

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of June 25, 2018 (12pm)**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated May 31, 2018 12pm 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**

1	NEPGA Mystic 8/9 Pricing Complaint (EL18-154)	Jun 6	ISO-NE, NEPOOL, CT Parties, ENECOS, EPSA, Eversource, National Grid, and NESCOE file answers, protests and comments to Complaint
		Jun 1-12	Additional parties intervene
		Jun 15	FirstEnergy renews request for emergency action
		Jun 19	NEPGA answers protests, comments and answers
4	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Jun 4	Settlement Judge Dring issues status report noting parties have reached a settlement in principle and recommending that settlement procedures be continued

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

6	Mystic 8/9 Cost of Service Agreement (ER18-1639)	Jun 6	NEPOOL, ISO-NE, Algonquin, CT Parties, EDF, ENECOS, ENGIE Gas & LNG LLC, EPSA, Eversource, FirstLight, IECG, MA AG, MPUC, National Grid, NEPGA, NESCOE, New England LDCs, NextEra, NHPUC, NRG, Repsol, Verso file comments and protests
		Jun 1-6	Additional parties intervene
		Jun 19	Mystic answers comments and protests
7	Emera MPD OATT Attachment J Revision (ER18-210)	Jun 4	Settlement Judge Dring certifies Settlement to the Commission
		Jun 7	Chief Judge terminates settlement judge procedures
7	MPD OATT – Waiver of Annual Info. Filing Protocols (ER15-1429)	Jun 14	Emera Maine requests waiver of Protocols to permit annual open meeting to occur Jun 27
8	ISO Securities: Authorization for Future Drawdowns (ES18-25)	Jun 1	FERC authorizes ISO-NE drawdowns under a new \$20 million Revolving Credit Line and a new \$4 million line of credit supporting the Payment Default Shortfall Fund through May 31, 2020

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

* 8	Economic Life Determination Revisions (ER18-1770)	Jun 11	ISO-NE and NEPOOL jointly file changes to the determination of economic life of an Existing Capacity Resource; comment date Jul 2
		Jun 11-20	Calpine, Dominion, NESCOE intervene
9	Waiver Request: FCA13 Qual. Deposit Deadline (Bay State Wind) (ER18-1691)	Jun 21	FERC grants one-day waiver of the FCA13 qualification deposit deadline
9	ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509)	Jun 6	ISO-NE, NEPOOL, Exelon, NEPGA file answers
		Jun 7	Algonquin files supplemental comments
		Jun 13	Eversource answers EMM comments
		Jun 15	FirstEnergy renews request for emergency action
		Jun 19	Cavus, MA AG, MPUC, NEPGA, and NextEra file answers to ISO-NE's June 7 answer

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

* 12	2017 Tax Law Waiver Request: Identified PTOs (ER18-1722)	May 31	Identified PTOs request waiver of certain provisions of ISO-NE OATT Attachment F in order to reflect 21% federal tax rate in the 2018 RNS rate projected transmission revenue req. (eff. Jun 1, 2018)
		Jun 4	NEPOOL, MA AG, MPUC, NESCOE intervene
		Jun 7	NEPOOL files comments
		Jun 18	PTOs answer NEPOOL's comments

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

* 12	Schedule 21-NHT: 2017 Tax Law Waiver Request (ER18-1723)	May 31	NHT requests waiver of relevant provisions of Schedule 21-NHT so that it may incorporate the 21% federal tax rate in its Jun 1 Annual Wholesale Trans. Revenue Reqs. and Schedule 21-NHT rate update
* 13	Schedule 21-CMP: 2017 Tax Law Waiver Request (ER18-1719)	May 31	CMP requests waiver of the relevant provisions of Schedule 21-CMP so that it may incorporate the 21% federal tax rate in its July 1, 2018 Mid-Year Rate Calculation
* 13	Schedule 21-UI: 2017 Tax Law Waiver Request (ER18-1718)	May 31	UI requests waiver of the relevant provisions of Schedule 21-UI so that it may incorporate the 21% federal tax rate in its ATTR
13	Schedule 21-EM: BHD Tax Law & Settlement Changes (ER18-1213)	Jun 13	Emera Maine submits response to deficiency letter
13	Schedule 21-EM: Recovery of Bangor Hydro/MPS Merger-Related Costs (ER15-1434 et al.)	Jun 11	Settlement Judge Dring certifies MPS Merger Cost Recovery Settlement to the FERC
* 14	Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)	May 31	NSTAR submits an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period Jan1, 2017 through Dec 31, 2017

