

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of FEBRUARY 28, 2018 (5pm)

The following activity, as more fully described in the attached litigation report, has occurred since the report dated January 31, 2018 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints/Section 206 Proceedings



2	Calpine/LS Power Delayed Resource Complaint (EL18-53)	Feb 8	Calpine/LS Power withdraw Complaint
2	PER Settlement Agreement (ER17-2153; EL16-120)	Feb 20	FERC approves PER Settlement, directs compliance filing
4	Base ROE Complaint IV (2016) (EL16-64)	Feb 7 Feb 22	Parties submit post-hearing reply briefs Post-hearing briefs ' oral argument held
4	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Feb 1 Feb 2 Feb 26	11th settlement conf. held Settlement Judge issues status report, recommending settlement judge procedures be continued Chief Judge issues order continuing settlement judge procedures

II. Rate, ICR, FCA, Cost Recovery Filings



6	Emera MPD OATT Attachment J Revision (ER18-210)	Feb 2 Feb 15 Feb 21	Maine Customer Group answers Emera Maine Jan 18 answer FERC accepts proposed tariff revision, suspends it for a nominal period, to become eff. Jan 1, 2018, as requested, subject to refund; establishes hearing & settlement judge procedures Chief Judge designates Judge Dring as settlement judge
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III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests



* 7	Real-Time Reserve Designation & Settlement Rule Changes (ER18-897)	Feb 22	ISO-NE and NEPOOL file changes to become eff. Jun 1, 2018; comment date Mar 15
7	CSO Termination: Blue Sky West (ER18-704)	Feb 1 Feb 2 Feb 2-13 Feb 13	NEPOOL submits limited comments; Blue Sky West answers ISO-NE Jan 31 answer FERC grants Blue Sky West emergency motion, directing portion of CSO involuntarily terminated by ISO-NE to be immediately reinstated pending resolution of this proceeding National Grid, NextEra, NRG/GenOn intervene Blue Sky West protests CSO termination
8	Waiver Request: Timing of Canal-MA-GHG-Rule-Related Addl. Cost Recovery Filing (GenOn) (ER18-623)	Feb 8	FERC grants waiver requested
9	Updated Dynamic De-List Bid Threshold (ER18-620)	Feb 13 Feb 21	NEPOOL, ISO-NE submit answers to NEPGA, PSEG protests NEPGA answers ISO-NE and NEPOOL Feb 13 answers

9	CASPR (ER18-619)	Feb 7	NH OCA intervenes out-of-time
		Feb 12	NRECA submits answer supporting Public Systems' and APPA calls for FERC to open a Section 206 proceeding
		Feb 13	NEPOOL, ISO-NE, FirstLight file answers
		Feb 19	EMM answers ISO-NE Feb 13 answer
		Feb 22	Connecticut answers ISO-NE and FirstLight Feb 13 answers
		Feb 26	ISO-NE answers EMM Feb 19 answer
10	Waiver Request: Restoration Plan Submission Deadline (PSNH) (ER18-465)	Feb 15	FERC grants one-day waiver of restoration plan submission deadline requested by PSNH for its Lost Nation generating unit

IV. OATT Amendments / TOAs / Coordination Agreements

No Activity to Report

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

* 11	Schedule 21-EM: Brookfield LSA (ER18-901)	Feb 23	ISO-NE and Emera file LSA with Brookfield Energy Marketing; comment date Mar 16
12	Schedule 21-EM: Stored Solar J&WE LSA (ER18-387)	Feb 2	FERC accepts Stored Solar LSA, eff. Jan 1, 2016

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 13	Capital Projects Report - 2017 Q4 (ER18-841)	Feb 9 Feb 22 Feb 27-28	ISO-NE files Q4 Report NEPOOL intervenes and files comments supporting Q4 Report National Grid, Eversource intervene
* 14	IMM Quarterly Markets Reports - 2017 Fall (ZZ17-4)	Feb 21	IMM files Fall 2017 Report

IX. Membership Filings

* 14	March 2018 Membership Filing (ER18-923)	Feb 28	New members: Bruce Power, CS Berlin Ops, HSE Hydro NH AC, Optik Energy; Terminations: Cargill, RBC Energy Services; comment date Mar 21
14	February 2018 Membership Filing (ER18-767)	Feb 2	Eversource intervenes
15	January 2018 Membership Filing (ER18-539)	Feb 12	FERC accepts termination of the Participant status of Aspirity Energy, Constellation Energy Services and Noble Americas Power & Gas
* 15	Suspension Notice – OhmConnect (not docketed)	Feb 21	ISO-NE files notice of suspension of OhmConnect from the New England Markets
* 15	Suspension Notice – Millennium Power Partners (not docketed)	Feb 16	ISO-NE files notice of suspension of Millennium Power Partners from the New England Markets

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

15	NOPR: Cyber Security Incident Reporting Rel. Standards (RM18-2)	Feb 7-26	Over 15 parties submit comments
16	NOPR: New Rel. Standards: PRC-027-1 and PER-006-1 (RM16-22)	Feb 12	Hydro One Networks Inc submits comments
* 17	Rules of Procedure Changes (Sections 600 and 900) (RR17-2)	Feb 27	NERC files amended changes to Rules of Procedure; comment date Mar 20

XI. Misc. - of Regional Interest

* 18	203 Application: NRG/GIP III Zephyr Acquisition Partners (EC18-61)	Feb 23	NRG requests authorization for transactions pursuant to which GIP will acquire NRG Yield, NRG Renew and their public utility subsidiaries, and Carlsbad
18	203 Application: PSNH/HSE Hydro NH (EC18-42)	Feb 28	FERC authorizes transaction
18	203 Application: Dynegy/Vistra (EC18-23)	Feb 5	Applicants answer Public Citizen protest; supplement app. with delivered price test for MISO
18	203 Application: Calpine/ECP (EC17-182)	Feb 21	FERC authorizes transaction
19	IA Cancellation: Superseded NGrid/Casella Waste Systems IA (ER18-791)	Feb 2	National Grid files notice of cancellation of IA with Casella Waste Systems superseded by conforming 3-party SGIA with Southbridge Recycling and Disposal Park
20	LGIAs: PSNH/GSP Newington/GSP White Lake /GSP Lost Nation (ER18-785, -786, -787)	Feb 2 Feb 23	Eversource files LGIAs GSP Lost Nation intervenes
20	REMVEC II & REMVEC SAS Agreement Terminations (ER18-716)	Feb 27	FERC accepts agreement terminations, eff. Mar 28, 2018
20	LGIA: Emera Maine/Penobscot Energy Recovery Co (ER18-505)	Feb 1	FERC accepts LGIA, eff. Mar 1, 2018
20	Anbaric's Ocean Grid Project: Transmission Rights at Negotiated Rates (ER18-435)	Feb 12	FERC conditionally authorizes Anbaric to sell transmission rights at negotiated rates on its Ocean Grid Project
21	NEP/HQUS Phase I/II HVDC-TF Service Agreement (ER18-388)	Feb 1	FERC accepts agreement, eff. Jan 1, 2018

XII. Misc. - Administrative & Rulemaking Proceedings

* 22	DER Participation in RTO/ISOs (AD18-10; RM18-9)	Feb 15	FERC issues notice of Apr 10-11 tech conf.; those wishing to speak should submit a nomination form by Mar 15, those interested in attending should register by Apr 3
22	Grid Resilience in RTO/ISOs; DOE NOPR (AD18-7; RM18-1)	Feb 7	Foundation for Resilient Societies requests rehearing of FERC order terminating DOE NOPR rulemaking proceeding (RM18-1)
* 23	NOPR: Withdrawal of Pleadings (RM18-7)	Feb 15	FERC issues NOPR; comment date Mar 26

25	<i>Order 841</i> : Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)	Feb 15	FERC issues <i>Order 841</i> , eff. [90 days after publication in the <i>Federal Register</i>]
26	<i>Order 842</i> : Primary Frequency Response (RM16-6)	Feb 15	FERC issues <i>Order 842</i> , eff. [70 days after publication in the <i>Federal Register</i>]

XIII. Natural Gas Proceedings ▼

26	FERC Staff Inquiry in Response to EDF Allegations of Pipeline Capacity Withholding (not docketed)	Feb 27	FERC issues press release stating that Staff found no evidence of withholding
29	New England Pipeline Proceedings <ul style="list-style-type: none"> • Atlantic Bridge Project (CP16-9) • Constitution Pipeline (CP18-5) 	Feb 16 Feb 12	Algonquin requests DC Circuit Court of Appeals issue an order establishing a deadline for the MA DEP to issue, condition, or deny the minor-source air permit for Algonquin’s proposed Weymouth, MA natural gas compressor station Constitution Pipeline Co. requests reh’g of Jan 11, 2018 order denying its Petition requesting that FERC find that NY DEC waived its authority under section 401 of the Clean Water Act by failing to act within a “reasonable period of time”
28	Natural Gas-Related Enforcement Actions: BP (IN13-15)	Feb 9	FERC Staff responds to BP’s Dec 11 motion

XIV. State Proceedings & Federal Legislative Proceedings ▼

No Activity to Report

XV. Federal Courts ▼

34	FCM Resource Retirement Reforms (17-1275)	Feb 1 Feb 7, 15 Feb 16 Feb 23	Constellation submits statement of issues and other prelim docs FERC counsel enters appearance, submits certified index to record Constellation submits joint motion for proposed briefing schedule Clerk issues order establishing briefing schedule
34	Demand Curve Changes (17-1110**)	Feb 1	Petitioners, Respondent and Intervenors for Respondent final briefs; Petitioners file final reply brief; Court issues order scheduling oral argument for Apr 13, 2018
35	FCA10 Results (16-1408) and FCA9 Results (16-1068)	Feb 9	Oral argument held before Judges Rogers, Millett and Pillard
35	Base ROE Complaints II & III (2012 & 2014) (15-1212)	Feb 13	Parties file 10th status report indicating that proceedings upon which request for abeyance was requested remain ongoing
36	FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)	Feb 2	Court grants NEPGA’s and Exelon’s petitions for review of orders accepting the FCM’s 7-year price lock-in (EL14-7) and capacity-carry-forward rules (EL15-23); remanding to FERC for further proceedings

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: February 28, 2018

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 February 28, 2018. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings
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- **Calpine/LS Power Delayed Resource Complaint (EL18-53)**

On February 8, Calpine Corporation (“Calpine”) and LS Power Associates (“LS Power”, and together with Calpine, “Complainants”) withdrew their December 21, 2017 complaint (“Delayed Resource Complaint”), which had asked the FERC to adopt an interim change to the Tariff, to be effective for FCA12, “to ensure that a resource that is not reasonably expected to be operational during the 2021-22 Capacity Commitment Period is not permitted to interfere with efficient price formation and artificially suppress prices in FCA 12 by entering a zero dollar offer for its capacity” and to “require ISO-NE to work with its stakeholders to file Tariff modifications in time for [FCA13] addressing the requirements for a Delayed Resource to participate in future FCAs, resume receiving its Lock-In Price, and extend its Lock-In Period.”

