

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of May 2, 2018**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated April 4, 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	Base ROE Complaint IV (2016) (EL16-64)	Apr 26	EMCOS, CAPs, TOs, FERC Trial Staff submit briefs on exceptions to <i>Initial Decision</i> ; CAPs move to re-open record to enter recent evidence related to one DCF result that impacted the <i>Initial Decision</i>
		Apr 27	TOs request extension to May 23 for briefs opposing exceptions and answers to CAPs' motion

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

5	VTransco Recovery of Highgate Ownership Share Acquisition Costs (ER18-1259)	Apr 20	MA AG protests filing
5	FCA12 Results Filing (ER18-940)	Apr 11-13 Apr 26	NEPOOL, Cogentrix, NRG/GenOn intervene FERC accepts results filing
6	Emera MPD OATT Attachment J Revision (ER18-210)	Apr 30	Emera Maine files an uncontested Joint Offer of Settlement to resolve all issues pending in this proceeding; comment date May 21; reply comment date May 30
* 7	MPD OATT Annual Informational Filing (ER15-1429)	Apr 13 Apr 20	Emera Maine requests extension of time, to and including May 15, to submit its annual update of charges under the MPD OATT FERC grants requested extension
7	ISO Securities: Authorization for Future Drawdowns (ES18-25)	Apr 19	National Grid intervenes

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

* 7	ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509)	May 1/2	ISO-NE requests Tariff waivers necessary (i) to authorize the retention of Mystic 8 & 9 for fuel security, rather than for local transmission needs; and (ii) to extend certain deadlines to accommodate Exelon's requirements; comment date May 23
8	FCM Enhancements – Phase II (ER18-1287)	Apr 5-23	Avangrid, ConEd, Eversource, NESCOE, NRG/GenOn, Public Citizen intervene
9	PFP Enhancements (ER18-1223)	Apr 6-17	NESCOE, Exelon, NRG/GenOn intervene
9	PER Settlement Compliance Filing (ER18-1153)	Apr 5-11 Apr 12 Apr 24 Apr 25 Apr 27	NEPOOL, Dominion, Eversource, NRG/GenOn intervene NEPOOL submits comments supporting compliance changes; NESCOE submits protest NEPGA answers NESCOE protest Exelon intervenes out-of-time NEPOOL files answer in response to NESCOE protest
9	CASPR (ER18-619)	Apr 6-9 Apr 24	NextEra/NERG, ENECOS, Clean Energy Advocates, Public Citizen request rehearing of <i>CASPR Order</i> ISO-NE answers Clean Energy Advocates' request for rehearing

**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**

13	Schedule 21-EM: BHD Tax Law & Settlement Changes (ER18-1213)	Apr 17 Apr 19	MPUC intervenes MPUC requests hearing and settlement judge procedures; MOPA supports MPUC request
* 15	Schedule 21-VEC and 20-VEC: Annual Informational Filing (ER10-1181)	May 1	VEC submits its annual update to its Schedule 21-VEC and 20-VEC formula rates covering the Jul 1, 2018 – Jun 30, 201 period

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

*No Activity to Report*

**VIII. Regional Reports**

* 15	LFTR Implementation: 38 <sup>th</sup> Quarterly Status Report (ER07-476)	Apr 16	ISO-NE files its 38th quarterly report
* 16	ISO-NE FERC Form 1 (not docketed)	Apr 15 Apr 16	ISO-NE files 2017 FERC Form 1 ISO-NE files CPA Certification Statement for 2017 FERC Form 1
* 16	ISO-NE FERC 582 (not docketed)	Apr 24	ISO-NE submits 2017 annual report of total MWh of transmission service (approx. 1.31 million MWhs)

**IX. Membership Filings**

* 16	May 2018 Membership Filing (ER18-1485)	Apr 30	<i>New Members:</i> Anbaric Development Partners; Appian Way Energy Partners East; Canton Mountain Wind; GSP Lost Nation; GSP Merrimack; GSP Newington; GSP Schiller; GSP White Lake; Marco DM Holdings; and WATTIFI; <i>Terminations:</i> AmericaWide Energy; Optik Energy; and <i>Name Change:</i> Energy Rewards (f/k/a Fairpoint Energy)
16	April 2018 Membership Filing (ER18-1235)	Apr 26	FERC accepts termination of the Participant status of Phoenix Energy New England, eff. Mar 1

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

16	Revised Reliability Standard: PRC-025-2 (RD18-4)	Apr 19 May 2	Southern California Edison intervenes FERC approves PRC-025-2, eff. May 2
17	Order 843: Revised Reliability Standard: CIP-003-7 (RM17-11)	Apr 19	FERC approves CIP-003-7, eff. Jun 25
18	Revised GMD Research Work Plan (RM15-11)	Apr 19	NERC submits Revised Plan; comment date May 21

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



* 19	203 Application: NEP (Vuelta and Old Wardour Interconnection Assets) (EC18-85)	Apr 16	New England Power requests authorization to acquire certain interconnection assets associated with the East Brookfield, MA Vuelta and Old Wardour solar facilities; comment date May 7
* 19	203 Application: NRG Canal/ Stonepeak (EC18-83)	Apr 12	Applicants request authorization for Stonepeak to acquire indirectly NRG Canal
* 19	203 Application: XOOM Energy/NRG Retail (EC18-82)	Apr 5	Applicants request authorization for NRG Retail to acquire indirectly XOOM Energy
20	203 Application: Boston Energy/ Diamond Energy (EC18-64)	Apr 19	FERC authorizes Diamond Energy (a Mitsubishi wholly-owned subsidiary) to acquire all of the membership interests of Boston Energy (NRG Related Person)
20	203 Application: Dynegy/Vistra (EC18-23)	Apr 9 Apr 19	Dynegy merges with and into Vistra Applicants submit notice that merger was consummated
21	203 Application: MATEP (EC18-10)	Apr 6-10	MATEP informs the FERC that it was acquired by Longwood Energy Partners (an Engie Related Person) on Mar 30, 2018
21	MOPR-Related Proceedings (PJM, NYISO) (EL16-49; EL13-62)	Apr 5 Apr 20	EPSCA renews earlier requests for expedited action NYPSC opposes EPSCA motion
* 21	Nat'l Grid/Granite Reliable Power Reimbursement Agreement Cancellation (ER18-1350)	Apr 13	National Grid submits notice of cancellation of Reimbursement Agreement with Granite Reliable Power
* 22	D&E Agreement Cancellation: CL&P/Beacon Falls (ER18-1306)	Apr 6	Eversource files Notice of Cancellation of 2016 Engineering, Design and Procurement Services Agreement between CL&P and Beacon Falls Energy Park, recently superseded by a <i>pro forma</i> LGIA
22	MPD OATT Changes (ER18-1244)	Apr 20	MPUC requests hearing and settlement judge procedures; MOPA, MCG support MPUC request
22	IA: CL&P/Fusion Solar (ER18-1192)	Apr 25	CL&P requests 30-day extension of time from the date of an order accepting the IA to submit its time-value refund report
23	Use Rights Transfer Agreement: CMEEC/NSTAR/Nalcor (ER18-1170)	Apr 24	FERC accepts Agreement for the transfer of CMEEC's Phase I/II HVDC Use Rights to Nalcor, eff. May 23, 2018
* 23	FERC Enforcement Action: PSEG (IN18-4)	Apr 25	FERC approves Stipulation and Consent Agreement with PSEG, requiring PSEG to pay an <b>\$8 million civil penalty</b> and to <b>disgorge \$31.4 million</b> , including interest, to resolve the FERC's investigation into violations, between 2005 and 2014, of PJM's Operating Agreement, PJM's Tariff, and the FERC's Market Behavior Rules
23	FERC Enforcement Action: ETRACOM LLC and M. Rosenberg (IN16-2)	Apr 10	FERC approves Stipulation and Consent Agreement with ETRACOM, requiring ETRACOM to pay a <b>\$1.5 million civil penalty</b> and to <b>disgorge \$400,000</b> , including interest, to resolve the FERC's investigation into violations of its Anti-Manipulation Rules
24	FERC Audit of ISO-NE (PA16-6)	Apr 18	FERC approves ISO-NE Audit Report, which did not identify any findings of non-compliance requiring corrective action

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



24	DER Participation in RTO/ISOs (AD18-10; RM18-9)	Apr 10-11 Apr 27	FERC holds tech conf.; speaker materials posted on eLibrary FERC issues notice inviting post-tech conf. comments; DER aggregation comments should be filed in RM18-9; comments on potential effects of DERs on the bulk power system, separately in AD18-10; comment date Jun 26
25	Grid Resilience in RTO/ISOs; DOE NOPR (AD18-7; RM18-1)	Apr 9-30	Sabin Center for Climate Change Law, Americans for a Clean Energy Grid, and IEEE Power & Energy Society submit comments; NEPOOL comments due May 9
26	NOPR: Pipeline Rates (RM18-11)	Apr 25	Over 30 parties submit comments
27	<i>Order 845</i> : LGIA/LGIP Reforms (RM17-8)	Apr 19	FERC issues final rule
28	<i>Order 844</i> : Uplift Transparency in RTO/ISO Markets (RM17-2)	Apr 19	FERC issues final rule
28	<i>Order 841</i> : Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)	Apr 13	FERC issues tolling order affording it additional time to consider requests for clarif. and/or reh'g of <i>Order 841</i>
30	<i>Order 842</i> : Primary Frequency Response - Essential Reliability Services and the Evolving Bulk- Power System (RM16-6)	Apr 13	FERC issues tolling order affording it additional time to consider requests for reh'g, reconsideration of <i>Order 842</i>
30	NOI: Certification of New Interstate Natural Gas Facilities (PL18-1)	Apr 19	FERC announces its intention to revisit its approach under its 1999 Certificate Policy Statement to determine whether a proposed jurisdictional natural gas project is or will be required by the present or future public convenience and necessity; comment date Jun 25
30	NOI: FERC's Policy for Recovery of Income Tax Costs & ROE Policies (PL17-1)	Apr 13-16  Apr 27	Dominion, Enable companies, Enbridge and Spectra Energy Partners, EQT Midstream Partners, Kinder Morgan, Master Limited Partnership Association, NGAA, SPPP, LP, Oil Pipe Lines, Plains Pipeline, Tailgrass Pipelines, and TransCanada request rehearing of Mar 15 FERC issues tolling order affording it additional time to consider rehearing requests

**XIII. Natural Gas Proceedings**



34	New England Pipeline Proceedings		
	• Portland XPress Project (CP18-251)	Apr 20	PNGTS submits abbrev. application for authorization for 40,000 Dth/d of increased pipeline capacity, the first phase of a three-phase system expansion; comment date May 23
	• Atlantic Bridge Project (CP16-9)	Apr 12	Algonquin files notice the construction of Salem Pike, Needham, Pine Hills and Plymouth meter and regulating stations began Apr 2
	• Constitution Pipeline (CP18-5)	Apr 30	Supreme Court denies Constitution's petition for writ of certiorari, thereby letting stand the 2nd Circuit's Decision
36	Non-New England Pipeline Proceed'gs		
	• Southeast Mrk't Pipelines Project (CP14-554, CP15-16, CP15-17)	Apr 13  Apr 27	Several intervenors (including the Sierra Club) jointly file rehearing request and motion for stay of the FERC's Order on Remand Florida Southeast Connection and FPL oppose joint motion for stay
	• PennEast Project (CP15-558)	Apr 13	FERC issues tolling order of Delaware Riverkeeper Network rehearing request

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



*No Activity to Report*

**XV. Federal Courts**



41	Base ROE Complaint IV (2016) (18-1077)	Apr 16	TOs submit initial submissions and request that case be held in abeyance pending conclusion of FERC proceedings in Base ROE Complaints II and III
		Apr 30	EMCOS move to dismiss case for lack of jurisdiction
41	FCM Resource Retirement Reforms (17-1275)	Apr 17	Exelon file Petitioner’s Brief; Respondent FERC’s Brief due Jul 2
41	Demand Curve Changes (17-1110**)	Apr 13	Oral argument held before Circuit Judge Wilkins and Senior Circuit Judges Sentelle and Randolph

## M E M O R A N D U M

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

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

**DATE:** May 2, 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”),<sup>1</sup> state regulatory commissions, and the Federal Courts and legislatures through May 2, 2018. If you have questions, please contact us.

<b>I. Com complaints/Section 206 Proceedings</b>
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- **PER Settlement Agreement (ER17-2153; EL16-120)**

On February 20, the FERC approved<sup>2</sup> the Offer of Settlement and settlement materials (“PER Settlement”) filed by the Settling Parties<sup>3</sup> to resolve the issue set for hearing and settlement judge procedures by the FERC in this proceeding.<sup>4</sup> 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 Adjustment<sup>5</sup> will be equal to any positive difference between a five-minute Thirty-Minute Operating Reserves Clearing Price or Ten-Minute Non-Spinning Reserves Clearing Price that exceeds the maximum allowable reserves clearing

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

<sup>2</sup> *New England Power Generators Assoc. v. ISO New England Inc.*, 162 FERC ¶ 61,144 (Feb 20, 2018), *clarif. requested* (“PER Settlement Order”).

<sup>3</sup> PER “Settling Parties” are: NEPGA, NESCOE, the Retail Energy Supply Association (“RESA”), NEPOOL, Exelon, H.Q. Energy Services (U.S.) (“HQUS”), Eversource, Dominion, Entergy, NRG, and Cogentrix. Intervenors in the proceeding not opposing the Settlement (“Non-Opposing Intervenors”) are: 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.