**VII. NEPOOL Agreement/Participants Agreement Amendments***No Activity to Report***VIII. Regional Reports**

* 15	Capital Projects Report - 2018 Q1 (ER18-1571)	Jun 12	FERC accepts 2018 Q1 Report, eff. Apr 1, 2018
* 16	ISO-NE FERC Form 714 (not docketed)	May 31	ISO-NE submits revised FERC Form 714

**IX. Membership Filings**

* 16	June 2018 Membership Filing (ER18-1714)	May 31	<b>New Member:</b> Group628; <b>Terminations:</b> MMWAC; Palmco Power CT; Cumulus Master Fund; South Jersey Energy ISO1; and VCharge
16	May 2018 Membership Filing (ER18-1485)	Jun 12	FERC accepts new members: 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; terminations of: AmericaWide Energy; and Optik Energy; and Energy Rewards name change

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

- |    |  |       |  |
|----|--|-------|--|
| 18 | <i>Order 847</i> : New Rel. Standards:<br>PRC-027-1 and PER-006-1<br>(RM16-22) | Jun 7 | FERC approves Protection System Changes, eff. Aug 13, 2018               |
| 18 | Revised GMD Research Work Plan<br>(RM15-11)                                    | Jun 7 | D. Bardin submits additional comments                                    |
| 19 | Rules of Procedure Changes<br>(Consolidated Hearings Process)<br>(RR17-2)      | Jun 8 | FERC accepts changes to NERC's compliance hearing process,<br>eff. Jun 8 |

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

- |      |  |                                     |  |
|------|--|-------------------------------------|--|
| 19   | 203 Application: XOOM<br>Energy/NRG Retail (EC18-82)                       | Jun 1<br>Jun 6                      | Transaction consummated<br>NRG submits transaction consummation notice   |
| * 20 | Deepwater Wind PURPA Complaint<br>(EL18-171)                               | Jun 6<br>Jun 19<br>Jun 20<br>Jun 21 | K. Leonard files Complaint; comment date Jun 27<br>RI PUC requests extension of time, to Jul 27, to answer Complaint<br>Complainant opposes RI PUC request<br>National Grid supports RI PUC request  |
| * 21 | PJM Clean MOPR Complaint<br>(EL18-169)                                     | May 31<br>Jun 1-22                  | CPV/Calpine/Eastern Generation file a complaint requesting that the<br>FERC require PJM to adopt a "Clean MOPR"<br>PJM's answers, and over 20 parties file comments and protests to, the<br>Complaint; over 30 parties intervene, including NEPOOL   |
| 22   | MPD OATT Changes<br>(ER18-1244)  | Jun 13<br>Jun 21                    | Emera Maine files responses to deficiency letter; comment date Jul 5<br>Maine Customer Group protests deficiency letter responses  |
| * 22 | FERC Enforcement Action: Show<br>Cause Order – Footprint Power<br>(IN18-7) | Jun 18                              | FERC directs Footprint Power to show cause why they should not (i) be<br>found to have violated the ISO-NE Tariff and FERC regulations during<br>the Jun 26-Jul 25, 2013 period; and (ii) <b>disgorge \$2.05 million</b> in CSO<br>payments and be assessed a <b>\$4.2 million civil penalty</b> ; Footprint<br>answer due on or before Jul 18 |