In their notice of withdrawal, Complainants explained that, because FCA12 “concluded on February 6, 2018, and because Complainants have not requested that the [FERC] require ISO-NE to re-run the auction after it is conducted, Complainants are now withdrawing the [Delayed Resource] Complaint.” Reporting on this proceeding is now concluded. If you have any remaining questions, 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).

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

On February 20, the FERC approved² the Offer of Settlement and settlement materials (“PER Settlement”) filed July 28, 2017³ by the Settling Parties⁴ to resolve the issue set for hearing and settlement

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 *New England Power Generators Assoc. v. ISO New England Inc.*, 162 FERC ¶ 61,144 (Feb 20, 2018) (“*PER Settlement Order*”).

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 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: ISO-NE, PSEG, Consolidated Edison Energy, Inc. (“ConEd”), Verso Corp., GenOn Energy Management LLC, National Grid, NextEra, the New Hampshire Electric Coop. (“NHEC”), and Calpine.

judge procedures by the FERC in this proceeding.⁵ Under the FERC-approved PER Settlement, ISO-NE 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 Adjustment⁶ 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.

As previously reported, the PER Settlement did not resolve the issues of the applicability of the Strike Price methodology to FCA9.⁷ In its comments, in which it neither supported nor objected to the proposed PER strike price methodology, ISO-NE requested that the FERC resolve how the Average Monthly PER will be calculated on and after June 1, 2018. 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 ISO-NE to make a compliance filing, but decline to address NESCOE's request until some later date. In the *PER Settlement Order*, the FERC found the issues of the applicability of the Strike Price methodology to FCA9 beyond the scope of the settlement agreement proceeding.⁸

ISO-NE was directed to make a compliance filing in eTariff format to reflect the FERC's action in the *PER Settlement Order*.⁹ The FERC stated that the *PER Settlement Order* "terminates Docket Nos. EL16-120-000 and ER17-2153-000."¹⁰ If you have any questions concerning this matter, please contact Joe Fagan (202-218-

⁵ See *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017) ("*PER Complaint Order*"), *reh'g and clarif. denied*, 161 FERC ¶ 61,193 (Nov. 16, 2017) ("*PER Complaint Rehearing 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 ISO-NE 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."

⁶ 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).

⁷ In its *PER Complaint Rehearing Order*, the FERC clarified that it "intended for ISO-NE to use the difference between the former strike price and the LMP for event hours that occurred prior to September 30, 2016, and for ISO-NE to use the new strike price only for event hours that occur after September 30, 2016 ... [t]he Commission's order is clear in that it addresses a change to the calculation of the PER strike price as set forth in section 111.13.7.2.7.1.1.1 and such change is prospective only."

⁸ *PER Settlement Order* at P 3.

⁹ While the *PER Settlement Order* acknowledged NEPOOL's request that, "in order to accommodate participation in the stakeholder process for modifying the market rules, the Commission allow at least sixty days following any Settlement approval for ISO-NE to file tariff revisions to implement the Settlement," the *PER Settlement Order* is silent on the timing for the compliance filing directed. Pursuant to Rule 1907 of the FERC's Rules of Practice and Procedure, unless otherwise provided, "when any ... person subject to the jurisdiction of the Commission is required to do or perform any act by Commission order, ... there must be filed with the Commission within 30 days following the date when such requirement became effective, a notice, under oath, stating that such requirement has been met or complied with." 18 CFR § 385.1907.

¹⁰ *PER Settlement Order* at P 4.

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)**

Hearings in this matter were held December 11-15, 2017. Transcripts of the hearings are posted on the FERC's eLibrary. Corrections to the transcripts, jointly filed by the hearing participants, were accepted by Judge Glazer on January 2, 2018. EMCOS, Complainant-Aligned Parties, TOs, and FERC Trial Staff submitted their initial post-hearing briefs on January 16 and their reply briefs on February 7. Post-hearing briefs' oral argument was held on February 22, 2018. An initial decision is expected to be issued on or before March 27, 2018.

As previously reported, the FERC, on September 20, 2016, established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint filed by EMCOS on April 29, 2016.¹¹ The 4th ROE Complaint asked the FERC to reduce the TOs' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. EMCOS identified three main considerations requiring submission of this 4th ROE 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." Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The FERC denied the requests for rehearing on January 16, 2018.¹²

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)**

The TOs' October 5, 2017 motion to dismiss all four ROE complaints (captioned above) in light of the *Emera Maine*¹³ decision remains pending. The October 5 motion alternatively requested that the FERC consolidate the four ROE 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. The TOs' motion and the motions filed in response 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-NE Tariff is unjust, unreasonable, and unduly

¹¹ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) ("*Base ROE Complaint IV Order*"), *reh'g denied*, 162 FERC ¶ 61,035 (Jan. 18, 2018).

¹² *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 61,035 (Jan. 18, 2018) ("*Base ROE Complaint IV Rehearing Order*").

¹³ *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 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).

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”).¹⁴ 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”.¹⁵ 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.¹⁶ Hearings continue to be held in abeyance pending the outcome of settlement judge procedures underway.¹⁷ The FERC-established refund date is January 4, 2016.¹⁸

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); four settlement conferences were held in 2017: April 5, May 9, July 7, and November 13, 2017; and two settlement conferences, on January 9 and February 1, thus far in 2018. Judge Dring’s most recent status report was issued on February 2, noting that, at the February 1 settlement conference, significant progress was made and a schedule was established for finalizing the necessary settlement documents for filing with the FERC. Accordingly, he recommended that settlement procedures be continued. On February 26, Chief Judge Cintron issued an order continuing settlement judge procedures. 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)¹⁹ and third (EL14-86)²⁰ complaints regarding the TOs’ 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;²¹ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²² and, because of “common issues of law and fact”, consolidated the two proceedings for purposes of hearing and decision, with

¹⁴ *ISO New England Inc. Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh’g denied*, 154 FERC ¶ 61,230 (Mar. 22, 2016).

¹⁵ *Id.* at P 8.

¹⁶ *Id.* at P 11.

¹⁷ *Id.*

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

¹⁹ 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%.

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

²¹ *Environment Northeast v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,235 (June 19, 2014) (“2012 Base ROE Initial Order”), *reh’g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

²² *Mass. Att’y Gen. v. Bangor Hydro*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh’g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

the FERC finding it “appropriate for the parties to litigate a separate ROE for each refund period.”²³ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²⁴ On July 13, 2015, the TOs appealed those orders to the DC Circuit Court of Appeals (see Section XIV below), and that appeal continues to be held in abeyance.

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.²⁵ 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 February 15, the FERC accepted Emera’s s proposed revision to Attachment J of the MPD OATT,²⁶ but established hearing & settlement judge procedures because its “preliminary analysis indicates that Emera Maine’s proposed tariff revision has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.”²⁷ The FERC suspend the tariff revision for a nominal period, to become effective January 1, 2018, as requested, subject to refund. As previously reported, the proposed tariff revision was 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. The Maine Customer Group (“MCG”)²⁸ protested the revision for a number of reasons, with the principal objection being the fact that “Emera already has a true-up mechanism in place under the MPD OATT to accommodate loss of Houlton load”.

²³ *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).

²⁴ *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).

²⁵ *Environment Northeast v. Bangor Hydro-Elec. Co. and Mass. Att’y Gen. v. Bangor Hydro-Elec. Co.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) (“*2012/14 ROE Initial Decision*”).

²⁶ *Emera Maine*, 162 FERC ¶ 61,131 (Feb. 15, 2018).

²⁷ *Id.* at P 24.

²⁸ MCG consists of consists of: Maine’s 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”).

Settlement Judge Procedures. On February 21, Chief Judge Cintron designated Judge John P. Dring as the Settlement Judge in these proceedings. Judge Dring has not as of the date of this Report scheduled a first settlement conference.

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

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

Rehearing remains pending of the FERC's October 6, 2017 order rejecting the TOs' June 5, 2017 filing in this proceeding.²⁹ As previously reported, the June 5 filing 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*³⁰ decision. In its *Order Rejecting Filing*, the FERC required the TOs to continue collecting their ROEs currently on file, subject to a future FERC order.³¹ 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 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.³² On November 6, the TOs requested rehearing of the *Order Rejecting Filing*. On December 4, 2017, the FERC issued a tolling order providing it additional time to consider the TOs' request for rehearing of the *Order Rejecting Filing*, which remains pending. 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

- **Real-Time Reserve Designation & Settlement Rule Changes (ER18-897)**

On February 22, 2018, ISO-NE and NEPOOL jointly filed changes to differentiate between Operating Reserve requirements and the reserve products used to satisfy those requirements and to add details about how Operating Reserve is designated to individual resources in the operation of the Real-Time Energy Market. Specifically, the changes (i) enhance the differentiation between reserve requirements and the reserve products that can be used to meet those requirements; (ii) add detail as to how reserves are designated for individual resources in the operation of the Real-Time Energy Market; (iii) restructure and clarify the financial settlement for resources providing Real-Time Reserves; and (iv) implement a handful of clean-up and conforming edits to the Tariff. ISO-NE requested the changes become effective June 1, 2018. The Real-Time Reserve Designation & Settlement Rule Changes were supported by the Participants Committee at the December 8, 2017 meeting (Consent Agenda Item #4). Comments on this filing are due on or before March 15, 2018. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **CSO Termination: Blue Sky West (ER18-704)**

As previously reported, ISO-NE filed on January 23, pursuant to Market Rule 1 § 13.3.4(c), to terminate a portion of the CSO held by Project Sponsor Blue Sky West ("BSW") for Resource No. 37105 -- BSW's Bingham, ME wind generation facility. ISO-NE explained that the involuntary termination was for the portion of the CSO that had not achieved commercial operation and had not been covered by BSW. ISO-NE reported that it terminated

²⁹ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*"), *reh'g requested*.

³⁰ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

³¹ *Order Rejecting Filing* at P 1.