<sup>4</sup> *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.”

<sup>5</sup> Five-Minute PER Strike Price Adjustment will be calculated according to the following formula: Five-Minute PER Strike Price Adjustment = MAX (Thirty-Minute Operating Reserves Clearing Price - \$500/MWh, 0) + MAX (Ten-Minute Non-Spinning Reserves Clearing Price – Thirty-Minute Operating Reserves Clearing Price - \$850/MWh, 0).

prices for those reserves products (i.e., the Reserve Constraint Penalty Factors) in effect before December 2014.

**Clarification Requested.** As previously reported, the PER Settlement did not resolve the issues of the applicability of the Strike Price methodology to FCA9.<sup>6</sup> 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.<sup>7</sup> On March 1, NESCOE requested clarification of the *PER Settlement Order* on this issue. NEPGA answered NESCOE's request on March 16.

**Compliance Filing.** ISO-NE was directed to make a compliance filing in eTariff format to reflect the FERC's action in the *PER Settlement Order*.<sup>8</sup> That compliance filing was submitted on March 22, 2018 (see ER18-1153 below). The FERC stated that the *PER Settlement Order* "terminates Docket Nos. EL16-120-000 and ER17-2153-000."<sup>9</sup>

If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, Judge Glazer issued on March 27, 2017 his initial decision<sup>10</sup> addressing Eastern Massachusetts Consumer-Owned Systems' ("EMCOS") Complaint<sup>11</sup> that the TOs' return on equity ("ROE") used in the Tariff's formula rate revenue requirement is too high on. The *Base ROE IV Initial Decision* concluded instead that the currently-filed base ROE of 10.57 %, which may reach a maximum ROE of 11.74 %

<sup>6</sup> 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."

<sup>7</sup> *PER Settlement Order* at P 3.

<sup>8</sup> 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.

<sup>9</sup> *PER Settlement Order* at P 4.

<sup>10</sup> *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

<sup>11</sup> 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%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15, 2017. The September 26, 2016 order was challenged on rehearing, but rehearing of that order was denied on January 16, 2018. *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) (together, the "*Base ROE Complaint IV Orders*"). The *Base ROE Complaint IV Orders*, as described in Section XV below, have been appealed to, and are pending before, the DC Circuit.



with incentive adders, is **not** unjust and unreasonable, and hence is not unlawful under section 206 of the Federal Power Act (“FPA”).<sup>12</sup> The *Base ROE IV Initial Decision* found that “Neither the Complainants nor Staff has met their burden to produce a properly-specified [Discounted Cash Flow (“DCF”)] analysis that demonstrates the [TOs’] existing base ROE is unjust and unreasonable.”<sup>13</sup> In light of those conclusions, the *Base ROE IV Initial Decision* finds it unnecessary to reach the issue of what a just and reasonable alternative base ROE ought to be. Briefs on exceptions to the *Base ROE IV Initial Decision* were filed on April 26, 2018 by EMCOS, CAPs, TOs, and FERC Trial Staff. In addition, CAPs requested on April 26 that the record be re-opened to receive three documents that CAPs assert demonstrate that there has been a significant factual change since the close of the record that calls into question the *Initial Decision’s* reliance on one DCF in establishing the Base ROE. On April 27, TOs requested that answers to the CAPs motion to re-open the record and briefs opposing exceptions be extended to May 24, 2018.

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

- **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 DC Circuit’s *Emera Maine*<sup>14</sup> 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 remain pending before the FERC.

- **206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)**

With the parties reportedly having reached a settlement in principle and memorializing their agreement, settlement judge procedures remain on-going. As previously reported, the FERC instituted this Section 206 proceeding on December 28, 2015, finding that the ISO-NE Tariff unjust, unreasonable, and unduly discriminatory or preferential because the Tariff “lacks adequate transparency and challenge procedures with regard to the formula rates” for Regional Network Service (“RNS”) and Local Network Service (“LNS”).<sup>15</sup> The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”.<sup>16</sup> Accordingly, the FERC established hearing and settlement judge procedures to develop just and reasonable formula rate protocols to be included in the ISO-NE Tariff and to examine the justness and reasonableness of the RNS and LNS rates. The FERC encouraged the parties to make every effort to settle this matter before hearing procedures are commenced.<sup>17</sup> Hearings continue to be

<sup>12</sup> *Id.* at P 2.; Finding of Fact (B).

<sup>13</sup> *Id.* Finding of Fact (A).

<sup>14</sup> *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).

<sup>15</sup> *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).

<sup>16</sup> *Id.* at P 8.

<sup>17</sup> *Id.* at P 11.



held in abeyance pending the outcome of settlement judge procedures underway.<sup>18</sup> The FERC-established refund date is January 4, 2016.<sup>19</sup>

**Settlement Judge Procedures.** As previously reported, John P. Dring was designated the Settlement Judge in these proceedings. Five settlement conferences were held in 2016: January 19, March 24, April 28, August 30, and November 18 (telephonically); 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, in 2018. Judge Dring's most recent status report was issued on April 3, noting that the parties have reached a settlement in principle, and are memorializing their agreement. Accordingly, he recommended that settlement procedures be continued. The Transmission Committee is being kept apprised, as appropriate, of settlement efforts. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **Base ROE Complaints II & III (2012 & 2014) (EL13-33 and EL14-86) (consolidated)**

Judge Sterner's findings and the *2012/2014 ROE Initial Decision*, and pleadings in response thereto, remain pending before the FERC. As previously reported, the FERC, in response to second (EL13-33)<sup>20</sup> and third (EL14-86)<sup>21</sup> complaints regarding the TOs' 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;<sup>22</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>23</sup> and, because of "common issues of law and fact", consolidated the two proceedings for purposes of hearing and decision, with the FERC finding it "appropriate for the parties to litigate a separate ROE for each refund period."<sup>24</sup> The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.<sup>25</sup> 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

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<sup>18</sup> *Id.*

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

<sup>20</sup> The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOs' 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

<sup>21</sup> The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General ("MA AG"), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the "2014 ROE Complainants"), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

<sup>22</sup> *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).

<sup>23</sup> *Mass. Att'y Gen. v. Bangor Hydro*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh'g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

<sup>24</sup> *Id.* at P 27 (for the refund period covered by EL13-33 (i.e., Dec. 27, 2012 through Mar. 27, 2014), the ROE for that particular 15-month refund period should be based on the last six months of that period; the refund period in EL14-86 and for the prospective period, on the most recent financial data in the record).

<sup>25</sup> *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al. and Mass. Att'y Gen. et al. -v- Bangor Hydro et al.*, 151 FERC ¶ 61,125 (May 14, 2015).

periods from 11.14% to 9.59% and 10.90%, respectively.<sup>26</sup> The *Initial Decision* also lowered the ROE ceilings. Judge Sterner's decision, if upheld by the FERC, would result in refunds totaling as much as \$100 million, largely concentrated in the EL13-33 refund period. Briefs on exceptions were filed by the TOs, Complainant-Aligned Parties ("CAPs"), EMCOS, and FERC Trial Staff on April 21, 2016; briefs opposing exceptions, on May 20, 2016. Judge Sterner's findings and *Initial Decision*, and pleadings in response thereto, remain pending, and will be subject to challenge, before the FERC. The *2012/14 ROE Initial Decision* and its findings can be approved or rejected, in whole or in part.

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

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

- **VTransco Recovery of Highgate Ownership Share Acquisition Costs (ER18-1259)**

On March 30, 2018, VTransco filed to recover, under the regional formula rate, \$639,780 in costs, including property transfer taxes, closing fees, and advisory fees, related to its acquisition recent of Highgate Transmission Facility ownership shares.<sup>27</sup> VTransco stated that, absent FERC action, it would recover the expenses solely from Vermont customers (under its grandfathered 1991 Vermont Transmission Agreement ("VTA")). VTransco asserts that, because the costs are related to VTransco's acquisition of ownership shares in the Highgate Transmission Facility, a facility utilized solely to provide Regional Network Service, it is just and reasonable to allow VTransco to recover the Highgate Transaction costs through the ISO-NE Tariff formula rate, rather than through the VTA. VTransco requested its request for rate recovery become effective May 29, 2018.

Comments on this filing were due on or before April 20. The Massachusetts Attorney General ("MA AG") filed a protest, asserting that VTransco did not meet its commitment, made in the earlier Section 203 proceeding (EC17-76) in which the Highgate ownership shares acquisition was approved,<sup>28</sup> to make a showing of "specific, measurable, and substantial benefits to ratepayers" of the transaction-related costs for which recovery is sought here. In addition, MA AG challenges the position that VTransco need only meet, or if so, has met, the "just and reasonable" standard under FPA Section 205. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **FCA12 Results Filing (ER18-940)**

On April 26, the FERC accepted the results of the twelfth FCA ("FCA12") held February 5-6, 2018. As previously reported, ISO-NE reported the following highlights:

- ◆ FCA12 Capacity Zones were the Southeastern New England ("SENE") Capacity Zone (the Northeastern Massachusetts ("NEMA")/Boston, Southeastern Massachusetts, and Rhode Island Load Zones), the Northern New England ("NNE") Capacity Zone (the Maine, New Hampshire and

<sup>26</sup> *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*").

<sup>27</sup> See *Green Mountain Power Corp.*, 159 FERC ¶ 62,191 (May 19, 2017) (order authorizing VTransco's acquisition of Green Mountain Power's ("GMP") ownership share in the Highgate Facilities). Of the Joint Owners, GMP was the only FERC-jurisdictional public utility (the other Joint Owners were the City of Burlington Electric Department, Vermont Public Power Supply Authority ("VPPSA"), Vermont Electric Cooperative, Inc. ("VEC"), and the Village of Johnson Water and Light Department). In the 203 application, VTransco stated that the transfer will result in efficiencies in operation and management of the facility by VELCO.

<sup>28</sup> Should VTransco or GMP seek to recover any transaction-related costs, they state that they will seek Commission approval by making a separate filing under section 205 of the FPA and making the required showing of specific, measurable, and substantial benefits to ratepayers. Therefore, according to Applicants, the Proposed Transaction will have no adverse effect on the rates of transmission customers

- Vermont Load Zones) and the Rest-of-Pool Capacity Zone (the Connecticut and Western/Central Massachusetts Load Zones)
- ◆ FCA12 commenced with a starting price of \$12.684/kW-mo. and concluded for the SENE, NNE and Rest-of-Pool after four rounds.
  - ◆ Resources will be paid as follows:
    - \$4.631/kW-mo. – all Capacity Zones
    - \$4.631/kW-mo. – NY AC Ties imports (524 MW) and Highgate (57 MW)
    - \$3.701/kW-mo. - Phase I/II HQ Excess external interface (442 MW)
    - \$3.155/kW-mo. – New Brunswick imports (194 MW)
  - ◆ No resources cleared as Conditional Qualified New Generating Capacity Resources
  - ◆ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource
  - ◆ 2 de-list bids (for Mystic 7 (575 MW) and Mystic 8 (703 MW)) were rejected for reliability reasons

The FCA12 rates and results were accepted effective as of June 28, 2018, as requested. Unless the April 26 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](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On April 30, Emera Maine submitted an uncontested Joint Offer of Settlement (“Settlement”) between itself, Houlton Water Company (“Houlton”), Van Buren Light and Power District, Eastern Maine Electric Cooperative, Inc., and the Maine Office of the Public Advocate (“MOPA”) that, if approved, will resolve all issues pending in this proceeding. The Settlement establishes revised Attachment J Protocols to be effective January 1, 2018, to substitute for those filed that initiated this proceeding, and establishes the timing (not prior to June 1, 2019) and notice (120 calendar days’ notice) provisions for Houlton to interconnect its electrical system with that of NB Power, as well as an exit fee in case of a breach of those timing and notice provisions. Comments on the Settlement must be filed on or before May 21, 2018, and Reply Comments must be filed on or before May 30, 2018.

As previously reported, the FERC accepted Emera’s proposed revision to Attachment J of the Maine Public District (“MPD”) OATT,<sup>29</sup> 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.”<sup>30</sup> 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 expected to occur early next year, Emera Maine would suffer a significant under-recovery in its transmission revenue requirement. The Maine Customer Group (“MCG”)<sup>31</sup> 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”. Judge John P. Dring served as the Settlement Judge in these proceedings.

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

<sup>29</sup> *Emera Maine*, 162 FERC ¶ 61,131 (Feb. 15, 2018).

<sup>30</sup> *Id.* at P 24.

<sup>31</sup> MCG 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”).

- **MPD OATT Annual Informational Filing (ER15-1429)**

On April 13, 2018, Emera Maine requested an extension of time, to and including May 15, 2018, to submit its annual update of charges under the Emera Maine Open Access Transmission Tariff for Maine Public District (“MPD OATT”). Emera Maine stated that the extension will avoid the need for it to submit an annual update only to change it shortly thereafter as the result of a soon-to-be-filed Offer of Settlement regarding the MPD OATT (see ER18-210 immediately above). If there are 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.<sup>32</sup> 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*<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **ISO Securities: Authorization for Future Drawdowns (ES18-25)**

On March 28, the ISO requested the necessary FERC authorization for drawdowns under a new \$20 million Revolving Credit Line and a new \$4 million line of credit supporting the Payment Default Shortfall Fund, each of which are with TDBank, are for a term of three years ending June 30, 2021, and replace similar arrangements that will expire June 30, 2018.<sup>36</sup> Comments on this filing were due on or before April 18; none were filed. National Grid filed a doc-less intervention (out-of-time). This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbval@daypitney.com](mailto:pnbval@daypitney.com)).

