary or capricious.
- ▶ 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.
 - In July 2016, the FERC rejected the NY AG’s filing as procedurally deficient, and declined to stay of the Certificate Order
- ▶ Tree felling and site preparation continues, but the long-term status of the pipeline is currently unknown.

- **Non-New England Pipeline Proceedings**

The following pipeline projects could affect ongoing pipeline proceeding in New England and around the country:

- ***Southeast Market Pipelines Project (CP14-554, CP15-16, CP15-17)***
 - ▶ Florida Southeast Connection, LLC, Transcontinental Gas Pipe Line Company, LLC and Sabal Trail Transmission, LLC (Sabal Trail) filed for a Section 7(c) certificates in Sept. – Nov. 2014.
 - ▶ The three separate but connected natural gas transmission pipeline projects project total approximately 685.5 miles of natural gas transmission pipeline and provide transportation service for up to approximately 1.1 billion cubic feet per day of natural gas to markets in Florida and the southeast United States .
 - ▶ Certificates of public convenience and necessity were granted Feb. 2, 2016.¹²⁵
 - Project construction began in August 2016, and in June and July 2017, Commission Staff authorized the pipelines to commence service on completed facilities.
 - ▶ On August 22, 2017, the DC Circuit vacated and remanded the FERC’s certificate order, holding that the FERC’s environmental review of the project failed to adequately consider the downstream effects of greenhouse gas emissions resulting from increased power generation.¹²⁶
 - The DC Circuit held that FERC must either quantify and consider the project’s downstream carbon emissions or explain in more detail why it cannot do so. According to the court, quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see how FERC could engage in “informed decision making” with respect to the greenhouse-gas effects of this project, or how “informed public comment” could be possible.
 - This opinion could have significant consequences for future pipeline proceedings at FERC.
 - ▶ On September 27, 2017, the FERC issued a Draft Supplemental EIS, estimating the pipeline would potentially increase the Florida GHG emission inventory between 3.7 and 9.7 percent.
 - In the supplemental EIS, the FERC stated that it “could not find a suitable

¹²⁵ *Fla. Southeast Connection, LLC*, 154 FERC ¶ 61,080, 61 (Feb. 2, 2016) (order issuing certificate).

¹²⁶ *Sierra Club v. FERC*, 2017 U.S. App. LEXIS 15911 (D.C. Cir. Aug. 22, 2017).

method to attribute discrete environmental effects to GHG emissions.”

- ***Millennium Pipeline Valley Lateral Project (CP16-17)***
 - ▶ On July 21, 2017, Millennium Pipeline Company, L.L.C. (Millennium) filed a Request for Notice to Proceed with Construction of its Valley Lateral Project in Orange County, New York.
 - The Valley Lateral Pipeline will connect the existing Millennium Pipeline to the 680 MW CPV Valley Energy Center.
 - ▶ To receive a notice to proceed, Millennium was required to demonstrate that it had obtained all federally-required environmental permits and authorizations, including authorizations under the Clean Water Act (CWA). Millennium stated that the New York State Department of Environmental Conservation (New York DEC) had waived its authority to issue a water quality certification under Section 401 of the CWA by failing to act before the statutorily-imposed deadline.
 - In August 2017, the NY DEC denied the water quality certification to the Valley Lateral Project, citing the D.C. Circuit’s recent ruling in *Sierra Club v. FERC* and the FERC’s “lack of a complete environmental review.”
 - ▶ By Letter Order issued on September 15, 2017, the FERC agreed with Millennium, finding that the New York DEC had waived its authority to issue or deny a water quality certification. Because the NY DEC had received Millennium’s Section 401 certification in November 2015, but did not rule on it until August 2017, FERC ruled that NY DEC, as the certifying agency, had therefore failed to act within the statutory timeframe and had waived its certification authority.¹²⁷ The FERC’s order effectively nullifies the NY DEC’s August 2017 rejection of the water quality certification.
 - The NY DEC, on October 13, 2017, filed a Request for Rehearing and Stay of the FERC’s September 15, 2017, Order.
 - ▶ Millennium sought, and on October 3, 2017, the FERC granted, a one year extension of time to complete construction of the Valley Lateral Project and make it available for service by November 2018.
 - ▶ On October 27, 2017, the FERC issued a Notice to Proceed, granting Millennium’s request to begin construction of the Valley Lateral.
 - The NY DEC, on October 30, 2017, filed a Request for Stay of the Notice to Proceed.
- ***Northern Access Project (CP15-115)***
 - ▶ On Feb. 3, 2017, the FERC issued an order authorizing National Fuel Gas Supply Corporation and Empire Pipeline, Inc. to construct and operate pipeline, compression, and ancillary facilities in McKean County, Pennsylvania, and Allegany, Cattaraugus, Erie, and Niagara Counties, New York (Northern Access Project)
 - ▶ In March 2017, Allegheny Defense Project and Sierra Club (collectively Allegheny) filed a request for rehearing of the FERC’s order and on August 31, 2017, FERC issued an Order Denying Stay
 - Consistent with its previous authorization, FERC found no evidence of irreparable harm in letting the project go forward.
 - ▶ Despite the FERC’s Order, the project remains halted pending the outcome of National Fuel’s fight with the NY DEC’s April denial of a Clean Water Act permit.
 - NY DEC found National Fuel’s application for a water quality certification, as well as for stream and wetlands disturbance permits, failed to comply with water regulations aimed at protecting wetlands and wildlife and that the pipeline failed to explore construction alternatives.