³² *Id.* at P 36.

the portion of the CSO for the FCA8 through FCA11 Capacity Commitment Periods concurrently with the termination filing. ISO-NE indicated that, upon FERC acceptance of the filing, it would draw down the amount of financial assurance provided by BSW with respect to the portion of the CSO to be terminated.

Emergency Motion to Reinstate Terminated MWs. On January 29, BSW filed an emergency motion asking the FERC to immediately reinstate the portion of BSW's CSO involuntarily terminated by ISO-NE on Jan 23 ("Disputed MWs") pending resolution of this CSO Termination Filing. The Emergency Motion presented a threshold issue of first impression, namely whether the involuntary termination of all or a portion of a CSO may become effective upon ISO-NE submission of an involuntary termination filing with the FERC (as ISO-NE asserted) or upon resolution of the involuntary termination filing (as Blue Sky West asserted). The distinction impacted the MWs with which Blue Sky West was eligible to participate in FCA12. ISO-NE answered the Emergency Motion on January 31. NEPOOL also submitted limited comments prior to the FERC-imposed February 1, 10am deadline for answers to the Emergency Motion (noting that the FERC needed to resolve the dispute between ISO-NE and BSW, and that, should the FERC conclude the Tariff required additional clarity, those changes be permitted to be proposed using the established NEPOOL Participant Processes). The FERC granted the Emergency Motion on February 2.³³ In directing the Disputed MWs be reinstated through March 24, 2018 (the end of the 60-day notice period required under FPA § 205), the FERC found that the filing, and ISO-NE's right to involuntarily terminate the Disputed MWs, could not be made, absent waiver, prior to March 24, 2018.

On the Merits of the Involuntary Termination of the Disputed MWs. On February 13, Blue Sky West protested the termination of the Disputed MWs. Blue Sky asserted that CPS monitoring requirements for the as-built portion of its resource terminated when that portion of the resource achieved Commercial Operation on December 13, 2016 and, as a result, Blue Sky West was not required to cover any MW up to the as-built CSO after that time. Blue Sky West further argued that, should the FERC find that ISO-NE had the discretion to terminate the Disputed MWs based on more recent Seasonal Claimed Capability audit results, it would be unjust and unreasonable to do so in this case (particularly given the unseasonably low wind resource period during the ISO-NE-selected audit period, and ISO-NE's pending revisions to ISO-NE audit procedures). Doc-less motions to intervene were filed by National Grid, NextEra and NRG/GenOn. This matter is now pending before the FERC.

If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Waiver Request: Timing of Canal-MA-GHG-Rule-Related Addl. Cost Recovery Filing (GenOn) (ER18-623)**

On February 8, the FERC granted GenOn's request for a waiver of certain timing requirements set forth in Market Rule 1 Appendix A Section 15 related to the timing of filings for additional cost recovery that may be made under Section 205 of the FPA if a Market Participant "believes that it will not recover the fuel and variable operating and maintenance costs of the Resource" ("GenOn Request").³⁴ Pursuant to Section III.A.15, "a Market Participant may make such a Section 205 filing "within **60 days** of the receipt of the first Invoice issued containing credits or charges for the applicable Operating Day." GenOn requested waiver of the 60-day and associated deadlines in order to allow for the purchase of MA GHG Allowances associated with the Canal unit for which it is the lead Participant, up to the March 1, 2019 compliance deadline under the MA GHG Rule, and the submission of an additional cost recovery filing as late as (but no later than) April 30, 2019. GenOn stated that ISO-NE and the Internal Market Monitor ("IMM") supported the requested waiver, with the understandings and limitations set forth in its request. In granting the request, the FERC found that the request met the FERC's criteria for granting one-time waivers of tariff provisions.³⁵ The FERC rejected Public Citizen's request to deny the waiver request, finding GenOn's litigation against Massachusetts was "not a reason to deny a request for waiver that would

³³ *ISO New England Inc.*, 162 ¶ 61,088 (Feb. 2, 2018).

³⁴ *GenOn Energy Management, LLC*, 162 FERC ¶ 61,094 (Feb. 8, 2018).

³⁵ *Id.* at P 19.

facilitate GEM's compliance."³⁶ Unless the February 8 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Updated Dynamic De-List Bid Threshold (ER18-620)**

On January 8, ISO-NE and NEPOOL jointly filed changes to reduce the FCM Dynamic De-List Bid Threshold ("DDBT"),³⁷ beginning with FCA13, to \$4.30/kW-mo. ISO-NE and NEPOOL requested that lower DDBT become effective March 9, 2018 (coincident with the start of the FCA13 qualification period). The updated DDBT was supported by the Participants Committee at the November 3 meeting (Agenda Item #6). On January 23, ISO-NE submitted supplemental information to clarify the "impact of potential capacity retirements for its argument that recent capacity surpluses warrant a reduction in the DDBT." Comments on this filing were due on or before January 29, 2018. Protests were filed by NEPGA and PSEG. ISO-NE and NEPOOL answered the protests on February 13; NEPGA answered the February 13 ISO-NE and NEPOOL answers on February 21. Doc-less interventions were filed by Calpine, Cogentrix, ConEd, ENE, Dominion, ENE, Eversource, FirstLight, National Grid, NESCOE, NextEra, NRG, and Public Citizen. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **CASPR (ER18-619)**

Also on January 8, ISO-NE filed its Competitive Auctions with Sponsored Policy Resources ("CASPR") Proposal. ISO-NE stated that its CASPR proposal is designed "to meet the region's objectives of accommodating the entry of sponsored new resources into the FCM over time and maintaining competitive capacity pricing." ISO-NE stated that wherever possible, it had prioritized the preservation of competitive prices in the FCM, and the Market Rules proposed include "financial incentives for existing resources to transfer their capacity obligations to new sponsored policy resources and to permanently exit the capacity market." ISO-NE requested that the bulk of the CASPR rules become effective on March 9, 2018 (coincident with the beginning of the approximately year-long auction-administration cycle for FCA13), with the remainder to become effective on June 1, 2018 (for a small number of Tariff changes related to FCM settlements, where changes to become effective on June 1, 2018 are already pending). The Participants Committee considered but did not support the CASPR Proposal at its December 8 Annual Meeting.

Comments on this filing were due on or before January 29, 2018 and were filed by NEPOOL, Calpine, CPV Towantic, Dominion, the EMM (out-of-time), Exelon, FirstLight, NECOS, NEPGA, NextEra, NRG, Public Systems, Verso, CT PURA/DEEP/OCC, MA AG, MA DPU, MPUC, NHPUC, NESCOE, AEMA, APPA, Clean Energy Advocates, NGSA, Public Citizen, and RESA. A high level summary of those pleadings has been separately prepared and is being circulated and posted with this Report. Entities that intervened, but that did not submit comments and/or protests either individually or as part of a group, included: Avangrid, AWEA, Champlain VT, ConEd, CT PURA, Direct Energy, Dynegy, EEI, Emera, ENE, EPSA, Eversource, HQUS, LS Power, National Grid, NH OCA (out-of-time), NRECA, and PSEG. Answers to the pleadings were submitted by NEPOOL, ISO-NE, FirstLight and NRECA. On February 19, the EMM answered ISO-NE's February 13 answer. On February 22, Connecticut answered the February 13 ISO-NE and FirstLight answers. On February 26, ISO-NE answered the EMM's February 19 answer. This matter is now pending before the FERC. If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

³⁶ *Id.* at P 20.

³⁷ The FCM Dynamic De-List Bid Threshold is an IMM-established value below which existing resources that have chosen to be price takers in an Forward Capacity Auction ("FCA") can opt to leave the auction without further review by the IMM. The Dynamic De-List Bid Threshold is designed to prevent the exercise of market power by maximizing the likelihood that the IMM reviews the pricing competitiveness of all bids from existing resources in a position to increase the clearing price (exercise market power) by leaving the FCA. The Tariff requires that the threshold price be re-set no less than once every three years. In the January 8 filing, ISO-NE committed to recalculate the Dynamic De-List Bid Threshold for FCA15 to reflect the change in the Capacity Performance Payment Rate scheduled to be in place for FCA15.

- **Waiver Request: Restoration Plan Submission Deadline (PSNH) (ER18-465)**

On February 15, 2018, the FERC granted Public Service Company of New Hampshire (“PSNH”) a one-day waiver of the submission deadline for the restoration plan for the Lost Nation³⁸ generating unit.³⁹ PSNH stated it missed the Tariff deadline for the submission of a plan (set forth in Section III.13.4.2.1.3(a)) by one business day because of what it described as two unforeseen and unavoidable events.⁴⁰ The FERC found that PSNH satisfied its conditions for granting waiver of tariff provisions.⁴¹ Unless the February 15 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) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ART Market Rule Changes (ER18-455)**

On December 15, 2017, as corrected by ISO-NE on December 20,⁴² ISO-NE and NEPOOL jointly filed changes to establish a new capacity market bilateral transaction -- an Annual Reconfiguration Transaction (“ART”) and to make other changes to the FCM rules (“ART Market Rule Changes”). ISO-NE and NEPOOL requested that the ART Market Rule Changes become effective in two stages, with most of the rule changes becoming effective on March 1, 2018 and the remainder becoming effective on June 1, 2018. The ART Market Rules Changes were supported by the Participants Committee at the November 3 meeting (Agenda Item #7). Comments on this filing, as corrected, were due on or before January 10, 2018. Two protests, on limited aspects of the Changes, were filed by (i) FirstLight (which, as it did at the November 3 meeting, protested the proposed exemption for deficiencies of less than 2 MW in the significant decrease provisions) and (ii) jointly by Exelon, CPV Towantic and NRG (“Indicated Generators”), who asked that the proposed “Required Demand Bid change”⁴³ take effect in the third ARA for FCA9, which will be held in March 2018, rather than in the ARA3 for FCA11. Doc-less interventions were filed by Brookfield, ConEd, Dominion, Eversource, National Grid, NESCOE, and PSEG (out-of-time). On January 25, NEPOOL and ISO-NE answered the FirstLight and Indicated Generators’ protests. On January 29, FirstLight answered ISO-NE’s January 25 answer. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Rehearing remains pending of the FERC’s October 6 order accepting updated FCM Cost of New Entry (“CONE”), Net CONE and Offer Review Trigger Price (“ORTP”) values filed by ISO-NE in January.⁴⁴ In accepting the changes, the FERC disagreed with the challenges to ISO-NE’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. On November 6, NEPGA requested rehearing of the *CONE/ORTP Updates Order*. On December 4, 2017, the FERC issued a tolling order providing it additional time to consider

³⁸ Lost Nation, an 18 MW oil-fired combustion turbine located in Northumberland, New Hampshire, obtained a 13.97 MW CSO in FCA9. ISO-NE flagged Lost Nation as having a significant decrease in capacity in its revised list of Qualified Capacity for FCA9 ARA3.