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

- **ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509)**

On May 1, 2018 (officially May 2), ISO-NE requested waiver of its Tariff to the extent necessary (i) for the retention of Mystic 8 & 9 for fuel security, rather than for local transmission needs, and (ii) to extend certain deadlines to accommodate Exelon’s requirements. ISO-NE stated that the waiver was necessary to ensure reliable electric service for New England consumers during the 2022-2023 and 2023-2024 Capacity Commitment Periods.

<sup>32</sup> *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) (“*Order Rejecting Filing*”), *reh’g requested*.

<sup>33</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (“*Emera Maine*”).

<sup>34</sup> *Order Rejecting Filing* at P 1.

<sup>35</sup> *Id.* at P 36.

<sup>36</sup> See *ISO New England Inc.*, 139 FERC ¶ 62,248 (June 22, 2012) (initially authorizing borrowings through June 30, 2014); *ISO New England Inc.*, 147 FERC ¶ 62,091 (May 6, 2014) (continuing authorization through June 30, 2015); *ISO New England Inc.*, 151 FERC ¶ 62,185 (June 15, 2015) (continuing authorization through June 30, 2017); *ISO New England Inc.*, 159 FERC ¶ 62,143 (May 9, 2017) (continuing authorization through June 30, 2019).

ISO-NE stated that its analyses establish that retirement of Mystic 8 & 9 would cause depletion of Ten-Minute Operating Reserves (“TMOR”) (a violation of mandatory reliability criteria) on numerous occasions, trigger load shedding—rolling blackouts—during the 2022-23 and 2023-24 winter periods, and, because the Mystic units are the largest customers of Distrigas, substantially diminish Distrigas’ financial viability (the loss of which would increase the region’s risks of reserve depletion and load shedding and the length and severity of such events). Specifically, ISO-NE requested waiver of the following Tariff provisions:

- ◆ Attachment K of the OATT, relating to evaluating upgrades to the transmission system to address a local reliability need
- ◆ Market Rule 1 (“MR1”) § III.13.1.2.3.1.5.1, relating to review of Retirement De-List Bids for local reliability needs.
- ◆ MR1 § III.13.2.5.2.5, relating to the criteria applied in reviewing a Retirement De-List Bid for a local reliability need.
- ◆ MR1 §§ III.13.2.5.2.5 and III.13.2.5.2.5.1, relating to retaining a capacity resource until the underlying reliability need is addressed.
- ◆ MR1 § III.13.2.3.2(c), relating to permitting a supplier whose resource is being retained for reliability to submit a Dynamic De-List Bid in the auction.
- ◆ MR1 §§ III.13.1.2.3.1.5.1(c) and III.13.2.5.2.5.1(b), relating to compensation for a resource that is retained for reliability.
- ◆ MR1 § III.13.2.5.2.5.2, relating to capital expenditures for a resource retained for reliability.
- ◆ MR1 §§ III.13.1.2.4.1 and III.13.1.2.3.1.5.1(d), relating to the deadlines for a capacity supplier that has submitted a Retirement De-List Bid to elect unconditional retirement or elect to be retained for an identified reliability need.

ISO-NE requested a decision on its waiver request no later than July 2, 2018 (just ahead of the July 6, 2018 date by which Participants, including Exelon, must decide whether or not to participate in FCA13). Comments on this filing are due on or before May 23, 2018. If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **FCM Enhancements – Phase II (ER18-1287)**

On April 2, 2018, ISO-NE and NEPOOL filed changes to streamline and improve various aspects of the FCM rules, and in particular, the rules governing the FCA qualification process (“FCM Enhancements – Phase II”). Specifically, the FCM Enhancements - Phase II (i) streamline the process used to increase the capability of an Existing Capacity Resource; (2) revise ISO-NE processes that can delay the return of financial assurance to intermittent generating and energy efficiency resources that are operational and able to meet their Capacity Supply Obligations; (3) memorialize the existing process by which ISO-NE determines that a new resource has become operational such that it is appropriate to release its financial assurance; (4) make several additional improvements to the FCM qualification process; and (5) clarify existing language related to the retirement and Permanent De-Listing of capacity resources, and make a number of other minor changes. ISO-NE requested a June 1, 2018 effective date for most of the changes.<sup>37</sup> The FCM Enhancements – Phase II were supported by the Participants Committee at its March 2, 2018 meeting (under a combination of Consent Agenda Item # 2 and discussion agenda item #3). Comments on this filing were due on or before April 23, 2018; none were filed. Avangrid, ConEd, Eversource, National Grid, NESCOE, NRG/GenOn, and Public Citizen filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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<sup>37</sup> A June 1, 2020 effective date was requested for the final sentence of revised Section III.13.6.1.5.3 (“The summer and winter commercial capacity of a Demand Capacity Resource consisting solely of Energy Efficiency measures may be verified in any month of the year”) and for the revisions to revised Section III.13.6.1.5.4(g).



- **PFPP Enhancements (ER18-1223)**

On March 30, 2018, ISO-NE and NEPOOL filed changes that enhance and clarify the Pay-For-Performance (“PFPP”) Market Rules (“PFPP Enhancements”). Specifically, the PFPP Enhancements (i) delete provisions that would, in certain circumstances, result in an inappropriate disconnect between a resource’s capacity “base” payment and its capacity “performance” payment during a scarcity event; (ii) add detail regarding how the Actual Capacity Provided (a component used in determining a resource’s capacity performance payment during a scarcity event) will be calculated for Demand Capacity Resources; (iii) revise how the Capacity Balancing Ratio (another component used in determining a resource’s capacity performance payment during a scarcity event) will be determined in cases where more than one reserve requirement violation caused the scarcity event; and (iv) effect conforming and clean-up changes. ISO-NE requested a June 1, 2018 effective date (the date PFPP is to be implemented). The PFPP Enhancements were supported by the Participants Committee at its February 2, 2018 meeting (Consent Agenda Item # 4). Comments on this filing were due on or before April 20, 2018; none were filed. ConEd, Eversource, Exelon, National Grid, NESCOE, NRG/GenOn, and Public Citizen filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **PER Settlement Compliance Filing (ER18-1153)**

On March 22, 2018, in accordance with the Commission-accepted PER Settlement Agreement, ISO-NE filed changes to Market Rule section 13.7.2.7.1.1.1 revising the methodology for calculating the PER Strike Price for the period September 30, 2016 through May 31, 2018 (the “Refund Period”). The revised language increases the Daily PER Strike Price for the Refund Period. ISO-NE requested the changes become effective as of September 30, 2016. The Markets Committee recommended that the Participants Committee support the Compliance Changes, and the Compliance Changes will be considered by the Participants at the April 6 meeting (Consent Agenda Item #1). Comments on this filing are due on or before April 12, 2018. NEPOOL submitted comments supporting the compliance changes. NESCOE submitted a limited protest requesting that the FERC reject the March 22 Filing as non-compliant with the *PER Settlement Order*, asserting that the Compliance Changes, if accepted, would “use the Adjusted PER Strike Price to calculate monthly capacity payments to resources for at least some, and potentially all, of Capacity Commitment Period 9 ... [an] outcome []inconsistent with the Settlement Order.” NEPGA answered NESCOE’s protest on April 24. NEPOOL answered NESCOE’s protest on April 27 (to clarify that (i) NEPOOL fully supports the compliance changes as filed and (ii) on the disagreements among NESCOE and NEPGA, which are broader than the filed tariff changes, NEPOOL has not and does not take any substantive position). ConEd, Dominion, Eversource, Exelon (out-of-time), National Grid, NESCOE, and NRG/GenOn filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **CASPR (ER18-619)**

Also on March 9, the FERC accepted ISO-NE’s Competitive Auctions with Sponsored Policy Resources (“CASPR”) revisions.<sup>38</sup> The CASPR revisions were effective March 9, 2018 (with the exception of revisions to Section III.13.7 that are to become effective June 1, 2018).

Highlights from the *CASPR Order* included the following:

- ◆ **Overall.** Guided by what the Order describes as “the first principles of capacity markets,” the FERC found “ISO-NE’s proposal to be an acceptable means of managing the impact of state policies in the New England region while maintaining just and reasonable rates.”<sup>39</sup>

<sup>38</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) (“*CASPR Order*”).

<sup>39</sup> *Id.* at P 22.

- ◆ **Sponsored Policy Resource Definition.** The FERC found that the definition of Sponsored Policy Resource “does not unduly discriminate against resources that do not fit within that definition because those two classes of resources are not similarly situated.”<sup>40</sup>
- ◆ **Auction Design.** The FERC found the proposed auction design to be just and reasonable, persuaded by the ISO’s arguments that requiring new, non-sponsored resources to participate in the substitution auction could discourage development of those resources, and that allowing new non-sponsored resources to participate in the substitution auction introduces concerns about fictitious entry that are difficult to address while still supporting the FCM’s key function of attracting and sustaining investment in new capacity when needed.<sup>41</sup> While acknowledging that allowing existing resources to submit spread bids in the substitution auction (spread bidding) could present existing resources with an alternative way to express their willingness to exit the market at a specific severance payment amount, and thus could enhance liquidity in the substitution auction, the Order found such an allowance unnecessary for CASPR to be a just and reasonable means to accommodate the exit of certain existing resources and the entry of new Sponsored Policy Resources into the FCM over time.<sup>42</sup> The FERC found it reasonable for load to assume additional costs associated with balancing the goals of providing Sponsored Policy Resources an opportunity to receive CSOs with the FCM’s need to secure private investment in the long term.<sup>43</sup>
- ◆ **Offer Behavior and Market Power.** The FERC agreed with the ISO that the likelihood and potential price impact of bid shading (lowering bids in the primary auction to improve the probability of retaining CSOs that would be bought out in the substitution auction) will be mitigated by various factors and does not render the changes unjust and unreasonable. Nevertheless, the FERC encouraged the ISO to work with its stakeholders to pursue market enhancements that will further protect against potentially uncompetitive market results.<sup>44</sup> The FERC disagreed with the position that demand-side market power in the substitution auction may render ISO-NE’s proposal unjust and unreasonable.<sup>45</sup>
- ◆ **Renewable Technology Resource (“RTR”) Exemption Phase Out.** The FERC accepted the RTR exemption phase out, finding the transition proposal “a balanced approach for implementing CASPR’s alternative means of accommodating state policies, while attenuating any potential adverse impacts on pending investments that could result from an immediate change to the market rules.”<sup>46</sup>
- ◆ **Other Issues.** The FERC disagreed with arguments that CASPR’s restriction on inter-zonal CSO transfers is not just and reasonable, or that CASPR will increase the region’s dependence on natural gas-fired generation and exacerbate current fuel security concerns. The FERC found unnecessary requests that it require periodic filings on ways to improve, or take additional actions with respect to, CASPR or the FCM.<sup>47</sup>
- ◆ **MOPR.** Of general but particular interest, and specifically challenged in the separate concurrences/dissents of Commissioners LaFleur and Glick, is the *CASPR Order’s* discussion of the Minimum Offer Price Rule (“MOPR”). The *CASPR Order* states that, “absent a showing that a different method would appropriately address particular state policies, [the FERC] intend[s] to use the MOPR to address the impacts of state policies on the wholesale capacity markets.” And, while the MOPR will be used “as our standard solution, we will consider supplemental or alternative

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<sup>40</sup> Id. at P 45.

<sup>41</sup> Id. at P 74.

<sup>42</sup> Id. at P 77.

<sup>43</sup> Id. at P 78.

<sup>44</sup> Id. at P 85.

<sup>45</sup> Id. at P 86.

<sup>46</sup> Id. at P 99.

<sup>47</sup> Id. at PP 115-122.



proposals to manage the impact of state policies, provided that those proposals are sufficiently consistent with the above-mentioned principles of capacity markets.”<sup>48</sup>

The *CASPR Order* included a concurrence in part from Commissioner LaFleur, a concurrence in part and dissent in part from Commissioner Glick, and a dissent from Commissioner Powelson.

- ◆ **LaFleur.** In her concurrence in part, Commissioner LaFleur strongly supported the FERC’s approval of CASPR, but noted her disagreement with the generic guidance set forth in the order regarding how the FERC intends to address the impacts of state policies on the wholesale capacity markets, which she explained was “not directly pertinent to the CASPR proposal, and in my view is not necessary to support the [CASPR Order]”. Commissioner LaFleur stated her intent to “closely monitor the effectiveness of this market construct in practice” and her appreciation for “ISO-NE’s commitment to continue to work with stakeholders on the definition of sponsored policy resources if state laws and regulations change.”
- ◆ **Glick.** In his concurrence in part and dissent in part, Commissioner Glick agreed with the decision to accept the CASPR proposal, but disagreed strongly with the *CASPR Order’s* suggestion that state sponsored resources must either be subject to a MOPR or some alternative mechanism for “accommodating” the effects of state public policies, finding that rationale “ill-conceived, misguided, and a serious threat to consumers, the environment and ... the long-term viability of the [FERC]’s capacity market construct.” He expressed his concern that a “broad application of the MOPR usurps the authority over generation resource decisions that Congress left to the states when it enacted the Federal Power Act” and should be applied “in only the limited circumstance for which it was originally intended: to prevent the exercise of buyer-side market power.”
- ◆ **Powelson.** In his dissent, Commissioner Powelson found that the two goals that CASPR tries to achieve (allowing states to accomplish certain policy goals, while also protecting the viability of the FCM) are fundamentally in conflict, cannot coexist in one market and CASPR will likely only accomplish one goal at the expense of the other. In his view, the CASPR proposal “will not provide a meaningful [price] signal to the market place” and may send a message “that the best way to ensure the future viability of a particular resource is to seek state support.” He acknowledged that states “are entitled to procure any resources they prefer,” but “if states do want to be in control of those choices, they should also assume the responsibility for resource adequacy and reliability.” Commissioner Powelson ultimately opined that the *CASPR Order* “threatens the viability of the FCM to serve as a mechanism to ensure resource adequacy in ISO-NE, and therefore, it is unjust and unreasonable and should be rejected.”