¹²⁷ *Millennium Pipeline Co., L.L.C.* 160 FERC ¶ 61,065 (Sept. 15, 2017).

- **NAESB WGQ Version 3.1 Standards (RM96-1)**

On September 29, the North American Energy Standards Board (“NAESB”) submitted an informational status report summarizing the development and summary of the changes that resulted in the issuance of Version 3.1 of the NAESB Wholesale Gas Quadrant (“WGQ”) Standards. This report will not be notice for public comment.

State Proceedings & Federal Legislative Proceedings
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- **Massachusetts Emissions Allowance Auctions: Stakeholder Input on Auction Design Parameters**

In an action that could have implications for the New England Markets, the Massachusetts (MA) Department of Environmental Protection (“MassDEP”) issued on August 11, 2017 final regulations to ensure that MA will meet the 2020 statewide greenhouse gas (“GHG”) emissions limits mandated by MA’s 2008 Global Warming Solutions Act (“GWSA”). Section 7.74¹²⁸ of those regulations reduces carbon dioxide (“CO₂”) emissions from MA-based power plants by imposing an annually declining aggregate emissions cap on MA’s 21 large fossil fuel-fired generators. Operators of those facilities will have to offset their CO₂ production with allowances (a limited authorization to emit one metric ton of CO₂ in a calendar year). Allowances will be allocated directly in 2018 based on historical generation. Beginning with compliance year 2019, Section 7.74 requires auctioning of the emissions allowances that facilities must use to comply with the regulation. Allowances may be traded between facilities and a limited quantity may be banked from year to year.

The MA Executive Office of Energy and Environmental Affairs (“EEA”) and the MassDEP are seeking stakeholder input on implementation of emissions allowance auctions under Section 7.74, and have posed the following questions:

- ▶ Are there additional special considerations that should be taken into account for an auction of this type occurring in a single state?
- ▶ When and how often should allowance auctions occur?
- ▶ Other than regulated power plants, should any other entities be allowed to purchase allowances?
- ▶ Should there be a minimum reserve price, and, if so, what should it be?
- ▶ What limits should there be on the number of allowances that can be purchased by a single bidder?
- ▶ Is there a need to protect certain information about auction bids or results from public release?
- ▶ Are there any particular design elements that should be considered because of the number of regulated facilities and facility owners?

To provide input on the auction design parameters, interested stakeholders may, *by November 15, 2017*, provide additional input by submitting written comments to climate.strategies@state.ma.us. This input will be used to inform auction design activities planned for 2018. Additional opportunities to provide input may be provided.

To receive further emails about this stakeholder process, including meeting announcements, go to <https://www.surveymonkey.com/r/C22Z6YR> to provide your contact information.

- **NG Advantage (NY) Permit Challenge (RJI No.: 2017-0799; RJI No.: 2017-0800)**

Chenango Valley Central School District and various nearby residents Petitioners have initiated proceedings against the Town of Fenton, New York Planning Board and NG Advantage, LLC to halt NG Advantage, LLC’s (“NG Advantage”) proposed construction of a natural gas compressor facility that would extract gas up to 4000 psi and transport the compressed natural gas to NG Advantage customers. Petitioners are concerned that the project infringes on the rights of those who live near the transfer station. They are specifically concerned about the site’s proximity to schools, and the burden it could place on local roads.

¹²⁸ Additional information about 310 CMR 7.74 (Reducing CO₂ Emissions from Electricity Generating Facilities) is available at: <http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/ghg/electricity-generatoremissions-limits.html>.

A judicial decision on whether the Town of Fenton followed proper procedures with respect to zoning laws in approving the Project has been held in reserve while Supreme Court Judge Ferris Lebous reviews oral arguments and submissions. The Project is currently halted pending judgment.

XIV. 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).

- **Demand Curve Changes (17-1110**)**
Underlying FERC Proceedings: ER14-1639¹²⁹
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. Petitioner’s Brief was filed on September 8, and corrected on September 18 (for compliance with the Court’s rules on acronyms and abbreviations. On October 6, the FERC submitted a motion to extend the remaining dates in the briefing schedule by two weeks (given scheduling conflicts with other proceedings). On October 11, the Court granted FERC’s unopposed motion to extend the briefing schedule. Accordingly, the following revised briefing schedule will now apply: Respondent Brief due on 11/21/2017; Intervenors for Respondent Brief(s), 12/12/2017; Petitioner Reply Brief, 1/11/2018; Deferred Appendix, 01/25/2018; and Final Briefs, 2/01/2018.

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**
Underlying FERC Proceedings: ER16-1041¹³⁰ ER15-1137¹³¹
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.

¹²⁹ 147 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*).

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

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

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**
Underlying FERC Proceeding: ER14-1050,¹³² EL14-52;133 EL15-25¹³⁴
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 was held October 27, 2017 before Judges Griffith, Sentelle and Randolph. This matter is now pending before the Court.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹³⁵
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: EL14-7,¹³⁶ EL15-23¹³⁷
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. Following briefing, oral argument was held October 6, 2017 before Judges Srinivasan, Wilkins and Sentelle. This matter is now pending before the Court.

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

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

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

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

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

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

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

“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).

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