³⁹ *Pub. Srvc. Co. of New Hampshire*, 162 FERC ¶ 61,104 (Feb. 15, 2018).

⁴⁰ PSNH attributed the missed deadline to the combination of the death of mother of the employee charged with submitting the Restoration Plan and the subsequent time off, as well as the employee’s storm duty assignment following the October 30, 2017 “nor’easter.” PSNH stated that, together, these events distracted the employee, ultimately with the effect that the deadline for submitting the Restoration Plan was missed.

⁴¹ *Id.* at P 12. The conditions for granting waiver are: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.

⁴² On December 20, 2017, ISO-NE submitted an errata filing to correct the clean Tariff sheets to be posted in eLibrary. The comment deadline was thereby effectively extended to January 10, 2018.

⁴³ The “Required Demand Bid change” is the ISO-NE proposal to submit a demand bid in the third ARA (“ARA3”) only in those cases when there is a significant decrease in the capacity resource’s ability to fulfill its Capacity Supply Obligation (“CSO”) in all 12 months of the Capacity Commitment Period (“CCP”), beginning with ARA3 for FCA11.

⁴⁴ *ISO New England Inc.*, 161 FERC ¶ 61, 035 (Oct. 6, 2017) (“*CONE/ORTP Updates Order*”), *reh’g requested*.

NEPGA's request for rehearing of the *CONE/ORTP Updates Order*, which remains pending. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Still pending before the FERC is ISO-NE's compliance filing in response to the FERC's August 8, 2016 remand order.⁴⁵ In the *2013/14 Winter Reliability Program Remand Order*, the FERC directed ISO-NE 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.⁴⁶ ISO-NE 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, ISO-NE 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 ISO-NE'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, ISO-NE answered the TransCanada and MA AG protests. On March 10, 2017, TransCanada answered ISO-NE's February 28 answer. This matter is 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

No Activity to Report

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-EM: Brookfield LSA (ER18-901)**

On February 23, 2018, ISO-NE and Emera filed a non-conforming three-party Local Service Agreement ("LSA") between Brookfield Energy Marketing, LP ("Brookfield"), Emera Maine and ISO-NE for Firm Local Point-to-Point Service under Schedule 21-EM. Under the LSA, Emera Maine will continue to provide 85 MW of firm, point-to-point transmission service from its Powersville Road Substation at the \$13.82/kW-yr rate set forth in a 2003 transmission service agreement that will expire May 16, 2018. Comments on this filing are due on or before March 16. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁴⁵ *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).

⁴⁶ *2013/14 Winter Reliability Program Remand Order* at P 17.

- **Schedule 21-ES: PSNH/VEC LSA (ER18-745)**

On January 30, 2018, ISO-NE and Eversource, on behalf of PSNH, filed a non-conforming three-party Local Service Agreement (“LSA”) between Vermont Electric Cooperative (“VEC”), PSNH and ISO-NE for Non-Firm Local Point-to-Point Service under Schedule 21-ES. The LSA is non-conforming in that it contains provisions reflecting a long-standing agreement between PSNH and VEC to provide each other with back-up transmission service. A January 1, 2018 effective date was requested. Comments on this filing were due on or before February 20; 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).

- **Schedule 21-EM: Stored Solar J&WE LSA (ER18-387)**

On February 2, the FERC accepted an LSA by and among Emera Maine, Stored Solar J&WE, and ISO-NE for Local Non-Firm Point-to-Point Transmission Service under Schedule 21-EM of the ISO-NE OATT (the “Stored Solar LSA”). The Stored Solar LSA extends the same discounted service rate to Stored Solar that was offered to its predecessors, Indeck Maine and Covanta Maine. The Stored Solar LSA was accepted effective as of January 1, 2016 (the date Stored Solar acquired the Jonesboro facility), as requested. Unless the February 2 order is challenged, this proceeding will be concluded. If there are any questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@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,⁴⁷ 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.⁴⁸ 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.⁴⁹ 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.⁵⁰ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁵¹

⁴⁷ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*June 2 Order*”).

⁴⁸ *Id.* at P 24.

⁴⁹ *Id.* at PP 25-26.

⁵⁰ *Id.* at P 27.

⁵¹ *Id.* at P 21; Ordering Paragraph (B).

Settlement Judge Procedures. ALJ John Dring is the settlement judge for these proceedings. There have been five settlement conferences: three in 2016 -- June 29, October 25, and December 1; and two in 2017 -- September 6 and November 9, 2017. In his most recent January 18, 2018 status report, Judge Dring found that the parties continue to make progress toward settlement, and recommended that settlement procedures (which are on-going) be continued.

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 ("October 26 Responses"). On November 13, Emera Maine responded to the October 26 Responses. The October 11 motion, October 26 Responses and Emera Maine's answer to the October 26 Responses are pending before Chief Judge Cintron.

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

- **Schedule 21-VEC: VEC/PSNH LSA (NJ18-10)**

On January 30, 2018, ISO-NE and VEC filed a non-conforming three-party LSA between VEC, PSNH and ISO-NE for Non-Firm Local Point-to-Point Service under Schedule 21-VEC. The LSA is non-conforming in that it contains provisions reflecting a long-standing agreement between PSNH and VEC to provide each other with back-up transmission service. The Agreement is docketed in an "NJ" docket due to VEC's representation that it is not a public utility subject to the obligations of Section 205 of the FPA. VEC asked that, if the filing of this rate schedule is not required (because, although VEC is the provider of service, VEC is not a public utility and the rates and charges for service do not affect regional service provided or are not collected by ISO-NE), the FERC reject the filing as moot or alternatively, give further guidance on how such agreements that are non-conforming should be handled in the future. A January 1, 2018 effective date was requested. Comments on this filing were due on or before February 20; 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).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Capital Projects Report - 2017 Q4 (ER18-841)**

On February 9, ISO-NE filed its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter ("Q4") of calendar year 2017 (the "Report"). ISO-NE 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) FCM Improvements (\$965,000); (ii) Photovoltaic & Load Forecasting (\$878,400); (iii) Intranet Platform Replacement (\$855,000); and (iv) Mobile Application Project (\$357,700). Projects with a significant changes were (i) FCA13 (2018 Budget decrease of \$2 million (to be re-chartered/budgeted as "Annual Reconfiguration Transactions") - total project cost of \$0); (ii) CASPR (2018 Budget decrease of \$1.27 million; total project cost

\$1.73 million); (iii) 2018 Issue Resolution Phase II (2018 Budget of \$750,000; project removed); (iv) IMM Data Analysis Phase II (2018 Budget decrease of \$700,000, for total project costs of \$600,000); and (v) CIMNET Simultaneous Feasibility Test with Data Transfer Enhancements (2017 Budget decrease of \$204,600, with total estimated project cost remaining at \$2.26 million). Comments on this filing are due on or before March 2. NEPOOL filed comments on February 22 supporting the Q4 Report. Thus far, National Grid and Eversource filed doc-less interventions. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

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 ISO-NE in compliance with *Opinions No. 531-A*⁵² and *531-B*⁵³ 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).

- **IMM Quarterly Markets Reports – Fall 2017 (ZZ17-4)**

On February 21, the IMM filed with the FERC its report for the Summer quarter of 2017 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC, but the Fall 2017 Report will be discussed with the Markets Committee at its March 6 meeting.

IX. Membership Filings

- **March 2018 Membership Filing (ER18-923)**

On February 28, NEPOOL requested that the FERC accept (i) the memberships of Bruce Power [Related Person to TransCanada Power Marketing (Supplier Sector)], CS Berlin Ops [Related Person to Berlin Station (Generation Sector Group Seat)], HSE Hydro NH AC [Related Person to Nautilus Hydro and Pawtucket Power (Generation Sector Group Seat)], and Optik Energy (Supplier Sector); and (ii) the termination of the Participant status of Cargill Power Markets (Supplier Sector) and RBC Energy Services [Related Person to Royal Bank of Canada (Supplier Sector)]. Comments on this filing are due on or before March 21.

- **February 2018 Membership Filing (ER18-767)**

On January 31, NEPOOL requested that the FERC accept the termination of the Participant status of Emera Energy Services Subsidiaries Nos. 10, 13 and 14 [Related Persons to Emera Maine (Transmission Sector)]; Epico

⁵² *Martha Coakley, Mass. Att’y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

⁵³ *Martha Coakley, Mass. Att’y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

USA (AR Sector RG Sub-Sector, Small RG Group members); Shipley Choice (Supplier Sector); and WMECO [former Related Person to Eversource (Transmission Sector)]. On February 2, Eversource filed a doc-less intervention. The February membership filing is pending before the FERC.

- **January 2018 Membership Filing (ER18-539)**

On February 12, the FERC accepted the termination of the Participant status of Aspurity Energy (Supplier Sector), Constellation Energy Services [Related Person to Exelon Generation Company (Supplier Sector) and Noble Americas Power & Gas [Related Person to Mercuria Energy America (Supplier Sector)]. Unless the February 12 order is challenged, this proceeding will be concluded.

- **Suspension Notices (not docketed)**

Since the last Report, ISO-NE filed, pursuant to Section 2.3 of the Information Policy, a notice with the FERC noting that the following Participants were suspended from the New England Markets on the date indicated (at 8:30 a.m.) due to a Payment Default:

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Feb 14/16	Millennium Power Partners, LP	--
Feb 16/21	OhmConnect, Inc.	--

Suspension notices are for the FERC’s information only and are not docketed or noticed for public comment.

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).

- **NOPR: Cyber Security Incident Reporting Reliability Standards (RM18-2)**

On December 21, 2017 the FERC issued a NOPR proposing to direct NERC to develop and submit modifications to the Critical Infrastructure Protection (“CIP”) Reliability Standards to improve the reporting of Cyber Security Incidents, including incidents that might facilitate subsequent efforts to harm the reliable operation of the bulk electric system (e.g. (incidents that compromise, or attempt to compromise, a responsible entity’s Electronic Security Perimeter (“ESP”) or associated Electronic Access Control or Monitoring Systems (“EACMS”)).⁵⁴ The mandatory reporting requirements are intended to improve awareness of existing and future cyber security threats and potential vulnerabilities. The reports would continue to go to the Electricity Information Sharing and Analysis Center (“E-ISAC”), but reports would also go to the Industrial Control Systems Cyber Emergency Response Team (“ICS-CERT”), with an annual, public, and anonymized summary of the reports. Comments on the *Cyber Security Incident Reporting NOPR* were due on or before February 26, 2018,⁵⁵ and were filed by over 15 parties, including by NY PSC, NRG and a number of individual commenters. This matter is pending before the FERC.