**Requests for Rehearing of CASPR Order.** Requests for rehearing of the *CASPR Order* were filed by (i) *NextEra/NRG* (which challenge the RTR Exemption Phase Out); (ii) *ENECOS*<sup>49</sup> (challenging the FERC’s findings with respect to the definition of Sponsored Policy Resource and the allocation of CASPR side payment costs to municipal utilities); (iii) *Clean Energy Advocates*<sup>50</sup> (which challenge the CASPR construct in its entirety, asserting that state-sponsored resources should not be subject to the MOPR); and (iv) *Public Citizen* (which also challenges the CASPR construct in its entirety and the CASPR Order’s failure to define “investor confidence”). On April 24, ISO-NE answered Clean Energy Advocates’ answer. The requests for rehearing and ISO-NE’s answer are pending,

<sup>48</sup> Id. at P 22.

<sup>49</sup> The Eastern New England Consumer-Owned Systems (“ENECOS”) are: Braintree Electric Light Department, Georgetown Municipal Light Department, Groveland Electric Light Department, Littleton Electric Light & Water Department, Middleton Electric Light Department, Middleborough Gas & Electric Department, Norwood Light & Broadband Department, Pascoag (Rhode Island) Utility District, Rowley Municipal Lighting Plant, Taunton Municipal Lighting Plant, and Wallingford (Connecticut) Department of Public Utilities. Wellesley Municipal Light Plant, which intervened in this proceeding as one of the ENECOS, did not join in the ENECOS’ request for rehearing.

<sup>50</sup> “Clean Energy Advocates” are, collectively the Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, Conservation Law Foundation, and RENEW Northeast, Inc.

with FERC action required on or before May 7, 2018 (the first business day 30 days from the date the first (Public Citizen) request for clarification was filed), or the requests will be deemed denied by operation of law.

If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto: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.<sup>51</sup> 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 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](mailto: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.<sup>52</sup> 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.<sup>53</sup> 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](mailto:slombardi@daypitney.com)).

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

##### *No Activity to Report*

<sup>51</sup> *ISO New England Inc.*, 161 FERC ¶ 61, 035 (Oct. 6, 2017) ("*CONE/ORTP Updates Order*"), *reh'g requested*.

<sup>52</sup> *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("*2013/14 Winter Reliability Program Remand Order*"). As previously reported, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable), and directing the FERC to either offer a reasoned justification for the order in ER13-2266 or revise its disposition to ensure that the Program rates are just and reasonable. *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

<sup>53</sup> *2013/14 Winter Reliability Program Remand Order* at P 17.

## V. Financial Assurance/Billing Policy Amendments

*No Activity to Report*

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

- **Schedule 21-EM: BHD Tax Law & Settlement Changes (ER18-1213)**

On March 29, 2018, Emera Maine filed changes to the Emera Maine, Bangor-Hydro District (“BHD”) Formula Rate to reflect: (i) the reduction to the marginal corporate income tax rate resulting from the 2017 Tax Law and the 2017 Annual Update Settlement Agreement (see ER18-960 below) and (ii) recent IRS guidance regarding tax normalization accounting for ratemaking. Comments on this filing were due on or before April 19, 2018. On April 19, MPUC requested that the FERC accept the filing, but subject to refund and to hearing and settlement judge procedures. MPUC stated that, although it agreed conceptually that the tariff changes were necessary to address recent changes in the tax law, it identified that some questions remain regarding the implementation of the concept and asked for an opportunity through settlement and hearings if necessary to better understand Emera Maine’s proposed changes and to ensure that Emera Maine’s ratepayers receive the full benefit of the lower tax rate resulting from the 2017 Tax Law. MPUC’s request was supported by a motion from MOPA. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **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. On March 5, the Filing Parties submitted a corrected transmittal letter to correct certain errors regarding the physical configuration of Emera Maine’s lines and substations. A May 16, 2018 effective date was requested. No comments on this filing were submitted and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On June 2, 2016, the FERC accepted, but established hearing and settlement judge procedures for,<sup>54</sup> March 31 filings by Emera Maine in which Emera Maine sought authorization to recover certain merger-related costs viewed by the FERC’s Office of Enforcement’s Division of Audits and Accounting (“DAA”) to be subject to the conditions of the orders authorizing Emera Maine’s acquisition of, and ultimate merger with, Maine Public Service (“Merger Conditions”). As previously reported, the Merger Conditions imposed a hold harmless requirement, and required a compliance filing demonstrating fulfillment of that requirement, should Emera Maine seek to recover transaction-related costs through any transmission rate. Following its recent audit of Emera Maine, DAA found that Emera Maine “inappropriately included the costs of four merger-related capital initiatives in its formula rate recovery mechanisms” and “did not properly record certain merger-related expenses incurred to consummate the merger transaction to appropriate non-operating expense accounts as required by [FERC] regulations [and] inappropriately included costs of merger-related activities through its formula rate recovery mechanisms” without first making a compliance filing as required by the merger orders.

<sup>54</sup> *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“June 2 Order”).

In the *June 2 Order*, the FERC found that the Compliance Filings raise issues of material fact that could not be resolved based on the record, and are more appropriately addressed in the hearing and settlement judge procedures.<sup>55</sup> The FERC reiterated several points with respect to transaction-related cost recovery explained in prior FERC orders and provided guidance on other transaction-related cost recovery points.<sup>56</sup> The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures.<sup>57</sup> The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.<sup>58</sup>

**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 March 26, 2018 status report, Judge Dring indicated that the parties have reached a settlement in principle, and are memorializing their agreement. Accordingly, he recommended that settlement judge procedures 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-EM 2017 Annual Update (ER15-1434) Settlement Agreement (ER18-960)**

Emera Maine submitted its 2017 annual informational filing updating its local transmission service charges under Schedule 21-EM on June 6, 2017 ("2017 Annual Update"). On October 20, 2017, the MPUC challenged the application of the Attachment J Formulas under the "Protocols for Implementing and Reviewing Charges Established by the Attachment J Formulas". Since that challenge was filed, Emera Maine and the MPUC engaged in settlement discussions regarding the MPUC's challenge. On March 2,<sup>59</sup> Emera Maine made two filings in connection with those settlement efforts. First, it filed in ER15-1434 a corrected version of the spreadsheet submitted with the 2017 Annual Update showing Emera Maine's charges under Schedule 21-EM for the June 1, 2017 to May 31, 2018 rate year. Second, Emera Maine filed, in ER18-960, a settlement agreement that required the filing of the corrected spreadsheet, and included a commitment by Emera Maine to make a Section 205 filing by March 31, 2018 containing "such changes to the Attachment J

<sup>55</sup> *Id.* at P 24.

<sup>56</sup> *Id.* at PP 25-26.

<sup>57</sup> *Id.* at P 27.

<sup>58</sup> *Id.* at P 21; Ordering Paragraph (B).

<sup>59</sup> The FERC was closed on Friday, March 2 due to the Nor'easter that hit Washington that day. Accordingly, the official filing date for all March 2 submissions was March 5, 2017, the first business day the FERC was open for business following the closure.

Formulas, effective June 1, 2018, as necessary to reflect the [Federal Tax Cuts and Jobs] Act’s reduction to the marginal corporate income tax rate.” [The settlement changes were filed on March 29 (see ER18-1213 above)] Comments on the Settlement Agreement were due on or before March 27; none were filed. The MPUC filed a doc-less intervention. The Settlement Agreement is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-VEC and 20-VEC Annual Informational Filing (ER10-1181)**

On April 27, 2018, VEC submitted its annual update to the formula rates contained in Schedules 21-VEC and 20-VEC covering the July 1, 2018 – June 30, 2019 period. VEC indicated that it was not proposing any changes to the underlying formulas. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VII. NEPOOL Agreement/Participants Agreement Amendments

*No Activity to Report*

## VIII. Regional Reports

- **LFTR Implementation: 38<sup>th</sup> Quarterly Status Report (ER07-476; RM06-08)**

ISO-NE filed the 38th of its Quarterly Status Reports regarding LFTR implementation on April 16, 2018. ISO-NE again reported its plan to focus on implementation of the monthly reconfiguration auctions (accepted in ER12-2122). ISO-NE reported that the Participants Committee supported its revised monthly ARA financial assurance design (January 5, 2018 meeting, agenda item #5) and ISO-NE is evaluating when it will file that design based on implementation timing. ISO-NE went on to explain how and when it will renew efforts to address the financial assurance issues associated with LFTRs. These status reports are not noticed for public comment.

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

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

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

The TOs’ November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A*<sup>60</sup> and *531-B*<sup>61</sup> also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

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

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

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

<sup>60</sup> *Martha Coakley, Mass. Att’y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

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

- **ISO-NE FERC Form 1 (not docketed)**

On April 15, ISO-NE submitted its 2017 FERC Form 1 (Annual Report of Major Electric Utilities, Licensees and Others). On April 16, ISO-NE filed the CPA Certification Statement for that Form. FERC Form 1 filings are not noticed for comment.

- **ISO-NE FERC Reporting Requirement 582 (not docketed)**

On April 23, ISO-NE submitted a report of its total MWh of transmission service during 2017. ISO-NE reported that 130,901,486.207 132,813,111.824 MWh of transmission service in interstate commerce was provided during 2017 (roughly 1.91 million MWh less than 2016). These filings are not noticed for comment.

## IX. Membership Filings

- **May 2018 Membership Filing (ER18-1485)**

On April 30, NEPOOL requested that the FERC accept (i) the memberships of Anbaric Development Partners (Provisional Member); Appian Way Energy Partners East (Supplier Sector); Canton Mountain Wind (Related Person to Spruce Mountain Wind, Generation Group Seat); GSP Lost Nation, GSP Merrimack, GSP Newington, GSP Schiller, and GSP White Lake (Related Persons to Castleton Commodities Merchant Trading (Supplier Sector)); Marco DM Holdings (Generation Sector); and WATTIFI (Supplier Sector); (ii) the termination of the Participant status of AmericaWide Energy and Optik Energy; and (iii) the name change of Energy Rewards (f/k/a Fairpoint Energy). Comments on the May Membership filing are due on or before May 21.

- **April 2018 Membership Filing (ER18-1235)**

On April 26, the FERC accepted the termination of the Participant status of Phoenix Energy New England (Supplier Sector), effective Mar 1, 2018 as requested. Unless the April 26 order is challenged, this proceeding will be concluded.

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

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

- **Revised Reliability Standard: PRC-025-2 (RD18-4)**

On May 2, the FERC approved revised Reliability Standard PRC-025-2 (Generator Relay Loadability). The Revised Standard was revised to better address risks of unnecessary generator tripping where the voltage is depressed and the generator is capable of increased Reactive Power output and voltage support during the disturbance ("PRC-025 Changes"). Specifically, the PRC-025 Changes: (i) add a provision to the Relay Loadability Evaluation Criteria in Attachment 1, Table 1 ("Table 1") to address dispersed power producing resources that are unable to be set at 130% of the calculated current due to physical limitations of the protection equipment; (ii) add to Table 1 relay type description the protective relay 50 Element associated with instantaneous (i.e., without intentional time delay) tripping of overcurrent based protection; (iii) clarify in the Table 1 that an entity must apply settings to all the applications described therein; (iv) clarify that an entity, when employing simulation for setting relays associated with the transmission line interconnecting the generator or plant to the Transmission system, must simulate the 0.85 per unit depressed voltage at the remote end (i.e., Transmission system side) of the line; (v) replaces "Pick Up" with "Setting Criteria" in Table 1 heading, to better align the setting to the calculated or simulated capability of the generator with an associated margin; and (vi) clarify certain terminology and references. The PRC-025 Changes were accepted effective as of the date of the order. Unless the May 2 order is challenged, this proceeding will be concluded.

- **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"))).<sup>62</sup> 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,<sup>63</sup> and were filed by over 15 parties, including by NYPSC, 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) (together, the "Supply Chain Cybersecurity Risk Management Changes").<sup>64</sup> 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* were due on or before March 26, 2018,<sup>65</sup> and were filed by over 20 parties, including NERC, ISO/RTO Council, EEI, Joint Trade Associations,<sup>66</sup> and the MPUC. This matter is pending before the FERC.

- **Order 843: Revised Reliability Standard: CIP-003-7 (RM17-11)**

On April 19, 2018, the FERC approved 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").<sup>67</sup> As previously reported, the CIP-003 Changes (i) clarify the electronic access control requirements applicable to low impact BES Cyber Systems; (ii) add requirements related

<sup>62</sup> *Cyber Security Incident Reporting Reliability Standards*, 161 FERC ¶ 61,291 (Dec. 21, 2017) ("*Cyber Security Incident Reporting NOPR*").

<sup>63</sup> 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.

<sup>64</sup> *Supply Chain Risk Management Reliability Standards*, 162 FERC ¶ 61,044 (Jan. 18, 2018) ("*Supply Chain Risk Management Standards NOPR*").

<sup>65</sup> *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.