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

- |    |   |                                    |   |
|----|---|------------------------------------|---|
| 23 | Grid Resilience in RTO/ISOs; DOE<br>NOPR (AD18-7)   | Jun 1-15                           | NEI, Exelon, American Petroleum Institute file supplemental and reply<br>comments; FirstEnergy files its motion for emergency action  |
| 25 | NOI: 2017 Tax Law Effect on FERC-<br>Jurisdictional Rates (RM18-12)                           | Jun 5-20                           | Dominion, EQT Midstream Partners, INGAA, Six Cities, Tallgrass<br>Pipelines, and TransCanada file reply comments and answers  |
| 26 | <i>Order 846</i> : Withdrawal of Pleadings<br>(RM18-7)  | Jun 22                             | <i>Order 846</i> becomes effective  |
| 26 | <i>Order 845</i> : LGIA/LGIP Reforms<br>(RM17-8)  | Jun 1<br>Jun 6<br>Jun 14<br>Jun 18 | FERC grants 90-day extension of compliance filing deadline; compliance<br>filing deadline now Nov 5<br>ISO-NE answers AWEA request for rehearing<br>AWEA answers ISO-NE Jun 6 answer<br>FERC issues tolling order affording it additional time to consider<br>requests for rehearing and/or clarification |
| 27 | <i>Order 841</i> : Electric Storage<br>Participation in RTO/ISO Markets<br>(RM16-23; AD16-20) | Jun 4                              | <i>Order 841</i> becomes effective  |
| 29 | NOI: Certification of New Interstate<br>Natural Gas Facilities (PL18-1)                       | Jun 6-22                           | Individual commenters and Del. Riverkeeper Network file comments<br>FERC extends comment deadline to Jul 25, 2018   |

29 NOI: Policies for Income Tax Cost & Jun 21 OFI SteelPath, Inc. files comments  
ROE Recovery (PL17-1)

**XIII. Natural Gas Proceedings**



37 Engie/Exelon: Temp. Waiver of Jun 1 Engie/Exelon answer ENECOS' May 21 protest  
Capacity Release Regs. & Policies EDF and New England LDCs intervene  
(RP18-806)

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



*No Activity to Report*

**XV. Federal Courts**



*No Activity to Report*

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

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

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

**DATE:** June 25, 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 noon on June 25, 2018. If you have questions, please contact us.

<b>I. Complaints/Section 206 Proceedings</b>
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- **NEPGA Mystic 8/9 Pricing Complaint (EL18-154)**

On May 23, NEPGA filed a Complaint asking the FERC, should it grant ISO-NE’s Mystic 8/9 Waiver Request Filing (*see ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509)* below), to “provide relief now, in time for the next capacity auction, by requiring ISO-NE to adopt an approach that accounts for the capacity of fuel security resources in a way that prevents price suppression.” Specifically, the NEPGA Complaint seeks modifications to the ISO-NE Tariff, suggesting “a market-based approach” to clear the Mystic 8 & 9 capacity in both FCAs modeled on New England’s CASPR design. NEPGA urged the FERC to grant its Complaint and requested relief on an expedited basis by July 2, 2018 (the date on which ISO-NE has requested FERC action on its Mystic 8/9 Waiver Request Filing) to provide Market Participants with certainty as they develop and submit for IMM review their FCA13 priced offers.

ISO-NE’s answer and any additional responses (“Pleadings”) to the Complaint were due on or before June 6. Doc-less motions to intervene were filed by Algonquin, Avangrid Networks, Avangrid Renewables, Calpine, CMEEC, ConEd, CPV Towantic, Dominion, Emera, Environmental Defense Fund (“EDF”), FirstLight, LS Power, MA AG, MA DPU, MA PUC, MMWEC, NHEC, NHPUC, NRG/GenOn, PSEG, Public Citizen, and Verso. Pleadings were filed by ISO-NE, NEPOOL, CT Parties,<sup>2</sup> ENECOS, EPSA, Eversource, National Grid, and NESCOE and were summarized as part of a separate, supplemental summary of the Mystic-related proceedings dated June 9 that was previously circulated and is [posted on the NEPOOL website](#). On June 19, NEPGA answered the Pleadings. In addition, on June 15, FirstEnergy renewed its request that the FERC immediately adopt the proposal that FirstEnergy Service Co. filed in Docket No. RM18-1 to ensure the continued operation of critical nuclear and coal-fired generators while a long term solution is developed. The Pleadings and FirstEnergy’s renewed request for emergency action are separately summarized in a supplemental summary that is being circulated and posted concurrently with this Report. NEPGA’s Complaint 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)) or Sunita Paknikar (202-218-3904; [spaknikar@daypitney.com](mailto:spaknikar@daypitney.com)).