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

On January 18, 2018, the FERC issued a NOPR proposing to approve 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)

⁵⁴ *Cyber Security Incident Reporting Reliability Standards*, 161 FERC ¶ 61,291 (Dec. 21, 2017) (“*Cyber Security Incident Reporting NOPR*”).

⁵⁵ The *Cyber Security Incident Reporting NOPR* was published in the Fed. Reg. on Dec. 28, 2017 (Vol. 82, No. 248) pp. 61,499-61,505.

(together, the “Supply Chain Cybersecurity Risk Management Changes”).⁵⁶ 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*. With respect to the proposed Reliability Standards’ implementation plan and effective date, the FERC proposed to reduce the implementation period as proposed by NERC to the first day of the first calendar quarter that is 12 months following the effective date of a FERC order. In addition, the FERC proposed to direct NERC (i) to develop modifications to the CIP Reliability Standards to include Electronic Access Control and Monitoring Systems (“EACMS”) associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards; (ii) to evaluate the cyber security supply chain risks presented by Physical Access Control Systems (“PACS”) and Protected Cyber Assets (“PCAs”) in the study of cyber security supply chain risks requested by the NERC Board of Trustees (“BOT”) in its resolutions of August 10, 2017; and (iii) to file the BOT-requested study’s interim and final reports with the FERC upon their completion. Comments on the *Supply Chain Risk Management Standards NOPR* are due on or before March 26, 2018.⁵⁷

- **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”).⁵⁸ 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* were due on or before December 26, 2017,⁵⁹ and were filed by NERC, ELCON, TAPS, and Trade Associations⁶⁰ (each urging the FERC to approve the CIP-003 Changes without directives or conditions) and by an individual, Jonathan Applebaum, who submitted comments limited to, and contesting the sufficiency of, the proposed electronic access controls requirement. This matter is pending before the FERC.

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

Comments on the *Protection System Changes NOPR*⁶¹ remain pending. As previously reported, the FERC issued a NOPR on November 16, 2017 proposing to approve (i) two new Reliability Standards -- PRC-027-1

⁵⁶ *Supply Chain Risk Management Reliability Standards*, 162 FERC ¶ 61,044 (Jan. 18, 2018) (“*Supply Chain Risk Management Standards NOPR*”).

⁵⁷ *Supply Chain Risk Management Reliability Standards NOPR* was published in the Fed. Reg. on Jan. 25, 2018 (Vol. 83, No. 17) pp. 3,433-3,442.

⁵⁸ *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*”).

⁵⁹ The *CIP-003-7 NOPR* was published in the Fed. Reg. on Oct. 26, 2017 (Vol. 82, No. 206) pp. 49,541-49,549.

⁶⁰ “Trade Associations” are the American Public Power Association (“APPA”), Edison Electric Institute (“EEI”) and the National Rural Electric Cooperative Association (“NRECA”).

⁶¹ *Coordination of Protection Systems for Performance During Faults and Specific Training for Personnel Rel. Standards*, 161 FERC ¶ 61,159 (Nov. 16., 2017) (“*Protection System Changes NOPR*”).

(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”). In addition, the FERC proposed to direct NERC to develop certain modifications to PRC-027-1. 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. Comments on the *Protection System Changes NOPR* were due on or before January 29, 2018⁶² and were filed by over 15 parties. Since the last Report, Hydro One Networks Inc. submitted comments. The Protection System Changes are pending before the FERC.

- **Rules of Procedure Changes (RR18-1)**

On November 21, 2017, NERC filed for approval revisions to Appendix 3D (Registered Ballot Body Criteria) of the NERC Rules of Procedure (“ROP”). NERC stated that the purpose of the proposed revisions is to help ensure that the votes of Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) are appropriately represented in Segment 2 of NERC’s registered ballot body for voting on Reliability Standards. Specifically, the revisions limit participation in “Segment 2” to RTO/ISOs exclusively, excluding other individuals and entities who may be consultants or vendors to RTO/ISOs from participating in that Segment. NERC requested that the proposed revisions be made effective upon FERC approval. Comments on this filing were due on or before December 12, 2017; none were filed. Dominion filed a doc-less intervention. This matter is pending before the FERC.

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

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

- **Rules of Procedure Changes (Consolidated Hearings Process) (RR17-2)**

On February 27, NERC amended its December 9, 2016 filing that proposed changes to the compliance hearing process. Under the 2016 changes, Regional Entities would be provided an option to select NERC to manage the hearing process, rather than just allowing for the Regional entities to conduct the hearing process. The February 27 amendments adjusts how members are appointed to the Hearing Body to address concerns raised by FERC Staff in response to the initial filing. In addition, NERC proposes changes related to the use of the terms “segment” and “sector”, such that they will align with the Appendix 2 definitions and the Regional Delegation Agreements between NERC and each Regional Entity. NERC requested that the proposed revisions be made effective upon FERC approval. Comments on this filing are due on or before March 20, 2018.

⁶² The *Protection System Changes NOPR* was published in the Fed. Reg. on Nov. 22, 2017 (Vol. 82, No. 224) pp. 55,535-55,541.

XI. Misc. - of Regional Interest

- **203 Application: NRG/GIP III Zephyr Acquisition Partners (EC18-61)**

On February 23, 2018, NRG Energy Inc. (“NRG”) requested authorization for a proposed transaction whereby GIP III Zephyr Acquisition Partners, L.P. (“Buyer”) will acquire, among other things, interests currently held by NRG in NRG Yield, NRG Renew and their public utility subsidiaries and Carlsbad. Following the transaction, GenConn will no longer be an NRG Related Person. GenConn will remain a Related Person to UI, but will also be a Related Person of CPV Towantic. Applicants requested an order authorizing the transaction on or before May 24, 2018. Comments on the application were due on or before March 16, 2018.

- **203 Application: PSNH/HSE Hydro NH (EC18-42)**

On February 28, the FERC authorized⁶³ the acquisition by HSE Hydro NH AC, LLC (“HSE Hydro NH”)⁶⁴ of PSNH’s portfolio of hydroelectric generation assets (the “PSNH Hydro Transaction”).⁶⁵ Among other conditions, the February 28 order required notice within 10 days of the consummation of the transaction. Subject to the required consummation notice, this proceeding will be concluded.

- **203 Application: Dynegy/Vistra (EC18-23)**

On November 22, Dynegy and Vistra Energy Corp. (“Vistra”, and together with Dynegy, “Applicants”) requested authorization for a proposed transaction pursuant to which Dynegy will merge with and into Vistra, with Vistra being the surviving corporation (the “Vistra Transaction”). Applicants requested an order authorizing the Vistra Transaction on or before March 15, 2018. Comments on the application were due on or before January 22, 2018. Public Citizen filed the lone protest (because the Horizontal Competitive Analysis Screen failed to include generation owned by Dynegy’s major shareholder, Energy Capital Partners, including assets that are part of ECP’s proposed acquisition of Calpine Corp.). Applicants answered Public Citizen’s protest on February 5. Doc-less interventions were filed by PJM and the Illinois Attorney General’s Office. Also on February 5, Applicants, at the request of FERC staff, supplemented their application with a delivered price test for the MISO region. Comments on the supplement were due on or before February 26; none were filed. This matter is pending before the FERC.

- **203 Application: MATEP (EC18-10)**

On January 24, 2018, the FERC authorized⁶⁶ a transaction pursuant to which MATEP LLC, which purchases all of the output its QF affiliate’s 95.8 MW cogeneration facility located in Boston’s Longwood Medical and Academic Area, will be owned by a joint venture between indirect subsidiaries of Engie and Axium US and will become a Related Person to Generation Sector member ENGIE Energy Marketing. 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.

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

On February 21, the FERC authorized a proposed transaction pursuant to which Calpine will become an indirect, wholly-controlled subsidiary of ECP Control Co, LLC (“ECP”) (the “Calpine/ECP Transaction”).⁶⁷ Among other conditions, the February 21 order required notice within 10 days of the consummation of the transaction.

⁶³ *Pub. Srv. Co. of NH and HSE Hydro NH AC, LLC*, 162 FERC ¶ 62,122 (Feb. 28, 2018).

⁶⁴ HSE Hydro NH is a Related Person to Generation Sector Group Seat members Nautilus Hydro and Pawtucket Power.

⁶⁵ PSNH’s hydro portfolio (61.8 MW) includes the following facilities: Smith (15.78 MW); Amoskeag (17.5 MW); Garvins Falls/Hooksett (7.09 MW); Ayers Island (8.94 MW); Eastman Falls (6.1 MW); Jackman (3.54 MW); Gorham (1.68 MW); Canaan (1.17 MW).

⁶⁶ *MATEP LLC*, 162 FERC ¶ 62,046 (Jan. 23, 2018).

⁶⁷ *Calpine Corp. and ECP ControlCo, LLC*, 162 FERC ¶ 61,148 (Feb. 21, 2018).

Upon consummation, the Calpine and Wheelabrator Participants⁶⁸ will become Related Persons. Subject to the required consummation notice, this proceeding will be concluded.

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

On October 31, 2017, the FERC approved certain conversions of GenOn notes into common equity of, and corporate structure changes that will result in, a “reorganized GenOn”.⁶⁹ 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.

- **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.⁷⁰ 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.

- **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; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **IA Cancellation: Superseded NGrid/Casella Waste Systems IA (ER18-791)**

On February 2, National Grid filed a notice of cancellation of a 2013 Interconnection Agreement (“IA”) between Massachusetts Electric Company (“NGrid”) and Casella Waste Systems. NGrid stated that the IA was recently superseded by a conforming three-party SGIA among ISO-NE, NGrid and Southbridge Recycling and

⁶⁸ The Calpine Participants are Calpine Energy Services, Calpine Energy Solutions, Champion Energy Marketing, and North American Power and Gas; the Wheelabrator Participants are Wheelabrator North Andover and Wheelabrator Bridgeport.

⁶⁹ *GenOn Energy Inc.*, 161 FERC ¶ 62,063 (Oct. 31, 2017).

⁷⁰ *Green Mountain Power Corp.*, 159 FERC ¶ 62,144 (May 9, 2017).