<sup>66</sup> For purposes of this proceeding, "Joint Trade Associations" are the American Public Power Association ("APPA"), the Electricity Consumers Resource Council ("ELCON"), the Large Public Power Council ("LPPC"), the National Rural Electric Cooperative Association ("NRECA"), and the Transmission Access Policy Study Group ("TAPS").

<sup>67</sup> *Rev. Critical Infrastructure Protection Rel. Standard CIP-003-7 – Cyber Security – Security Management Controls*, Order No. 843, 163 FERC ¶ 61,032 (Apr. 19, 2018) ("*Order 843*").



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 directed 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. *Order 843* will become effective on June 25, 2018.<sup>68</sup> Unless *Order 843* is challenged, this proceeding will be concluded.

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

Comments on the *Protection System Changes NOPR*<sup>69</sup> 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 (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, 2018<sup>70</sup> 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.

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

In accordance with *Order 830*,<sup>71</sup> NERC submitted on April 19, 2018, a revised work plan for research on topics related to geomagnetic disturbances ("GMD") and their impacts on the reliability of the Bulk-Power System ("BPS"). The Revised Plan demonstrates the improvements that have been made (the work plan was last accepted in October 2017) as a result of further work on the plan and with the benefit of early experience implementing some of the research activities. Specifically, the Revised Plan includes additional background information and specificity regarding the research activities that will be performed under the plan's nine broad work categories and an updated project timeline specifying the anticipated completion dates for each of the research activities. NERC encouraged anyone interested in NERC's GMD research activities to participate in GMD Task Force meetings, which are open to the public, with remote participation available. Comments on the Revised Plan are due on or before May 21.

- **Compliance and Certification Committee Charter Amendments (RR18-4)**

On March 15, 2018, NERC filed for approval amendments to the Compliance and Certification Committee ("CCC") Charter to reflect the participation of CCC observers in NERC audits of the Regional Entities in accordance with Appendix 4A of the NERC Rules of Procedure. Comments on this filing were due on or before April 5, 2018; none were filed. This matter is pending before the FERC.

<sup>68</sup> *Order 843* was published in the Fed. Reg. on Apr. 25, 2018 (Vol. 83, No. 80) pp. 17,913-17,921.

<sup>69</sup> *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*").

<sup>70</sup> The *Protection System Changes NOPR* was published in the Fed. Reg. on Nov. 22, 2017 (Vol. 82, No. 224) pp. 55,535-55,541.

<sup>71</sup> *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*").

- **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 adjust 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 were due on or before March 20, 2018; none were filed. AEP filed a doc-less motion to intervene. This matter is again pending before the FERC.

## XI. Misc. - of Regional Interest

- **203 Application: NEP (Vuelta and Old Wardour Interconnection Assets) (EC18-85)**

On April 16, 2018, New England Power (“NEP”) requested authorization to acquire from Vuelta Solar, LLC certain interconnection assets associated with the 9.88 MW Vuelta and Old Wardour solar facilities located in East Brookfield, Massachusetts. Comments on the application are due on or before May 7, 2018.

- **203 Application: NRG Canal/Stonepeak (EC18-83)**

On April 12, 2018, NRG Canal, GenOn HoldCo 10, LLC and Stonepeak Kestrel Holdings, LLC (“Stonepeak”) requested authorization for a transaction pursuant to which NRG Canal will be ultimately be acquired indirectly by Stonepeak. Applicants<sup>72</sup> requested an order authorizing the transaction on or before May 12, 2018. Following the transaction, NRG Canal will no longer be a Related Person to the NRG/GenOn Companies.<sup>73</sup> Comments on the application are due on or before May 3, 2018.

- **203 Application: XOOM Energy/NRG Retail (EC18-82)**

On April 5, 2018, XOOM Energy requested authorization for NRG Retail to acquire indirectly all of its membership interests. Following the transaction, XOOM Energy will become a Related Person to NRG/GenOn Companies. Applicants requested that an order accepting the application be issued no later than May 21, 2018.

<sup>72</sup> “Applicants” for purposes of this 203 application are: GenOn Holdco 10, LLC; NRG Canal LLC; and Stonepeak Kestrel Holdings LLC.

<sup>73</sup> The “NRG/GenOn Companies” are, currently: NRG Power Mkt’g, LLC; Conn. Jet Power LLC; Devon Power LLC; Middletown Power LLC; Montville Power LLC; Norwalk Power LLC; Somerset Power LLC; Energy Plus Holdings LLC; Independence Energy Group LLC; GenConn Energy LLC; GenOn Energy Management, LLC; NRG Canal LLC; Green Mountain Energy Co.; Reliant Energy Northeast LLC; NRG Curtailment Solutions, Inc.; and Boston Energy Trading and Mkt’g LLC.

Comments on the application were due on or before April 26, 2018; none were filed. This matter is pending before the FERC.

- **203 Application: HIKO Energy/Spark HoldCo (EC18-69)**

On March 13, 2018, HIKO Energy requested authorization for Spark HoldCo, LLC, a subsidiary of Spark Energy (Spark), to acquire all of its membership interests. HIKO requested an order authorizing the transaction on or before May 12, 2018. Following the transaction, HIKO will become a Related Person to Spark Energy (Spark Energy and its Related Persons<sup>74</sup> are also members of the Supplier Sector). Comments on the application were due on or before April 3, 2018; none were filed. This matter is pending before the FERC.

- **203 Application: Boston Energy/Diamond Energy (EC18-64)**

On April 19, 2018, the FERC authorized the acquisition by Diamond Energy Trading and Marketing, LLC of all of the membership interests in Boston Energy Trading and Marketing LLC (“Boston Energy”), until then a Related Person to NRG Power Marketing.<sup>75</sup> Among other conditions, the order required notice within 10 days of the acquisition’s consummation.

- **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; none were filed. Dominion and PJM filed doc-less interventions. This matter remains pending before the FERC.

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

On February 28, the FERC authorized<sup>76</sup> the acquisition by HSE Hydro NH AC, LLC (“HSE Hydro NH”)<sup>77</sup> of PSNH’s portfolio of hydroelectric generation assets (the “PSNH Hydro Transaction”).<sup>78</sup> 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 April 4, the FERC authorized a proposed transaction pursuant to which Dynegy will merge with and into Vistra Energy Corp. (“Vistra”), with Vistra being the surviving corporation (the “Vistra Transaction”).<sup>79</sup> On April 19, the Applicants submitted a notice that the Vistra Transaction was consummated on April 9, 2018. This proceeding is now concluded.

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<sup>74</sup> Spark Energy’s Related Person Participants are: National Gas & Electric, LLC; Oasis Power, LLC (d/b/a Oasis Energy), Electricity Maine, LLC; Electricity NH, LLC (d/b/a ENH Power); Major Energy Electric Services LLC; Perigee Energy, LLC; Provider Power Mass, LLC; and Verde Energy USA, Inc.

<sup>75</sup> *Boston Energy Trading and Mkt’g LLC*, 163 FERC ¶ 62,052 (Apr. 19, 2018).

<sup>76</sup> *Pub. Srvc. Co. of NH and HSE Hydro NH AC, LLC*, 162 FERC ¶ 62,122 (Feb. 28, 2018).

<sup>77</sup> HSE Hydro NH is a Related Person to Generation Sector Group Seat members Nautilus Hydro and Pawtucket Power.

<sup>78</sup> 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).

<sup>79</sup> *Dynegy Inc. and Vistra Energy Corp.*, 163 FERC ¶ 61,013 (Apr. 4, 2018).

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

On April 6, as amended April 10, MATEP LLC informed the FERC that the previously authorized transaction,<sup>80</sup> pursuant to which MATEP would 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, was consummated on March 30, 2018. This proceeding is now 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”.<sup>81</sup> 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.<sup>82</sup> Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

- **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, in the NYISO proceeding on April 5, EPSA filed a motion renewing its earlier requests for expedited action. EPSA stated that “under the principles articulated in last month’s [CASPR Order], there is no justification for continued delay in the face of this ongoing price suppression.” The New York Public Service Commission (“NYPSC”) answered EPSA’s motion on April 20, arguing that the EPSA motion should be denied as it “is procedurally defective because it inappropriately attempts to raise issues that are not sufficiently related to the underlying [IPPNY] Complaint .... [and] because it seeks to impose new mitigation rules without a stakeholder process or adequate record.” These proceedings remain pending before the FERC. If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; [dtodoot@daypitney.com](mailto:dtodoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **National Grid/Granite Reliable Power Reimbursement Agreement Cancellation (ER18-1350)**

On April 12, National Grid filed a Notice of Cancellation of the Cost Reimbursement Agreement (“Reimbursement Agreement”) between NEP and Granite Reliable Power, LLC (“Granite Reliable Power”). The

<sup>80</sup> MATEP LLC, 162 FERC ¶ 62,046 (Jan. 23, 2018).

<sup>81</sup> GenOn Energy Inc., 161 FERC ¶ 62,063 (Oct. 31, 2017).

<sup>82</sup> Green Mountain Power Corp., 159 FERC ¶ 62,144 (May 9, 2017).

execution by NEP and Granite Reliable Power and FERC acceptance of a Related Facilities Agreement (“RFA”)<sup>83</sup> fully satisfied each party’s obligations under the Reimbursement Agreement. A November 1, 2017 effective date, the date the RFA became effective, was requested. Comments on this filing are due on or before May 3, 2018. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement Cancellation: CL&P/Beacon Falls Energy Park (ER18-1306)**

On April 6, CL&P filed a notice of cancellation of an Engineering, Design and Procurement Services agreement between itself and Beacon Falls Energy Park. The purpose of the Agreement was to set forth the terms and conditions under which CL&P would provide design and/or engineering necessary to complete a cost estimate for the modification of CL&P’s Beacon Falls substation and to interconnect the proposed 63.3 MW fuel cell project’s switchyard. The Agreement terminated as of the effective date of a three-party conforming LGIA between CL&P, Beacon Falls and ISO-NE (“2018 LGIA”) – March 9, 2018. NSTAR requested that the notice of cancellation be accepted for filing as of the effective date of the 2018 LGIA. Comments on this filing were due on or before April 27; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement: NSTAR/National Grid (ER18-1290)**

On April 3, NSTAR filed an Agreement for Design, Engineering and Construction services between itself and National Grid (the “D&E Agreement”). The purpose of the D&E Agreement is to set forth the terms and conditions under which National Grid will reimburse NSTAR for the costs associated with performing design, engineering and construction services on jurisdictional transmission facilities necessary for NEP to interconnect one of its retail customers (the Wynn Casino). NSTAR requested that the D&E Agreement be accepted for filing as of the date of filing, April 3, 2018. Comments on this filing were due on or before April 24; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **MPD OATT Changes (ER18-1244)**

On March 30, 2018, Emera Maine filed changes to Attachment J of the MPD OATT to reflect the reduction to the marginal corporate income tax rate resulting from the 2017 Tax Law and the 2017 Annual Update Settlement Agreement (see ER18-960 above). Comments on this filing were due on or before April 20, 2018. On April 20, MPUC requested that the FERC accept the filing, but subject to refund and to hearing and settlement judge procedures. MPUC stated that, although it agreed conceptually that the tariff changes were necessary to address recent changes in the tax law, it identified that some questions remain regarding the implementation of the concept and asked for an opportunity through settlement and hearings if necessary to better understand Emera Maine’s proposed changes and to ensure that Emera Maine’s ratepayers receive the full benefit of the lower tax rate resulting from the 2017 Tax Law. MPUC’s request was supported by motions from MOPA and from the Maine Customer Group.<sup>84</sup> This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **IA: CL&P/Fusion Solar (ER18-1192)**

On March 27, Eversource filed a two-party IA between CL&P and Fusion Solar to govern the interconnection of Fusion Solar’s 20 MW solar generating facility in Sprague, CT, which is interconnected to CL&P’s distribution system. A March 27, 2018 effective date, the commercial operation date of the facility, was requested. Comments on this filing were due on or before April 17, 2018; none were filed. On April 25,

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<sup>83</sup> The RFA addresses costs associated with upgrades to NEP’s equipment at the Moore Generating Station and modifications to NEP’s protection system in connection with the Dummer, New Hampshire interconnection of Granite Reliable Power’s 99 MW wind generation facility. The RFA was accepted in delegated letter order, *New England Power Co.*, Docket No. ER18-346 (Jan. 24, 2018).

<sup>84</sup> For purposes of this proceeding, Maine Customer Group (“MCG”) consists of: Houlton Water Co., Van Buren Light and Power District and Eastern Maine Electric Coop., Inc.