<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> “CT Parties” are, collectively, the Connecticut Public Utilities Regulatory Authority (“CT PURA”), the Connecticut Department of Energy and Environmental Protection (“CT DEEP”), and the Connecticut Office of Consumer Counsel (“CT OCC”).

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

On February 20, the FERC approved<sup>3</sup> the Offer of Settlement and settlement materials (“PER Settlement”) filed by the Settling Parties<sup>4</sup> to resolve the issue set for hearing and settlement judge procedures by the FERC in this proceeding.<sup>5</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>6</sup> will be equal to any positive difference between a five-minute Thirty-Minute Operating Reserves Clearing Price or Ten-Minute Non-Spinning Reserves Clearing Price that exceeds the maximum allowable reserves clearing prices for those reserves products (i.e., the Reserve Constraint Penalty Factors) in effect before December 2014.

**Clarification Requested.** As previously reported, the PER Settlement did not resolve the issues of the applicability of the Strike Price methodology to FCA9.<sup>7</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>8</sup> On March 1, NESCOE requested clarification of the *PER Settlement Order* on this issue. NEPGA answered NESCOE’s request on March 16.

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<sup>3</sup> *New England Power Generators Assoc. v. ISO New England Inc.*, 162 FERC ¶ 61,144 (Feb 20, 2018), *clarif. requested* (“*PER Settlement Order*”).

<sup>4</sup> PER “Settling Parties” are: NEPGA, NESCOE, the Retail Energy Supply Assoc. (“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 (“GEnOn”), National Grid, NextEra, the New Hampshire Electric Coop. (“NHEC”), and Calpine.

<sup>5</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>6</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).

<sup>7</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>8</sup> *PER Settlement Order* at P 3.

**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>9</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>10</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>11</sup> addressing Eastern Massachusetts Consumer-Owned Systems’ (“EMCOS”) Complaint<sup>12</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 % with incentive adders, is **not** unjust and unreasonable, and hence is not unlawful under section 206 of the Federal Power Act (“FPA”).<sup>13</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>14</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 23, 2018, which the FERC granted on May 7.

On May 23, Briefs Opposing Exceptions were filed by TOs, EMCOS, CAPs, and FERC Trial Staff. The TOs also opposed CAPs’ motion for limited reopening of record. The *Base ROE IV Initial Decision*, as well as all of the related briefs and motions, are pending before the FERC. 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)).

<sup>9</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>10</sup> *PER Settlement Order* at P 4.

<sup>11</sup> *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) (“*Base ROE Complaint IV Initial Decision*”).

<sup>12</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.

<sup>13</sup> *Id.* at P 2.; Finding of Fact (B).

<sup>14</sup> *Id.* Finding of Fact (A).

- **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>15</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>16</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>17</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>18</sup> Hearings continue to be held in abeyance pending the outcome of settlement judge procedures underway.<sup>19</sup> The FERC-established refund date is January 4, 2016.<sup>20</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 June 4, 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)).

<sup>15</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>16</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>17</sup> *Id.* at P 8.

<sup>18</sup> *Id.* at P 11.

<sup>19</sup> *Id.*

<sup>20</sup> The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.



- **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>21</sup> and third (EL14-86)<sup>22</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>23</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>24</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>25</sup> The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.<sup>26</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 periods from 11.14% to 9.59% and 10.90%, respectively.<sup>27</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)).

<sup>21</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>22</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>23</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>24</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>25</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>26</sup> *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al. and Mass. Att'y Gen. et al. -v- Bangor Hydro et al.*, 151 FERC ¶ 61,125 (May 14, 2015).