Disposal Park, Inc. A December 21, 2016 effective date (the date the SGIA superseded the IA and is reported in ISO-NE's EQRs) was requested. Comments, if any, on this filing were due on or before February 23, 2018; 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).

- **LGIAs: PSNH/GSP Newington/GSP White Lake /GSP Lost Nation (ER18-785, -786, -787)**

On February 2, Eversource, on behalf of PSNH, filed two-party LGIAs with GSP Newington (ER18-785), GSP White Lake (ER18-786), and GSP Lost Nation (ER18-787). The LGIAs reflect the interconnection arrangements for Newington Station (420 MW gas-oil steam), Lost Nation (19.3 MW oil combustion (gas)) and White Lake (23.2 MW oil combustion (gas)), each acquired by the respective Granite Shore Power subsidiaries on January 10, 2018.⁷¹ The LGIAs cover previously existing interconnections, unmodified in connection with the change in ownership, and were not required to have ISO-NE as a party. A January 10, 2018 effective date was requested. Comments on the LGIAs were due on or before February 23, 2018; none were filed. GSP Lost Nation LLC filed a doc-less motion to intervene. This matter is pending before the FERC. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **NSTAR/WMECO Succession Proceedings (ER18-749/751)**

On January 30, Eversource, on behalf its subsidiary NSTAR and former subsidiary WMECO, submitted a pair of filings to reflect the merger of WMECO with and into NSTAR. The filings included a Notice of Succession identifying all the WMECO jurisdictional documents to which NSTAR Electric is succeeding and cancelled WMECO's eTariff database and certain WMECO jurisdictional documents not currently filed in WMECO's eTariff database. A March 31, 2018 effective date was requested. Comments on this filing were due on or before February 20, 2018; 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).

- **REMVEC II and REMVEC SAS Agreement Terminations (ER18-716)**

On February 27, the FERC accepted the termination of the Rhode Island, Eastern Massachusetts, Vermont Energy Control ("REMVEC") II Agreement and the related REMVEC Security Analysis Services ("SAS") Agreement. The Agreements were recently superseded and replaced by a Local Control Center ("LCC") Agreement (accepted by letter order dated October 3, 2017 in Docket No. ER17-2339) pursuant to which certain local control center services are provided at or through NEP's dispatching center that is operated under ISO-NE's direction/ authorization. The terminations were accepted effective as of March 28, 2018, as requested. Unless the February 27 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA: Emera Maine/Penobscot Energy Recovery Co (ER18-505)**

On February 1, the FERC accepted a fully executed, non-conforming LGIA between Emera Maine and Penobscot Energy Recovery Company ("Penobscot"). The LGIA establishes the interconnection of Penobscot's solid 25 MW waste-fired generating facility (Line 247) as a direct assignment facility (possible because its radial in nature and serves a single customer) and thereby supports Penobscot's access to New England Market upon expiration of its long-time PPA with Emera Maine (through a resulting lower monthly charge). The LGIA was accepted effective as of March 1, 2018, as requested. Unless the February 1 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Anbaric's Ocean Grid Project: Transmission Rights at Negotiated Rates (ER18-435)**

On February 12, the FERC conditionally authorized⁷² Anbaric Development Partners ("Anbaric") to sell transmission rights at negotiated rates on its "Ocean Grid Project".⁷³ The FERC conditioned its authorization

⁷¹ See *Pub. Service Co. of New Hampshire, Granite Shore Power LLC*, 161 FERC ¶ 62,231 (Dec. 27, 2017).

⁷² *Anbaric Development Partners, LLC*, 162 FERC ¶ 61,097 (Feb. 12, 2018) ("*Ocean Grid Project Order*").

on the requirement that Anbaric submit a compliance filing “within 30 days of the close of the open solicitation process disclosing the results of its capacity allocation process and demonstrating that its capacity allocation was consistent with the Policy Statement and the [FERC]’s open access policies.”⁷⁴ Unless the *Ocean Grid Project Order* is challenged, and pending submission of the 30-day compliance filing, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **NEP/HQUS Phase I/II HVDC-TF Service Agreement (ER18-388)**

On February 1, the FERC accepted a new Phase I/II HVDC-TF Service Agreement between NEP and HQUS that allows the continuation without interruption of service provided pursuant to an existing agreement between NEP and HQUS. The new agreement conforms to the pro forma Phase I/II HVDC-TF Service Agreement set forth in Attachment A of Schedule 20A–Common to the ISO-NE OATT. The Agreement was filed as “non-conforming” as it was unclear whether the FERC would deem conforming the provisions included in the Agreement that accommodate HQUS’ exercise of its right of first refusal to extend its transmission customer service rights beyond the five-year term of its currently effective Service Agreement with NEP pursuant to Schedule 20A (while taking into account the fact that NEP currently only has contractual rights allowing it to sell service over the Phase I/II HVDC-TF through October 31, 2020). The agreement was accepted effective as of January 1, 2018, as requested. Unless the February 1 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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.

⁷³ The “Ocean Grid Project” will be integrated offshore transmission system that includes two 1,000 to 1,200 megawatt (“MW”) High-Voltage Direct Current (“HVDC”) transmission lines, each approximately 40 to 60 miles in length, with a total integrated system capacity of up to 2,400 MW, connecting Massachusetts off-shore wind generation to the transmission system in the Southeastern Massachusetts Load Zone (“SEMA”). As previously reported, Anbaric anticipates that the first phase of the Project (1,200 MW) will be in service by December 2021 and the second phase in service by 2024.

⁷⁴ *Id.* at P 23.

XII. Misc. - Administrative & Rulemaking Proceedings

- **DER Participation in RTO/ISOs (AD18-10; RM18-9)**

In *Order 841*⁷⁵ (see RM16-23 below), the FERC initiated a new proceeding in order to continue to explore the proposed distributed energy resource (“DER”) aggregation reforms it was considering in the *Storage NOPR*.⁷⁶ All comments filed in response to the *Storage NOPR* will be incorporated by reference into Docket No. RM18-9 and any further comments regarding the proposed distributed energy resource aggregation reforms, including comments regarding the technical conference described below, should be filed in RM18-9.

Technical Conference (AD18-10). On April 10-11, the FERC will hold a technical conference to gather additional information to help the FERC determine what action to take on DER aggregation reforms proposed in the *Storage NOPR* and to explore issues related to the potential effects of DERs on the bulk power system. Panel topics include:

- Economic Dispatch, Pricing and Settlement of DER Aggregations
- Discussion of Operational Implications of DER Aggregation with State and Local Regulators
- DER Participation in RTO/ISO Markets
- DER Installation Data Collection and Availability
- Incorporating DERs in Modeling, Planning and Operations Studies
- Coordination of DER Aggregations Participating in RTO/ISO Markets
- Ongoing Operational Coordination

Additional information regarding the technical conference will be provided in subsequent supplemental notices. Those wishing to participate in the April 10-11 conference should submit a nomination form online by March 15, 2018 at: <https://www.ferc.gov/whatsnew/registration/04-10-18-speaker-form.asp>. Those interested in attending are encouraged to register by April 3, 2018 at: <https://www.ferc.gov/whats-new/registration/04-10-18-form.asp>.

- **Grid Resilience in RTO/ISOs; DOE NOPR (AD18-7; RM18-1)**

On January 8, 2018, the FERC terminated the DOE NOPR rulemaking proceeding (RM18-1)⁷⁷ and initiated a new Grid Resilience in RTO/ISOs proceeding (AD18-7).⁷⁸ In terminating the DOE NOPR proceeding, the FERC concluded that the Proposed Rule and comments received did not support FERC action under Section 206 of the FPA, but did suggest the need for further examination by the FERC and market participants of the risks that the bulk power system faces and possible ways to address those risks in the changing electric markets. Accordingly, the FERC initiated AD18-7 to evaluate the resilience of the bulk power system in RTO/ISO regions, directed each RTO/ISO to submit information on certain resilience issues and concerns, and committed to use the information

⁷⁵ *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018) (“*Order 841*”).

⁷⁶ *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) (“*Storage NOPR*”).

⁷⁷ As previously reported, the FERC opened the DOE NOPR proceeding in response to a September 28, 2017 proposal by Energy Secretary Rick Perry, issued under a rarely-used authority under §403(a) of the Department of Energy (“DOE”) Organization Act, that would have required 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. More than 450 comments were submitted in response to the DOE NOPR, raising and discussing an exceptionally broad spectrum of process, legal, and substantive arguments. A summary of those initial comments was circulated under separate cover and can be found with the posted materials for the November 3, 2017 Participants Committee meeting. Reply comments and answers to those comments were filed by over 100 parties.

⁷⁸ *Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018), *reh’g requested*.

submitted to evaluate whether additional FERC action regarding resilience is appropriate. RTO submissions are due on or before March 9, 2018; reply comments by interested entities are due on or before April 9, 2018.

On February 7, Foundation for Resilient Societies (“FRS”) requested rehearing of the January 8 order terminating the DOE NOPR proceeding. Absent FERC action on or before March 9, the request for rehearing will be deemed denied.

- **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, 2017) 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 technical conference’s calendar entry. Those interested were invited to submit post-conference comments on or before June 22, 2017. 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.

- **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.⁷⁹ The NOI followed the D.C. Circuit’s *United Airlines*⁸⁰ 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.⁸¹ Comments and reply comments were submitted by over 25 and 18 parties, respectively. Since the last Report, on January 2, 2018, R. Gordon Gooch filed a motion requesting that the FERC compel all pass-through entities to reduce their claims for income tax allowance in rates, lowering rates as necessary to make their rates “just and reasonable” in response to the passage and signature into law of the “Tax Cut and Jobs Act” (Public Law No. 115-97). A second motion for partial summary judgement was filed by Gooch on January 16. Answers to the motions of partial summary judgement were by the Liquids Shippers Group, Natural Gas Indicated Shippers, the American Public Gas Association and INGAA. This matter remains pending before the FERC.

- **NOPR: Withdrawal of Pleadings (RM18-7)**

On February 15, 2018, the FERC issued a NOPR proposing to adopt a more accurate title for, and clarify the text of, Rule 216 of the FERC’s Rules of Practice and Procedure.⁸² The FERC proposes to change Rule 216’s the title from “Withdrawal of pleadings and tariff or rate filings (Rule 216)” to “Withdrawal of pleadings (Rule 216)”, to change the first sentence of Rule 216(a) to read, “Any person may seek to withdraw its pleading by filing a notice of withdrawal,” and to refer to “person” rather than “party,” in Rule 216(c). Comments on the *Pleadings Withdrawal NOPR* must be submitted on or before March 26, 2018.⁸³

⁷⁹ *Inquiry Regarding the FERC’s Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2017).