CL&P requested a 30-day extension of time from the date of an order accepting the IA to submit its time-value refund report. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Use Rights Transfer Agreement: CMEEC/NSTAR/Nalcor (ER18-1170)**

On April 24, the FERC accepted an Agreement that transfers CMEEC's Use Rights on the Phase I/II HVDC Transmission Facilities, ultimately, to Nalcor Energy Marketing Corporation, for the July 1, 2018 through October 31, 2020 period ("Transfer Agreement"). Because CMEEC, as a non-jurisdictional entity, does not have a mechanism to directly transfer its Use Rights to Nalcor (a Schedule 20A under the ISO-NE OATT), CMEEC is transferring its Use Rights to NSTAR who, in turn, is transferring those Use Rights to Nalcor. CMEEC's IRH management committee voting rights, financial obligations and all other rights and responsibilities provided for in the Support Agreements and the Restated Use Agreement that are not directly related to the Use Rights and the exercise thereof by Nalcor are not being transferred to Nalcor. The Transfer Agreement was accepted for filing effective as of May 23, 2018, as requested. Unless the April 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **FERC Enforcement Action: PSEG (IN18-4)**

On April 25, the FERC approved a Stipulation and Consent Agreement<sup>85</sup> that resolved its investigation, following a 2014 self-report by PSEG Energy Resources & Trade, LLC ("PSEG"), into whether, from 2004-2015, certain of PSEG's fossil unit cost-based offers into the PJM energy market were inconsistent with the PJM Operating Agreement and the PJM Tariff, and whether incorrect costs included in the offers comprised inaccurate statements inconsistent with the FERC's Market Behavior Rules. Among the factual stipulations agreed to by PSEG and FERC Staff were that PSEG's cost-based offers included multiple types of errors<sup>86</sup> which, collectively, resulted in over-statements and under-statements of the costs included in PSEG's cost-based offers. The FERC noted that PSEG's compliance program and existing compliance procedures did not detect the errors in the cost-based components of the offers, in some cases, for multiple years and that, following the self-report, PSEG took a number of steps to improve its compliance program. The FERC noted that the remedies reflected PSEG's exemplary cooperation during the investigation, history of no prior violations, and a compliance program, while in place, "not sufficiently robust to detect or prevent the violations".<sup>87</sup> Under the Settlement, in which PSEG neither admits nor denies the alleged violations, PSEG to **disgorge \$31.4 million** (which includes interest) to PJM and pay an **\$8 million civil penalty** to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **FERC Enforcement Action: ETRACOM LLC and M. Rosenberg (IN16-2)**

On April 10, the FERC approved a Stipulation and Consent Agreement<sup>88</sup> that resolves its investigation into (and subsequent litigation in the US District Court for the Eastern District of California<sup>89</sup> regarding) claims that ETRACOM and Michael Rosenberg violated FPA Section 222 and the FERC's Anti-Manipulation Rule by engaging, during May 2011, in manipulative virtual trading at CAISO's New Melones Intertie in order to

<sup>85</sup> *PSEG Energy Resources & Trade, LLC*, 163 FERC ¶ 61,056 (Apr. 25, 2018).

<sup>86</sup> Errors in the cost-based offers included: (1) inclusion of CO<sub>2</sub> adders after the State of New Jersey withdrew from RGGI; (2) inclusion of seasonal NO<sub>x</sub> adders in offers outside the NO<sub>x</sub> compliance season; (3) incorrect amounts of fuel required to maintain minimum operations for the Bergen 2 unit; and (4) inaccurate performance factor data, which affected the heat rate or fuel burned per unit of output, for some of its units. In addition, PSEG did not regularly update emission allowance prices and ozone fees and did not update emission rates such as after the installation of back-end technology for environmental compliance. PSEG also made errors in its variable operations and maintenance and other fuel-related cost components.

<sup>87</sup> *Id.* at P 14.

<sup>88</sup> *ETRACOM LLC and Michael Rosenberg*, 163 FERC ¶ 61,022 (Apr. 10, 2018).

<sup>89</sup> *FERC v. ETRACOM LLC*, No. 2:16-cv-01945-SB (E.D. Cal.).



artificially lower the day-ahead LMP and economically benefit ETRACOM's Congestion Revenue Rights sourced at that location. Under the Settlement, in which Respondents neither admit nor deny the alleged violations, ETRACOM agreed to **disgorge \$315,072 plus \$84,420 in interest** to CAISO and pay a **\$1,500,508 million civil penalty** to the United States Treasury. The civil penalties are roughly \$1 million lower than those proposed in the earlier show cause order,<sup>90</sup> while the principal disgorgement amount is unchanged. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

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

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

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

On April 18, 2018, the report on the audit of ISO-NE docketed in this proceeding was finally approved. 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 audit covered the period from July 10, 2013 through June 30, 2017. In the audit report, the FERC "did not identify any findings of noncompliance that require ISO-NE corrective action at this time." Congratulations to ISO-NE. Reporting on this proceeding is now concluded.

## XII. Misc. - Administrative & Rulemaking Proceedings

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

In *Order 841*<sup>91</sup> (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*.<sup>92</sup> 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 held a technical conference to gather additional information to help the FERC determine what action to take on DER aggregation reforms proposed in

<sup>90</sup> *ETRACOM LLC and Michael Rosenberg*, 153 FERC ¶ 61, 314 (Dec. 16, 2015) ("Show Cause Order").

<sup>91</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018), *clarif. requested* ("Order 841").

<sup>92</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) ("*Storage NOPR*").



the *Storage NOPR* and to explore issues related to the potential effects of DERs on the bulk power system. Panel topics included:

- 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

Speaker materials are posted on the FERC's eLibrary.

On April 27, the FERC issued a notice inviting all interested persons to file post-technical conference comments on the topics concerning the Commission's DER aggregation proposal discussed during the technical conference, including on follow-up questions from FERC Staff related to the panels. Comments related to DER aggregation should be filed in Docket No. RM18-9. Comments on the potential effects of DERs on the bulk power system should be separately filed in Docket No. AD18-10. Comments should be submitted on or before June 26, 2018 and should not exceed 30 pages.

- **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)<sup>93</sup> and initiated a new Grid Resilience in RTO/ISOs proceeding (AD18-7).<sup>94</sup> 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. On February 7, Foundation for Resilient Societies ("FRS") requested rehearing of the January 8 order terminating the DOE NOPR proceeding. The FERC issued a tolling order on March 8, 2018 affording it additional time to consider the FRS request for rehearing, which remains pending.

**Grid Resilience Administrative Proceeding (AD18-7).** In the January 8 order, 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 submitted to evaluate whether additional FERC action regarding resilience is appropriate. RTO submissions were due on or before March 9, 2018.

**ISO-NE Response.** In its response, ISO-NE identified fuel security<sup>95</sup> as the most significant resilience challenge facing the New England region. ISO-NE reported that it has established a process to discuss market-

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<sup>93</sup> 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.

<sup>94</sup> *Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018), *reh'g requested*.

<sup>95</sup> ISO-NE defined fuel security as "the assurance that power plants will have or be able to obtain the fuel they need to run, particularly in winter – especially against the backdrop of coal, oil, and nuclear unit retirements, constrained fuel infrastructure, and the difficulty in permitting and operating dual-fuel generating capability."

based solutions to address this risk, and indicated that it believed it will need through the second quarter of 2019 to develop a solution and test its robustness through the stakeholder process. In the meantime, ISO-NE indicated that it would continue to independently assess the level of fuel-security risk to reliable system operation and, if circumstances dictate, would take, with FERC approval when required, actions it determines to be necessary to address near-term reliability risks. ISO-NE's response was broken into 3 parts: (i) an introduction to fuel-security risk; (ii) background on how ISO-NE's work in transmission planning, markets, and operations support the New England bulk power system's resilience; and (iii) answers to the specific questions posed in the January 8 order.

Following a 30-day extension issued on March 20, reply comments by interested entities are now due on or before May 9, 2018. NEPOOL's Reliability Committee-recommended reply comments will be discussed at the May 4 Participants Committee meeting. Since the last Report, comments were submitted by Sabin Center for Climate Change Law, Americans for a Clean Energy Grid, and IEEE Power & Energy Society.

**FirstEnergy DOE Application for Section 202(c) Order.** In a related but separate matter, FirstEnergy Solutions ("FirstEnergy") asked the Department of Energy ("DOE") in late March to issue an emergency order to provide cost recovery to coal and nuclear plants in PJM, saying market conditions there are a "threat to energy security and reliability". FirstEnergy made the appeal under Section 202(c) of the FPA, which allows the DOE to issue emergency orders to keep plants operating, but has previously been exercised only in response to natural disasters. Since the last Report, a number of industry participants weighed in, both in support and opposed, to the request.

- **NOI: 2017 Tax Law Effect on FERC-Jurisdictional Rates (RM18-12)**

On March 15, the FERC opened an inquiry ("NOI")<sup>96</sup> seeking comments on the effect of the 2017 Tax Cuts and Jobs Act ("2017 Tax Law") (which reduced the federal corporate income tax rate from a maximum 35% to a flat 21%) on FERC-jurisdictional rates. Of particular interest is whether, and if so how, the FERC should address changes relating to accumulated deferred income taxes ("ADIT"),<sup>97</sup> bonus depreciation,<sup>98</sup> or other rates (not otherwise being addressed in the concurrently issued show cause orders). Comments on the NOI must be submitted on or before May 21, 2018.<sup>99</sup>

- **NOPR: Pipeline Rates (RM18-11)**

On March 15, 2018, the FERC issued a NOPR<sup>100</sup> that proposes a procedure through which the cost-based rates of natural gas pipelines are to be examined to determine which, if any, of those entities are collecting unjust and unreasonable rates in light of the 2017 Tax Law's reduction in the corporate tax rate from 35 to 21 % and the disallowance in the Tax Policy Statement (see PL17-1 below) of income tax allowances for MLP pipelines. The *Pipeline Rates NOPR* would require interstate pipelines to (a) file a one-time report, FERC Form No. 501-G, that would provide financial information from the pipeline's 2017 FERC Form 2; and (b) voluntarily make a filing to address the changes to the pipeline's recovery of tax costs, or explain why no action is needed. Pipelines can respond in one of four ways:

<sup>96</sup> *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Comm.-Jurisdictional Rates*, 162 FERC ¶ 61,223 (Mar. 15, 2018).

<sup>97</sup> ADIT arises from differences between the methods of computing taxable income for IRS reporting purposes and computing income for regulatory accounting and ratemaking purposes. As a result of the Tax Cuts and Jobs Act, a portion of an ADIT liability that was collected from customers will no longer be due to the IRS, is considered excess ADIT, and must be returned to customers in a cost-of-service ratemaking context.

<sup>98</sup> Bonus depreciation is a tax incentive given to companies to encourage certain types of investment. Bonus depreciation allows companies to deduct a percentage of the cost of a qualified property in the year the property is placed into service, in addition to other depreciation deductions. Under the Act, bonus depreciation is no longer available for "assets acquired in the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services; gas or steam through a local distribution system; or transportation of gas or steam by pipeline."

<sup>99</sup> The NOI was published in the *Fed. Reg.* on Mar. 21, 2018 (Vol. 83, No. 55) pp. 12,371 – 12,376.

<sup>100</sup> *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, 162 FERC ¶ 61,226 (Mar. 15, 2018) ("*Pipeline Rates NOPR*").

1. A limited Natural Gas Act (“NGA”) section 4 filing to reduce the pipeline’s cost-based rates by the percentage reduction in its cost of service shown in its FERC Form No. 501-G;
2. A commitment to file either a prepackaged uncontested rate settlement or a general NGA section 4 rate case by December 31, 2018;
3. The filing of a statement explaining why no change in rates is required; or
4. The taking of no other action (other than the submittal of the one-time report).<sup>101</sup>

Comments to the *Pipeline Rates NOPR* were due on or before April 25, 2018,<sup>102</sup> and were submitted by over 30 parties. This matter is 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.<sup>103</sup> 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* were initially due on or before March 26, 2018,<sup>104</sup> later extended to March 28. A single comment, addressing what was described as a “jarring grammatical error”, was filed. This matter is pending before the FERC.

- **Order 845: LGIA/LGIP Reforms (RM17-8)**

On April 19, 2018, the FERC issued its final rule,<sup>105</sup> *Order 845*, revising its *pro forma* Large Generator Interconnection Procedures (“LGIP”) and *pro forma* Large Generator Interconnection Agreement (“LGIA”) to implement 10 specific reforms designed to improve certainty for interconnection customers,<sup>106</sup> promote more informed interconnection decisions,<sup>107</sup> and enhance the interconnection process.<sup>108</sup> Based on the comments received on its December 15, 2016 NOPR<sup>109</sup> in this proceeding as well as other factors, *Order 845* declines to

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<sup>101</sup> If the pipeline chooses the latter two options, FERC will consider after reviewing both the one-time report and the comments of others whether to initiate an NGA Section 5 investigation.

<sup>102</sup> The *Pipeline Rates NOPR* was published in the *Fed. Reg.* on Mar. 26, 2018 (Vol. 83, No. 58) pp. 12,888 – 12,901.

<sup>103</sup> *Withdrawal of Pleadings*, 162 FERC ¶ 61,111 (Feb. 15, 2018) (“*Pleadings Withdrawal NOPR*”).

<sup>104</sup> The *Pleadings Withdrawal NOPR* was published in the *Fed. Reg.* on Feb. 23, 2018 (Vol. 83, No. 37 pp. 8,019-8,020).

<sup>105</sup> *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (Apr. 19, 2018) (“*Order 845*”).

<sup>106</sup> To improve certainty for interconnection customers, *Order 845* (1) removes the limitation that interconnection customers may only exercise the option to build a transmission provider’s interconnection facilities and stand-alone network upgrades in instances when the transmission provider cannot meet the dates proposed by the interconnection customer; and (2) requires that transmission providers establish interconnection dispute resolution procedures that allow a disputing party to unilaterally seek non-binding dispute resolution.

<sup>107</sup> To promote more informed interconnection decisions, *Order 845* (1) requires transmission providers to outline and make public a method for determining contingent facilities; (2) requires transmission providers to list the specific study processes and assumptions for forming the network models used for interconnection studies; (3) revises the definition of “Generating Facility” to explicitly include electric storage resources; and (4) establishes reporting requirements for aggregate interconnection study performance.