<sup>27</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*").

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

- **Mystic 8/9 Cost of Service Agreement (ER18-1639)**

On May 16, Constellation Mystic Power, LLC (“Mystic”) filed for approval an agreement between Mystic, Exelon Generation Company, LLC (“ExGen”) and ISO-NE that provides cost-of-service compensation to Mystic for continued operation of Mystic 8 & 9, which ISO-NE has requested be retained to ensure fuel security for the New England region, for the period of June 1, 2022 to May 31, 2024 (“Mystic 8/9 Cost of Service Agreement”). Mystic stated that the Agreement provides for recovery of Mystic’s fixed and variable costs of operating Mystic 8 & 9 over the 2-year term of the Agreement, which is based on the *pro forma* cost-of-service agreement contained in Appendix I to Market Rule 1, modified and updated to address Mystic’s unique circumstances, including the value placed on continued sourcing of fuel from the Everett liquefied natural gas (“LNG”) facility, and on the continued provision of surplus LNG from Everett to third parties. Mystic explained the importance of the timing of action on the Agreement, so that Mystic has the information it needs to accept the reliability service obligation or unconditionally retire by the January 4, 2019 deadline that, if extended as requested in ISO-NE’s Mystic 8/9 Waiver Filing (see ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509) below), would apply.

Comments on the Mystic 8/9 Cost of Service Agreement were due on or before June 6, 2018. Doc-less motions to intervene were filed by APPA, Avangrid Networks, Avangrid Renewables, Calpine, CMEEC, CT DEEP, CT PURA, ConEd, Cavus Energy, Dighton Power, Direct, Dominion, Emera, ENECOS, EPSA, Eversource, LS Power, MA AG, MA DPU, MA Environmental Affairs Office, Milford Power, MMWEC, MPUC, NESCOE, NH OCA, NH PUC, NHEC, NRG/GenOn, Public Citizen, PJM IMM, PSEG, Vitol, and VT PUC. Comments and protests were filed by NEPOOL, ISO-NE, Algonquin, CT Parties, EDF, ENECOS, ENGIE Gas & LNG LLC, EPSA, Eversource, FirstLight, IECG, MA AG, MPUC, National Grid, NEPGA, NESCOE, New England LDCs, NextEra, NHPUC, NRG, Repsol, and Verso. The comments and protests were summarized as part of a separate, supplemental summary of the Mystic-related proceedings dated June 9 that was previously circulated and is [posted on the NEPOOL website](#).<sup>28</sup> On June 19, Mystic answered the comments and protests. The Mystic Answer is separately summarized in a supplemental summary that is being circulated and posted concurrently with this Report. The Mystic 8/9 Cost of Service Agreement is pending before the FERC. If you have questions on this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Sunita Paknikar (202-218-3904; [spaknikar@daypitney.com](mailto:spaknikar@daypitney.com)).

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

On May 29, the FERC rejected, without prejudice, the request by Vermont Transco, LLC (“VTransco”) for authorization to recover in transmission rates property transfer taxes, closing fees, and advisory fees related to its acquisition of ownership shares in the Highgate Transmission Facility.<sup>29</sup> In rejecting the request, the FERC found that “VTransco has not made a showing ... that these transaction-related costs have ‘specific, measurable, and substantial benefits to ratepayers.’ Accordingly, we reject VTransco’s filing, without prejudice to it making a future filing that makes this showing.”<sup>30</sup> The FERC also rejected “the pass-through of transaction-related costs to ratepayers in any Commission-jurisdictional rate, without prejudice to VTransco submitting a request with the required showing of ‘specific, measurable, and substantial benefits’ to ratepayers.”<sup>31</sup>

As previously reported, VTransco filed, on March 30, 2018, to recover, under the regional formula rate, \$639,780 in costs, including property transfer taxes, closing fees, and advisory fees, related to its

<sup>28</sup> ENECOS full protest was separately summarized in a June 14 supplemental memo.