⁸⁰ *United Airlines Inc. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (“*United Airlines*”).

⁸¹ *Id.* at 137.

⁸² *Withdrawal of Pleadings*, 162 FERC ¶ 61,111 (Feb. 15, 2018) (“*Pleadings Withdrawal NOPR*”).

⁸³ The *Pleadings Withdrawal NOPR* was published in the *Fed. Reg.* on Feb. 23, 2018 (Vol. 83, No. 37 pp. 8,019-8,020).

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

As previously reported, the FERC issued a NOPR⁸⁴ on December 15, 2016 proposing reforms designed to improve certainty,⁸⁵ promote more informed interconnection,⁸⁶ and enhance interconnection processes.⁸⁷ Based, in part, on input received in response to AWEA's petition for changes to the *pro forma* LGIP/LGIA, and the FERC's May 13, 2016 technical conference to explore generator interconnection issues (as reported previously under Docket Nos. RM16-12; RM15-21), the FERC 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.⁸⁸ 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, Invenergy, National Grid, NextEra, APPA/LPPC/NRECA, AWEA, EEI, ELCON, ESA, and Public Interest Organizations. The *LGIP/LGIA Reforms NOPR* is pending before the FERC.

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

On January 19, 2017, the FERC issued a NOPR proposing to require each RTO and ISO that currently allocates the costs of Real-Time uplift due to deviations to do so only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.⁸⁹ 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,

⁸⁴ *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).

⁸⁵ 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.

⁸⁶ 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.

⁸⁷ 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.

⁸⁸ *Id.* at P 11.

⁸⁹ *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*").

Direct, Exelon, Potomac Economics, Saracen, EEI, APPA/NRECA, Appian Way Energy Partners, AWEA, ELCON, EPSA, Financial Marketers Coalition, and the IRC. The *Uplift/Transparency NOPR* is pending before the FERC.

- **Order 841: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)**

On February 15, the FERC issued *Order 841*, which requires each RTO/ISO to revise its tariff “to establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitates their participation in the RTO/ISO markets.” The participation model must:

- (1) ensure that a resource using the participation model is eligible to provide all capacity, energy and ancillary services that the resource is technically capable of providing in the markets;
- (2) ensure that a resource using the participation model can be dispatched and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer consistent with existing market rules that govern when a resource can set the wholesale price;
- (3) account for the physical and operational characteristics of electric storage resources through bidding parameters or other means; and
- (4) establish a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW.

Additionally, each RTO/ISO must specify that the sale of electric energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale locational marginal price. RTO/ISOs must file any necessary tariff changes on or before [270 days from *Order 841*’s publication in the Federal Register]⁹⁰ and implement those tariff provisions within one year of that compliance filing. *Order 841* will become effective [90 days from publication in the *Federal Register*].

Order 841 did not adopt the *Storage NOPR*’s proposed reforms related to DER aggregations. Instead, *Order 841* instituted a new rulemaking proceeding and technical conference (see AD18-10/RM18-9 above) to gather additional information to help the FERC determine what action to take with respect to DER aggregation.

- **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.⁹¹ 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

⁹⁰ *Order 841* has not, as of the date of this Report, been published in the Fed. Reg.

⁹¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

Data Collection NOPR were due on or before September 19, 2016⁹² 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*⁹³ 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 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, 2017.⁹⁴ On December 19, 2016, EEI requested rehearing of *Order 833*. The FERC issued a tolling order on January 17, 2017 affording it additional time to consider the EEI request for rehearing, which remains pending.

- **Order 842: Primary Frequency Response - Essential Reliability Services and the Evolving Bulk-Power System (RM16-6)**

On February 15, the FERC issued *Order 842*,⁹⁵ which requires 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. The FERC also established certain uniform minimum operating requirements, including maximum droop and deadband parameters and provisions for timely and sustained response. *Order 842* requirements will also apply to *existing* large and small generating facilities that take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after *Order 842*'s effective date. These requirements will not apply to existing generating facilities, a subset of combined heat and power ("CHP") facilities, or generating facilities regulated by the Nuclear Regulatory Commission. The FERC did not impose a headroom requirement for new generating facilities, and did not mandate that new generating facilities receive compensation for complying with the primary frequency response requirements. To implement these requirements, the FERC modified the *pro forma* LGIA and the *pro forma* SGIA. *Order 842* will become effective [70 days from publication in the Federal Register].⁹⁶

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).

- **FERC Staff Inquiry in Response to EDF Allegations of Pipeline Capacity Withholding (not docketed)**

On February 27, the FERC issued a press release stating that a staff inquiry revealed no evidence of anticompetitive withholding of natural gas pipeline capacity on Algonquin Gas Transmission by New England shippers. The inquiry arose out of allegations made by the Environmental Defense Fund ("EDF") in an August 2017 white paper, which asserted that local gas distribution companies in New England had engaged in practices to withhold pipeline capacity on the Algonquin system in order to drive up gas and/or power prices in the region. FERC staff reviewed both publicly available and non-public data. On the basis of that review, staff determined that "EDF's study was flawed and led to incorrect conclusions about the alleged withholding.

⁹² The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

⁹³ *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*").

⁹⁴ *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

⁹⁵ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, Order No. 842, 162 FERC ¶ 61,128 (Feb. 15, 2018) ("*Order 842*").

⁹⁶ *Order 842* has not, as of the date of this Report, been published in the *Fed. Reg.*

Commission staff found no evidence of capacity withholding.” The Commission will take no further action on the matter.

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

On March 31, 2016, the FERC conditionally accepted Algonquin tariff modifications and request for waiver that provided an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies (“EDCs”) that are participating in state-regulated electric reliability programs.⁹⁷ As previously reported, Algonquin stated that the modifications were consistent with the FERC’s current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies (“LDCs”) from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC’s initiatives related to gas-electric coordination. On May 9, 2016, the FERC held a technical conference to examine “concerns raised regarding the basis and need for the waiver.” Initial comments were due May 31. Almost two dozen sets of initial comments were filed, raising numerous issues both in support and in opposition to the Algonquin proposal. Reply comments were due June 10, 2016 and were filed by Algonquin Gas Transmission, Sequent Energy Management, L.P. and Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG.

On August 31, 2016, the FERC issued an order in which it rejected Algonquin’s request for a waiver that would have exempted gas-fired generators from capacity release bidding requirements but accepted Algonquin’s proposal to exempt from bidding an EDC’s capacity release to an asset manager who is required to use the released capacity to carry out the EDC’s obligations under the state-regulated electric reliability program.⁹⁸ The FERC explained that its capacity release regulations seek to balance the interests of the releasing shipper in releasing capacity to a replacement shipper of its choosing while still ensuring that allocative efficiency is enhanced by ensuring the capacity is used for its highest valued use.⁹⁹ Algonquin’s proposal, whereby any gas-fired generator to whom EDCs release capacity would be a pre-arranged replacement shipper, failed to meet the standard of “improving the competitive structure of the natural gas industry” as formulated by the FERC in granting bidding exemptions for state-regulated retail access programs.¹⁰⁰ Furthermore, the FERC found that exemption proponents had not shown why such a broad exemption was necessary in order for EDCs to have a sufficient ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.¹⁰¹ On September 30, 2016, ConEd and Orange & Rockland Utilities, Inc. (“O&R”) requested clarification of the *Algonquin Order Following Technical Conference*, asking the FERC to clarify certain aspects of its approval exempting from bidding an EDC’s capacity release to an asset manager. Algonquin Gas Transmission, National Grid Electric Distribution Companies, and Sequent Energy Management and Tenaska Marketing Ventures filed answers to the requests for clarification on October 17. Those requests are pending before the FERC.

On September 23, 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.

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

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

⁹⁹ *Id.* at P 27.

¹⁰⁰ *Id.* at P 34.

¹⁰¹ *Id.* at P 35

- **Natural Gas-Related Enforcement Actions**

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

BP (IN13-15). On July 11, 2016, the FERC issued *Opinion 549*¹⁰² affirming Judge Cintron's August 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, "BP") violated Section 1c.1 of the Commission's regulations ("Anti-Manipulation Rule") and section 4A of the Natural Gas Act ("NGA").¹⁰³ Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP's Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel ("HSC") trading point in order to benefit correspondingly long position at the Henry Hub trading point. The FERC agreed, finding that the "record shows that BP's trading practices during the Investigative Period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions."¹⁰⁴ Accordingly, the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in "unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index." The \$20.16 million civil penalty was at the top of the FERC's Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP's violation of a FERC order within 5 years of the scheme. BP's penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP's request for rehearing of the order establishing a hearing in this proceeding.¹⁰⁵ BP was directed to pay the civil penalty and disgorgement amount within 60 days of the *BP Penalties Order*. On August 10, 2016 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.¹⁰⁶

BP moved, on December 11, 2017, to lodge, to reopen the proceeding, and to dismiss, or in the alternative, for reconsideration based on changes in the law it asserted are dispositive and that have occurred since BP filed its request for rehearing of the *BP Penalties Order*. FERC Staff asked for, and was granted, additional time, to January 25, 2018, to file its Answer to BP's December 11 motion. FERC Staff filed its answer on January 25, 2018, and revised that answer on January 31. On February 9, BP replied to FERC Staff's revised answer. This matter is again pending before the FERC.

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁰⁷ in which it directed Total Gas & Power North America, Inc. ("TGPNA") and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen ("Tran") and Aaron Hall (collectively, "Respondents") to show cause why

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

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

¹⁰⁴ *BP Penalties Order* at P 3.

¹⁰⁵ *BP America Inc.*, 147 FERC ¶ 61,130 (May 15, 2014) ("*BP Hearing Order*"), *reh'g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

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

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

Respondents should not be found to have violated NGA Section 4A and the FERC's Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.¹⁰⁸

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA's parent company, Total, S.A. ("Total"), and TGPNA's affiliate, Total Gas & Power, Ltd. ("TGPL"), to show cause why they should not be held liable for TGPNA's, Hall's, and Tran's conduct, and be held jointly and severally liable for their disgorgement and civil penalties based on Total's and TGPL's significant control and authority over TGPNA's daily operations. Respondents filed their answer on July 12, 2016. OE Staff replied to Respondents' answer on September 23, 2016. 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.¹⁰⁹ 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)**

- ▶ 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.

¹⁰⁸ The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during 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.

¹⁰⁹ 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).