<sup>108</sup> To enhance the interconnection process, *Order 845* (1) allows interconnection customers to request a level of interconnection service that is lower than their generating facility capacity; (2) requires transmission providers to allow for provisional interconnection agreements that provide for limited operation of a generating facility prior to completion of the full interconnection process; (3) requires transmission providers to create a process for interconnection customers to use surplus interconnection service at existing points of interconnection; and (4) requires transmission providers to set forth a procedure to allow transmission providers to assess and, if necessary, study an interconnection customer’s technology changes without affecting the interconnection customer’s queued position.

<sup>109</sup> *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016) (“*LGIP/LGIA Reforms NOPR*”). The *LGIP/LGIA Reforms NOPR* was published in the *Fed. Reg.* on Jan. 13, 2017 (Vol. 82, No. 9 pp. 4,464-4,501).

adopt four proposed reforms related to requiring periodic restudies, self-funding of network upgrades, the posting of congestion and curtailment information, and the modeling of electric storage resources. *Order 845* took no action on two additional issues raised in the NOPR -- cost caps for network upgrades and affected system coordination (which is being addressed in a separate proceeding). *Order 845* will become effective [75 days after publication in the *Federal Register*], and requires compliance filings to be filed on or before [90 days after publication in the *Federal Register*].

- **Order 844: Uplift Transparency in RTO/ISO Markets (RM17-2)**

Also on April 19, the FERC issued *Order 844* which requires each RTO/ISO to establish in its tariff requirements to report on, on a monthly basis, the following three uplift transparency requirements to be reported on a monthly basis:

- (1) **Zonal Uplift** – a report of all uplift, paid in dollars, and categorized by transmission zone, day, and uplift category (“We define transmission zone as a geographic area that is used for the local allocation of charges, such as a load zone that is used to settle charges for energy. Transmission zones with fewer than four resources may be aggregated with one or more neighboring transmission zones, until each aggregated zone has at least four resources, and reported collectively.”). This report must be posted on a publicly-accessible portion of the RTO/ISO’s website within 20 calendar days of the end of each month;
- (2) **Resource-Specific Uplift** - a report containing the resource name and total amount of uplift paid in dollars aggregated across the month to each resource that received uplift payments. This report must be publicly accessible on the RTO/ISO’s website within 90 calendar days of the end of each month; and
- (3) **Operator-Initiated Commitment** – a report listing the commitment size, transmission zone, commitment reason, and commitment start time of each operator-initiated commitment (“We define an operator-initiated commitment as a commitment made after the day-ahead market for a reason other than minimizing the total production costs of serving load. Commitment reasons shall include, but are not limited to, system-wide capacity, constraint management, and voltage support.”). This report must be posted on a publicly accessible portion of the RTO/ISO’s website within 30 calendar days of the end of each month.

In addition to these reporting requirements, each RTO and ISO must include in its tariff the **transmission constraint penalty factors** used in its market software, as well as any circumstances under which those penalty factors can set locational marginal prices, and any process by which the penalty factors can be temporarily changed. In response to a number of concerns raised, including by ISO-NE, *Order 844* withdraws the FERC’s proposal in the *Uplift/Transparency NOPR* to require that each RTO/ISO that currently allocates the costs of Real-Time uplift to deviations allocate such Real-Time uplift costs only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.

*Order 844* requires that each RTO/ISO submit a compliance filing within 135 days of *Order 844*’s publication in the *Federal Register* (or by early in September 2018).<sup>110</sup> The draft Final Rule allows each RTO or ISO a further 120 days from the compliance filing due date to implement *Order 844*.

- **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:

<sup>110</sup> *Order 844* was published in the *Fed. Reg.* on Apr. 25, 2018 (Vol. 83, No. 80) pp. 18,134-18,157.

- (4) 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;
- (5) 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;
- (6) account for the physical and operational characteristics of electric storage resources through bidding parameters or other means; and
- (7) 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 November 30, 2018 (270 days from *Order 841*'s publication in the Federal Register)<sup>111</sup> and implement those tariff provisions within one year of that compliance filing. *Order 841* will become effective June 4, 2018.

*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. Requests for Clarification and/or Rehearing of *Order 841* were filed by CAISO, MISO, PJM, the AES Companies, AMP/APPA/NRECA, California Energy Storage Alliance, EEI, NARUC, PG&E, TAPS, and Xcel Energy Services. On April 13, 2018, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending.

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

The FERC's *Data Collection NOPR* remains pending. As previously reported, the FERC issued a July 21, 2016 NOPR, which superseded both its *Connected Entity NOPR* (RM15-23) and *Ownership NOPR* (RM16-3), proposing to collect certain data for analytics and surveillance purposes from market-based rate ("MBR") sellers and entities trading virtual products or holding FTRs and to change certain aspects of the substance and format of information submitted for MBR purposes.<sup>112</sup> The *Data Collection NOPR* presents substantial revisions from what the FERC proposed in the *Connected Entity NOPR*, and responds to the comments and concerns submitted by NEPOOL in that proceeding. Among other things, the changes proposed in the *Data NOPR* include: (i) a different set of filers; (ii) a reworked and substantially narrowed definition of Connected Entity; and (iii) a different submission process. With respect to the MBR program, the proposals include: (i) adopting certain changes to reduce and clarify the scope of ownership information that MBR sellers must provide; (ii) reducing the information required in asset appendices; and (iii) collecting currently-required MBR information and certain new information in a consolidated and streamlined manner. The FERC also proposes to eliminate MBR sellers' corporate organizational chart submission requirement adopted in *Order 816*. Comments on the *Data Collection NOPR* were due on or before September 19, 2016<sup>113</sup> and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

<sup>111</sup> *Order 841* was published in the *Fed. Reg.* on Mar. 6, 2018 (Vol. 83, No. 44) pp. 9,580-9,633.

<sup>112</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

<sup>113</sup> The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150) pp. 51,726-51,772.

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

Rehearing of *Order 833*<sup>114</sup> 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.<sup>115</sup> 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*,<sup>116</sup> 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 May 15, 2018.<sup>117</sup> Requests for rehearing and/or clarification and reconsideration of *Order 842* were filed by PJM, the AES Companies and Arizona Public Service. Answers to the PJM request were filed by PJM Power Providers Group and EPSA ("Competitive Suppliers"), the PJM Utilities Coalition, and the PJM IMM. On April 13, 2018, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending.

- **NOI: Certification of New Interstate Natural Gas Facilities (PL18-1)**

On April 19, 2018, the FERC announced its intention to revisit its approach under its 1999 Certificate Policy Statement to determine whether a proposed jurisdictional natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in NGA Section 7. Specifically, the NOI seeks comments from interested parties on four broad issue categories: (1) project need, including whether precedent agreements are still the best demonstration of need; (2) exercise of eminent domain; (3) environmental impact evaluation (including climate change and upstream and downstream greenhouse gas emissions); and (4) the efficiency and effectiveness of the FERC certificate process. Comments are due on or before June 25, 2018.<sup>118</sup>

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

On March 15, 2018, the FERC found that an impermissible double recovery results from granting a Master Limited Partnership pipeline ("MLP") both an income tax allowance and an ROE pursuant to the DCF

<sup>114</sup> *Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Info.; Availability of Certain N. Amer. Elec. Rel. Corp. Databases to the Comm.*, Order No. 833, 157 FERC ¶ 61,123 (Nov. 17, 2016) ("*Order 833*"), *reh'g requested*.

<sup>115</sup> *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

<sup>116</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, Order No. 842, 162 FERC ¶ 61,128 (Feb. 15, 2018) ("*Order 842*"), *reh'g requested*.

<sup>117</sup> *Order 842* was published in the *Fed. Reg.* on Mar. 6, 2018 (Vol. 83, No. 44) pp. 9,636-9,677.

<sup>118</sup> The NOI was published in the *Fed. Reg.* on Mar. 6, 2018 (Vol. 83, No. 44) pp. 9,636-9,677.

methodology.<sup>119</sup> Accordingly, the FERC issued a revised policy statement that it will no longer permit an MLP to recover an income tax allowance in its cost of service. The finding follows an NOI<sup>120</sup> that sought comments regarding how to address any double recovery resulting from the FERC's income tax allowance and ROE policies in light of the D.C. Circuit's *United Airlines*<sup>121</sup> holding. The FERC indicated that it will address the application of *United Airlines* to non-MLP partnership forms as those issues arise in subsequent proceedings. The revised policy statement took effect on March 21, 2018. Requests for rehearing of the March 15 order were filed by the Dominion, Enable Mississippi River Transmission and Enable Gas Transmission, Enbridge and Spectra Energy Partners, EQT Midstream Partners, Kinder Morgan, Master Limited Partnership Association, NGAA, SPPP, LP, Oil Pipe Lines, Plains Pipeline, Tailgrass Pipelines, and TransCanada. On April 27, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC.

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<sup>119</sup> *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (Mar. 15, 2018).

<sup>120</sup> *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2016).

<sup>121</sup> *United Airlines Inc. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) ("*United Airlines*") (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). *Id.* at 137.



## XIII. Natural Gas Proceedings

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

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

- **Petition for Initiation of Show Cause Proceedings: Cont’d Justness & Reasonable of Rates Post-Tax Act (RP18-415)**

On January 31, 2018, a number of natural gas industry trade associations and companies (“Petitioners”)<sup>122</sup> petitioned the FERC to initiate show cause proceedings against all interstate natural gas pipeline and storage companies, other than those required to file updated rate justifications on an on-going basis or required to file rate cases in 2018, to require them to demonstrate that their existing jurisdictional rates continue to be just and reasonable, and to require immediate rate reductions if and as appropriate, in light of reduced tax rates implemented pursuant to the 2017 Tax Law. Petitioners explained they were pursuing a “show cause” approach in order to avoid “unreasonable delay” in relief to consumers. Over 20 sets of comments and answers were received. Given the issuance of the *Pipeline Rates NOPR*, which effectively dismisses the Petition, reporting on this Petition is concluded.

- **Natural Gas-Related Enforcement Actions**

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

**BP (IN13-15).** On July 11, 2016, the FERC issued *Opinion 549*<sup>123</sup> affirming Judge Cintron’s August 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, “BP”) violated Section 1c.1 of the Commission’s regulations (“Anti-Manipulation Rule”) and NGA Section 4A.<sup>124</sup> Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP’s Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel (“HSC”) trading point in order to benefit correspondingly long position at the Henry Hub trading point. The FERC agreed, finding that the “record shows that BP’s trading practices during the Investigative Period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions.”<sup>125</sup> Accordingly, the FERC assessed a **\$20.16 million civil penalty** and

<sup>122</sup> “Petitioners”, estimated to account for a majority of shippers on nearly every interstate natural gas pipeline, as well as a majority of contracted firm capacity, include the following trade associations and companies: American Forest and Paper Assoc., American Public Gas Assoc., Indep. Petroleum Assoc. of America, Nat. Gas Supply Assoc., and Process Gas Consumers Group, Aera Energy, Anadarko Energy Services, Chevron U.S.A., ConocoPhillips, Hess Corp., Petrohawk Energy, WPX Energy Marketing, LLC, and XTO Energy.

<sup>123</sup> *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) (“*BP Penalties Order*”).

<sup>124</sup> *BP America Inc.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

<sup>125</sup> *BP Penalties Order* at P 3.

required BP to **disgorge \$207,169** in “unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index.” The \$20.16 million civil penalty was at the top of the FERC’s Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP’s violation of a FERC order within 5 years of the scheme. BP’s penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP’s request for rehearing of the order establishing a hearing in this proceeding.<sup>126</sup> 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.<sup>127</sup>

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 order<sup>128</sup> in which it directed Total Gas & Power North America, Inc. (“TGPNA”) and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen (“Tran”) and Aaron Hall (collectively, “Respondents”) to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC’s Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.<sup>129</sup>

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

<sup>126</sup> *BP America Inc.*, 147 FERC ¶ 61,130 (May 15, 2014) (“*BP Hearing Order*”), *reh’g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

<sup>127</sup> *BP America Inc.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) (“*Order Staying BP Disgorgement*”)

<sup>128</sup> *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

<sup>129</sup> The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE’s case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission’s Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company’s related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

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.<sup>130</sup> NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **New England Pipeline Proceedings**

The following New England pipeline projects are currently under construction or before the FERC:

- **Portland Express Project (CP18-251)**

- ▶ On April 20, 2018, Portland Natural Gas Transmission System LP ("PNGTS") submitted an abbreviated application for a certificate of public convenience and necessity seeking authorization for 40,000 Dth/d of increased pipeline capacity; intended to be the first phase of a three-phase system expansion known as the Portland Xpress ("PXP") Project.
- ▶ Phase I is intended to increase PNGT's certificated capacity on its Northern Facilities from Pittsburg, NH, to Westbrook, ME, and its certificated capacity by 1,641 Mcf/d on its Joint Facilities (shared with Maritimes and Northeast Pipeline LLC) from Westbrook, ME to Dracut, MA.
- ▶ PNGTS has also asked for authorization to amend its Presidential Permit under NGA Section 3 that would permit it to increase its import/export capacity from 210,000 Mcf/d to 274,216 Mcf/d at border-crossing facilities at the US/Canadian border in NH.
- ▶ No new construction or modifications are being proposed to the existing pipeline infrastructure. Rather, the addition of 40,000 Mcf/d of capacity on the Northern Facilities is being created through pressure reductions at Westbrook, ME into the Joint Facilities.
- ▶ Eight precedent agreements have been executed with firm shippers totaling 137,378 Dth/d under PNGT's Rate Schedule FT, and have been filed under seal at the FERC as part of the certificate application.
- ▶ PNGTS seeks FERC certificate authorization on or before September 30, 2018, with a targeted in-service date of November 1, 2018.