- ▶ 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, 2017.¹¹⁰
- ▶ Certain facilities,¹¹¹ providing 40,000 out of the project's total capacity of 132,705 dekatherms per day of incremental firm transportation service, placed into service on November 1, 2017.¹¹² Remaining Project capacity will be available when the remaining Project facilities are placed into service following Director of OEP authorization.
- ▶ Authorization to proceed with construction of additional Project segments requested on Oct. 31, 2017. Detailed information regarding construction activities can be found in the weekly construction reports filed in this docket.
- ▶ On February 16, Algonquin filed with the DC Circuit Court of Appeals, pursuant to Section 19(d)(2) of the Natural Gas Act, a petition for review of the MA DEP's failure to issue, condition, or deny a minor-source air permit for Algonquin's proposed natural gas compressor station in the Town of Weymouth, MA by the July 31, 2016 deadline established by the FERC. Algonquin seeks an order establishing a deadline for the MA DEP to issue, condition, or deny the permit.
- **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.
 - 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.

¹¹⁰ Order Issuing Certificate and Authorizing Abandonment, *Algonquin Gas Transmission LLC and Maritimes & Northeast Pipeline, LLC*, 158 FERC ¶ 61,061 (Jan. 25, 2017), *order denying stay*, 160 FERC ¶ 61,015 (2017), *reh'g denied*, 161 FERC ¶ 61,255 (Dec. 13, 2017) ("*Atlantic Bridge Project Order*").

¹¹¹ The following facilities placed into service: Southeast Discharge Take-up and Relay (Fairfield County, CT); Modified Oxford Compressor Station (New Haven County, CT); Modified Chaplin Compressor Station (Windham County, CT); Modified Danbury (CT) Meter Station; and Modified Stony Point Compressor Station (Rockland County, NY).

¹¹² *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Oct. 27, 2017).

- ▶ On October 11, 2017, Constitution filed with the FERC a petition for declaratory order (“Petition”) requesting that the FERC find that NY DEC waived its authority under section 401 of the Clean Water Act by failing to act within a “reasonable period of time.” (CP18-5)
 - On January 11, 2018, the FERC denied Constitution’s Petition.¹¹³ Although noting that states and project sponsors that engage in repeated withdrawal and refile of applications for water quality certifications are acting, in many cases, contrary to the public interest and to the spirit of the Clean Water Act by failing to provide reasonably expeditious state decisions, the FERC did not conclude that the practice violates the letter of the statute, found factually that Constitution gave the NY DEC new deadlines, and found that the record did not show that the NY DEC in any instance failed to act on Constitution’s application for more than the outer time limit of one year.¹¹⁴
 - On February 12, 2018, Constitution Pipeline requested rehearing of the January 11, 2018 order. Absent FERC action on the request for rehearing on or before March 14, the request will be deemed denied.
- ▶ 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. Constitution will submit its monitoring reports monthly rather than weekly until activities resume in 2018.

- **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, 2016.¹¹⁵
 - 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

¹¹³ *Constitution Pipeline Co.*, 162 FERC ¶ 61,014 (Jan. 11, 2018), *reh’g requested*.

¹¹⁴ *Id.* at P 23.

¹¹⁵ *Fla. Southeast Connection, LLC*, 154 FERC ¶ 61,080, 61 (Feb. 2, 2016) (order issuing certificate).

generation.¹¹⁶

- 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 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.¹¹⁷ 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. On November 15, the FERC denied the requests for rehearing, stay, and rescission.¹¹⁸
 - ▶ 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.

¹¹⁶ *Sierra Club v. FERC*, 2017 U.S. App. LEXIS 15911 (D.C. Cir. Aug. 22, 2017).

¹¹⁷ *Millennium Pipeline Co., L.L.C.*, 160 FERC ¶ 61,065 (Sept. 15, 2017), *reh’g denied*, 161 FERC ¶ 61,186 (Nov. 15, 2017).

¹¹⁸ *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,186 (Nov. 15, 2017) (“November 15 Order”).

- ▶ 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. The *November 15 Order* also denied the October 30 request for stay.¹¹⁹
- **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.

XIV. State Proceedings & Federal Legislative Proceedings

- **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 7.74¹²⁰ 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.

On December 15, 2017, MassDEP filed final amendments to correct errors for two facilities in the 2018 allowance allocations. These amendments were published in the Massachusetts register on December 29, 2017. In addition, MassDEP has committed to post on its website compliance forms and an “FAQ” document.

¹¹⁹ On Oct. 30, 2017, NY DEC also petitioned the United States Court of Appeals for the Second Circuit for a temporary stay of the FERC’s Notice to Proceed until the FERC acts on NY DEC’s request for rehearing of the Declaratory Order. *In re New York State Department of Environmental Conservation v. FERC*, 2d Cir. No. 17-3503, Petitioner’s Emergency Petition for a Writ of Prohibition (Oct. 30, 2017) (Emergency Petition). NY DEC also requested the court to stay the effectiveness of the Notice to Proceed on an interim basis while the court considers the merits of its petition. *Id.* at 34. On Nov. 2, 2017, the court granted an administrative stay pending consideration of the petition by the next available three-judge panel. *In re New York State Dep’t of Env’tl. Conservation v. FERC*, 2d Cir. No. 17-3503 (Nov. 2, 2017). NY DEC’s Emergency Petition is pending at the court.

¹²⁰ 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>.

The allowance tracking system will be deployed In the Spring of 2018. Detailed instructions for regulated facilities will be provided at that time. Stakeholder comments on the auction design solicited in the Fall of 2017 will be considered as the MassDEP develops procedures in preparation for allowance auctions that begin in 2019. MassDEP anticipates additional opportunities for stakeholders to participate in the auction design process in 2018, possibly including an opportunity to comment on proposed regulatory amendments. MassDEP is also in the process of soliciting market monitoring services, and will hire an auction administrator in 2018. Questions regarding 310 CMR 7.74 can be directed to Will Space (william.space@state.ma.us; 617-292-5610).

- **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.

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 Lebo's reviews oral arguments and submissions. The Project is currently halted pending judgment.

XV. Federal Courts

The following are matters of interest, including petitions for review of FERC decisions in NEPOOL-related proceedings, that are currently pending before the federal courts (unless otherwise noted, the cases are before the U.S. Court of Appeals for the District of Columbia Circuit). An "***" following the Case No. indicates that NEPOOL has intervened or is a litigant in the appeal. The remaining matters are appeals as to which NEPOOL has no organizational interest but that may be of interest to Participants. For further information on any of these proceedings, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Resource Retirement Reforms (17-1275)**

Underlying FERC Proceedings: ER16-551¹²¹

Petitioner: Constellation

As previously reported, Constellation ("Petitioner") petitioned the DC Circuit Court of Appeals on December 28, 2017 for review of the FERC's *FCM Resource Retirement Reforms Orders*. Upon a joint motion of Constellation and the FERC, the following briefing schedule was ordered: Petitioner's Brief to be filed April 17, 2018; Respondent's Brief, July 2, 2018; Petitioner's Reply Brief, July 30, 2018; Deferred Appendix, August 13, 2018; and Final Briefs August 20, 2018.

- **Demand Curve Changes (17-1110**)**

Underlying FERC Proceedings: ER14-1639¹²²

Petitioners: NextEra, NRG, PSEG

NextEra, NRG and PSEG ("Petitioners") petitioned the DC Circuit Court of Appeals for a second time 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. Briefing was completed on February 1,

¹²¹ *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) ("*FCM Resource Retirement Reforms Orders*").

¹²² 147 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*).

2018 and oral argument scheduled for April 13, 2018. The composition of the argument panel will be revealed approximately 30 days prior to the date of oral argument.

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**
Underlying FERC Proceedings: ER16-1041¹²³ ER15-1137¹²⁴
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. All briefing is complete and oral argument was held before Judges Rogers, Millett and Pillard on February 9, 2018. This matter is pending before the Court.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**
Underlying FERC Proceeding: ER14-1050;¹²⁵ EL14-52;¹²⁶ EL15-25¹²⁷
Petitioner: NEPGA

On January 19, 2018, the Court dismissed for lack of jurisdiction the petition for review in 16-1023 (the appeal of the FCM Jump Ball and Compliance Proceedings) and denied on the merits the petition for review in 16-1024 (the NEPGA PER Complaint appeal). 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, Dentelle and Randolph. In denying 16-1024 on the merits, the Court found that the underlying orders were not arbitrary and capricious. The Court further stated that “so long as any change is reasonably explained, it is not arbitrary and capricious for an agency to change its mind in light of experience, or in the face of new or additional evidence, or further analysis or other factors indicating that the agency’s earlier decision should be altered or abandoned.” With respect to 16-1023, the Court found it lacked jurisdiction because petitioner NEPGA had not itself sought rehearing of the FERC order appealed from, which for the Court to have jurisdiction it would have had to do. The court is withholding the issuance of its mandate until the 45-day appeal period expires (on March 5, 2018).

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹²⁸
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 tenth such report filed, was filed on February 12, 2018. 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.

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

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

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

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

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

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

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹²⁹ EL15-23¹³⁰
Petitioners: NEPGA, Exelon

On February 2, 2018, DC Circuit granted NEPGA's and Exelon's petitions for review of orders accepting the FCM's 7-year price lock-in (EL14-7) and capacity-carry-forward rules (EL15-23).¹³¹ Finding that "the FERC failed to adequately explain why its rationale [for rejecting price lock-in and capacity carry forward rules] in PJM – which seems to foreclose signing off on a Tariff scheme like ISO-NE's – does not apply even more forcefully to the scheme it accepted in the Orders [appealed from]," the DC Circuit granted the Petitions and remanded to FERC for further proceedings in which the FERC, in order to accept the changes filed, must provide some analysis and explanation why it changed course.

Other Federal Court Developments of Interest

- ***California Public Utilities Commission v. FERC* (9th Cir., 16-70481)** (Jan. 8, 2018)

In a decision that could impact how the FERC approaches future orders on ROE filings, the Ninth Circuit Court of Appeals held that the FERC acted arbitrarily and capriciously, and erred, by granting a transmission owner (PG&E) an incentive adder for its participation in an RTO (CAISO) where the participation by the TO was not voluntary. Doing so created a generic incentive adder (for TO participation in an RTO) in contravention of Order 679's requirement of case-by-case review of adders to be granted, which were designed to induce voluntary RTO participation. The Ninth Circuit remanded the matter back to the FERC with instructions to follow the appeals court's reasoning.

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

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

¹³¹ *New England Power Generators Assoc. v FERC*, 881 F.3d 202 (DC Cir. 2018).

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