- **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.

<sup>130</sup> See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh'g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

- ▶ 6.3 miles of replacement pipeline along Algonquin in NY and CT; new 7,700-horsepower compressor station in Weymouth, MA; more horsepower at existing compressor stations in CT and NY.
  - ▶ Seven firm shippers: Heritage Gas Limited, Maine Natural Gas Company, NSTAR Gas Company d/b/a Eversource Energy, Exelon Generation Company, LLC (as assignee and asset manager of Summit Natural Gas of Maine), Irving Oil Terminal Operations, Inc., New England NG Supply Limited, and Norwich Public Utilities.
  - ▶ Certificate of public convenience and necessity granted Jan. 25, 2017.<sup>131</sup>
  - ▶ Certain facilities,<sup>132</sup> 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.<sup>133</sup> Remaining Project capacity will be available when the remaining Project facilities are placed into service following Director of OEP authorization.
  - ▶ Algonquin files notice that construction of Salem Pike, Needham, Pine Hills and Plymouth meter and regulating stations began on April 2, 2018. Detailed information regarding construction activities can be found in the weekly construction reports filed in this docket.
  - ▶ On February 16, 2018, Algonquin filed with the DC Circuit Court of Appeals, pursuant to NGA Section 19(d)(2), 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

<sup>131</sup> Order Issuing Certificate and Authorizing Abandonment, *Algonquin Gas Transmission LLC and Maritimes & Northeast Pipeline, LLC*, 158 FERC ¶ 61,061 (Jan. 25, 2017), *order denying stay*, 160 FERC ¶ 61,015 (2017), *reh'g denied*, 161 FERC ¶ 61,255 (Dec. 13, 2017) ("*Atlantic Bridge Project Order*").

<sup>132</sup> 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).

<sup>133</sup> *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Oct. 27, 2017).

- decision; and (2) the NY DEC acted within its statutory authority in denying the certification, and its denial was not arbitrary or capricious.
- Constitution filed a petition for a writ of certiorari of the 2nd Circuit’s decision at the United States Supreme Court in January 2018 alleging, among other things, that the State’s denial of the Clean Water Act permit exceeded the state’s authority, and interfered with FERC’s exclusive jurisdiction. On April 30, 2018, the Supreme Court denied Constitution’s petition, thereby letting stand the 2nd Circuit’s ruling.
  - ▶ 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.<sup>134</sup> Although noting that states and project sponsors that engage in repeated withdrawal and refiling 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.<sup>135</sup>
    - On February 12, 2018, Constitution Pipeline requested rehearing of the January 11, 2018 order. The FERC issued a tolling order on March 14 affording it additional time to consider Constitution Pipelines’ request, which remains pending.
  - ▶ 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. The NY AG sought rehearing, and the Commission denied rehearing on November 22, 2016, noting again that the NY AG’s complaint was still procedurally deficient.
  - ▶ 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 proceedings in New England and elsewhere:
    - **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 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

<sup>134</sup> *Constitution Pipeline Co.*, 162 FERC ¶ 61,014 (Jan. 11, 2018), *reh’g requested*.

<sup>135</sup> *Id.* at P 23.

Florida and the southeast United States (“SMP Project”).

- ▶ Certificates of public convenience and necessity were granted Feb. 2, 2016.<sup>136</sup>
  - Project construction began in August 2016, and in June and July 2017, Commission Staff authorized the pipelines to commence service on the 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 SMP Project failed to adequately consider the downstream effects of greenhouse gas emissions resulting from increased power generation.<sup>137</sup>
  - 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.
- ▶ 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.”
- ▶ On March 14, 2018, the FERC issued an Order on Remand reinstating the certificates of public convenience and necessity. The majority found that while the FERC calculated the gross and net emissions, there was nothing to do with that information as there is “no widely accepted standard to ascribe significance to a given rate or volume of GHG emissions.” The FERC also noted that it is only approving the means of transportation, and it is not the Commission’s job to “decide national policy on the use of natural gas.”
  - Commissioner LaFleur dissented in part because she could not “support the Commission’s responses to the Court on downstream GHG emissions and the Social Cost of Carbon.”
  - Commissioner Glick also dissented, arguing that the FERC must consider the reasonably foreseeable indirect effects of the SMP Project. Glick argues that the “Commission must take a ‘hard look’ at climate change – the ultimate environmental impact,” and should be more transparent in its decision-making. He concluded by noting “that t[he] order, by limiting analysis of the environmental impacts of a proposed pipeline, will both increase the Commission’s litigation risk and contribute further to the cynicism of the pipeline siting process.”
  - On April 13, 2018, several intervenors (including the Sierra Club) jointly filed a rehearing request and motion for stay of the FERC’s Order on Remand. On April 27, 2018, Florida Southeast Connection, LLC and Florida Power & Light filed an answer in opposition to the joint motion for stay.

- **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 Pipeline in Orange County, New York. Originally, the subject of a November 13, 2015 FERC certificate application, the Valley Lateral Pipeline was authorized by FERC on November 9, 2016.<sup>138</sup>
  - 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

<sup>136</sup> *Fla. Southeast Connection, LLC*, 154 FERC ¶ 61,080, 61 (Feb. 2, 2016) (order issuing certificate).

<sup>137</sup> *Sierra Club v. FERC*, 2017 U.S. App. LEXIS 15911 (D.C. Cir. Aug. 22, 2017).

<sup>138</sup> *Millennium Pipeline Co., L.L.C.*, 157 FERC ¶ 61,096 (Nov. 9, 2017).

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.<sup>139</sup> The FERC's order effectively nullified 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.<sup>140</sup>
  - The NY DEC sought review of the FERC's Orders in the Second Circuit. On March 12, 2018, the 2nd Circuit upheld the FERC's determination that the NY DEC waived its authority to act on Millennium's application for a CWA water quality certification by not acting on the application within one year of receipt. In doing so, the Second Circuit rejected the NY DEC's argument that the one-year statutory deadline begins when a state agency deems the application complete, rather than when the application is received.
- ▶ Millennium sought, and on October 3, 2017, the FERC granted, a one year extension of time to complete construction of the Valley Lateral Project and make it available for service by November 2018.
- ▶ On October 27, 2017, the FERC issued a Notice to Proceed, granting Millennium's request to begin construction of the Valley Lateral.
  - The NY DEC, on October 30, 2017, filed a Request for Stay of the Notice to Proceed. The *November 15 Order* also denied the October 30 request for stay.<sup>141</sup>
- ▶ A related project, the Millennium Eastern System Upgrade (CP16-486) received its certificate of public convenience and necessity on November 28, 2017. On March 19, 2018, the FERC denied a request for stay filed by Delaware Riverkeeper Network filed with its request for rehearing of the certificate order.
- ▶ On April 4, the FERC approved an amendment to the November 9, 2016 certificate of public convenience and necessity authorizing the Valley Lateral Project to reflect an overall increase in the cost of construction of the facilities.<sup>142</sup>

<sup>139</sup> *Millennium Pipeline Co., L.L.C.*, 160 FERC ¶ 61,065 (Sept. 15, 2017), *reh'g denied*, 161 FERC ¶ 61,186 (Nov. 15, 2017).

<sup>140</sup> *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,186 (Nov. 15, 2017) ("*November 15 Order*").

<sup>141</sup> 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.

<sup>142</sup> *Millennium Pipeline Co., L.L.C.*, 163 FERC ¶ 61,009 (Apr. 4, 2018).

- **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 under Section 401 of the Clean Water Act, 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.
    - National Fuel appealed the NY DEC’s decision to the 2nd Circuit on the grounds that the denial was improper.<sup>143</sup> Oral argument was held on November 16, 2017. The Court’s decision is pending.
- **PennEast Project (CP15-558)**
  - ▶ On September 24, 2015, PennEast Pipeline Company, LLC (“PennEast”) filed an application pursuant to NGA Section 7(c) requesting authorization to construct and operate a new 116-mile natural gas pipeline from Luzerne County, Pennsylvania, to Mercer County, New Jersey, along with three laterals extending off the mainline, a compression station, and appurtenant above ground facilities (“PennEast Project”).
  - ▶ PennEast is a joint venture owned by Red Oak Enterprise Holdings, Inc., a subsidiary of AGL Resources Inc.; NJR Pipeline Company, a subsidiary of New Jersey Resources; SJI Midstream, LLC, a subsidiary of South Jersey Industries; UGI PennEast, LLC, a subsidiary of UGI Energy Services, LLC; and Spectra Energy Partners, LP.
  - ▶ The project is designed to provide up to 1,107,000 Dth/d of firm transportation service.
  - ▶ Certificates of public convenience and necessity were granted by FERC on January 19, 2018.<sup>144</sup>
    - Requests for rehearing and motions for stay were filed by opponents of the PennEast Project of FERC’s order granting authorization of the project. FERC issued a tolling order on these rehearing requests on February 22, 2018.
    - Delaware Riverkeeper Network sought rehearing of FERC’s tolling order arguing that the use of tolling orders deprive it of Constitutional due process. The FERC issued a tolling order of this rehearing request on April 13, 2018.
  - ▶ The New Jersey Attorney General and several conservation groups have filed actions in federal district court in New Jersey seeking to limit PennEast’s use of its NGA eminent domain authority.

<sup>143</sup> *National Fuel Gas Supply Corp. v. NYSDEC et al.*, , 2d Cir. No. 17-1164.

<sup>144</sup> *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018).



## 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 7.74<sup>145</sup> of those regulations reduces carbon dioxide (“CO<sub>2</sub>”) 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 CO<sub>2</sub> production with allowances (a limited authorization to emit one metric ton of CO<sub>2</sub> 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.

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

<sup>145</sup> Additional information about 310 CMR 7.74 (Reducing CO<sub>2</sub> Emissions from Electricity Generating Facilities) is available at: <http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/ghg/electricity-generatoremissions-limits.html>.

- **Base ROE Complaint IV (2016) (18-1077)**  
**Underlying FERC Proceedings: EL16-64**<sup>146</sup>  
**Petitioner: TOs**

On March 15, 2018, the TOs petitioned the DC Circuit Court of Appeals for review of the FERC's *Base ROE Complaint IV Orders*. On April 16, TOs submitted their initial materials, including certificates, docketing statement form, procedural motions, and its statement of issues. The TOs also requested that the Court hold the appeal in abeyance while the FERC completes its proceedings with respect to Base ROE Complaints II and III, committing to submit a report on a periodic basis (e.g. every 90 days) regarding the developments in those proceedings. On April 30, EMCOS moved to dismiss the case for lack of jurisdiction, arguing that TOs seek review of orders that are not final and therefore not subject to judicial review under Section 313(b) of the FPA. These motions are pending before the Court.

- **FCM Resource Retirement Reforms (17-1275)**  
**Underlying FERC Proceedings: ER16-551**<sup>147</sup>  
**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*. On April 17, Exelon filed Petitioner's Brief. Respondent FERC's Brief is due next on July 2, 2018. From there, Petitioner's Reply Brief is due July 30, 2018; Deferred Appendix, August 13, 2018; and Final Briefs, August 20, 2018.

- **Demand Curve Changes (17-1110\*\*)**  
**Underlying FERC Proceedings: ER14-1639**<sup>148</sup>  
**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, 2018 and oral argument, before Circuit Judge Wilkins and Senior Circuit Judges Sentelle and Randolph, held April 13, 2018. This matter is pending before the Court.

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**  
**Underlying FERC Proceedings: ER16-1041**<sup>149</sup> **ER15-1137**<sup>150</sup>  
**Petitioners: UWUA Local 464 and Robert Clark**

UWUA Local 464 and Robert Clark ("Petitioners") filed petitions for review of the FERC's orders on the FCA10 and FCA9 Results Filings, consolidated by the Court on January 31, 2017. 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.

<sup>146</sup> *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016), *reh'g denied*, 162 FERC ¶ 61,035 (Jan. 18, 2018) ("*Base ROE Complaint IV Orders*").

<sup>147</sup> *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*").

<sup>148</sup> 147 FERC ¶ 61,173 (May 30, 2014) (*Demand Curve Order*); 150 FERC ¶ 61,065 (Jan. 30, 2015) (*Demand Curve Clarification Order*); 155 FERC ¶ 61,023 (Apr. 8, 2016) (*Demand Curve Remand Order*); 158 FERC ¶ 61,138 (Feb. 3, 2017) (*Demand Curve Remand Rehearing Order*).

<sup>149</sup> 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).

<sup>150</sup> 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>151</sup>**  
**Appellants: New England Transmission Owners**

As previously reported, the TOs filed a petition for review of the FERC's orders in the 2012 and 2014 ROE complaint proceedings on July 13, 2015. On August 14, 2015, the TOs filed an unopposed motion to hold this case in abeyance pending final FERC action on the 2012 and 2014 ROE Complaints (see Section I above). On August 20, 2015, the Court granted the TOs' motion to hold the case in abeyance, subject to submission of status reports every 90 days. The most recent status report, the 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.

- **FCM Pricing Rules Complaints (15-1071\*\*, 16-1042) (consol.)**  
**Underlying FERC Proceeding: EL14-7,<sup>152</sup> EL15-23<sup>153</sup>**  
**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).<sup>154</sup> 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.

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

<sup>152</sup> 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

<sup>153</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

<sup>154</sup> *New England Power Generators Assoc. v FERC*, 881 F.3d 202 (DC Cir. 2018).

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