<sup>29</sup> *Vermont Transco, LLC*, 163 FERC ¶ 61,152 (May 29, 2018).

<sup>30</sup> *Id.* at P 16.

<sup>31</sup> *Id.* at P 18.

acquisition recent of Highgate Transmission Facility ownership shares.<sup>32</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 asserted 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. The Massachusetts Attorney General (“MA AG”) protested, 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>33</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 challenged the position that VTransco need only meet, or if so, met, the “just and reasonable” standard under FPA Section 205.

Unless the May 29 order rejecting the VTransco cost recovery request is challenged, with any challenges due on or before June 28, 2018, 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).

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

On April 30, 2018, Emera Maine submitted an uncontested Joint Offer of Settlement (“MPD OATT Attachment J 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.<sup>34</sup> The MPD OATT Attachment J 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. On June 4, Settlement Judge Dring certified the MPD OATT Attachment J Settlement to the Commission, before whom the Settlement is currently pending. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **MPD OATT – Waiver of Annual Informational Filing Protocols (ER15-1429)**

On June 14, 2018, Emera Maine requested a waiver of the MPD OATT to permit it to hold its annual meeting with stakeholders on June 27, 2018—two days before what would ordinarily be permitted under the Protocols for Implementing and Reviewing Charges Established by the Attachment J Rate Formulas of the MPD OATT (“Protocols”). The Protocols provide that Emera Maine will “hold an open meeting to discuss the Annual Update” (a “Customer Meeting”) between 45 days and 60 days after submission of the annual update filing,

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<sup>32</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>33</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

<sup>34</sup> As previously reported, the FERC accepted Emera’s proposed revision to Attachment J of the Open Access Transmission Tariff (“OATT”) for the Maine Public District (“MPD”), *Emera Maine*, 162 FERC ¶ 61,131 (Feb. 15, 2018), 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.” 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”) 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”.

which following a FERC-approved extension<sup>35</sup> and as reported in the last Report, occurred on May 15, 2018. The requested waiver will permit the open meeting to occur just prior to the effective date of the updated retail charges. Comments on Emera Maine's waiver request were due on or before June 21; none were filed. This matter 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)).

- **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>36</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>37</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>38</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>39</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 June 1, the FERC authorized drawdowns under a new \$20 million Revolving Credit Line and a new \$4 million line of credit supporting the Payment Default Shortfall Fund,<sup>40</sup> 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>41</sup> Unless the June 1 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

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

- **Economic Life Determination Revisions (ER18-1770)**

On June 11, ISO-NE and NEPOOL jointly filed revised Tariff language to change the determination of economic life under Section III.13.1.2.3.2.1.2.C of the Tariff. Specifically, the revisions provide that the economic life of an Existing Capacity Resource is calculated as the evaluation period in which the net present value of the resource's expected future profit is maximized. An August 10, 2018 effective date was requested. The Economic

<sup>35</sup> See *Notice of Extension of Time, Emera Maine*, Docket No. ER15-1429-000, Apr. 20, 2018. See also *Joint Offer of Settlement, Emera Maine & BHE Holdings*, Docket Nos. 10-67-002, May 8, 2018.

<sup>36</sup> *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*"), *reh'g requested*.

<sup>37</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

<sup>38</sup> *Order Rejecting Filing* at P 1.

<sup>39</sup> *Id.* at P 36.

<sup>40</sup> *ISO New England Inc.*, 163 FERC ¶ 62,144 (June 1, 2018) (continuing authorization through May 31, 2020).

<sup>41</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).

Life Determination Revisions were supported by the Participants Committee at its June 1, 2018 meeting. Comments on this filing are due on or before July 2. Thus far, doc-less interventions have been filed by Calpine, Dominion, and NESCOE. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Waiver Request: FCA13 Qual. Deposit Deadline (Bay State Wind) (ER18-1691)**

On June 21, the FERC granted BSW ProjectCo LLC (“BSW”),<sup>42</sup> which is developing the Bay State Wind Project,<sup>43</sup> a one-day waiver of the FCA13 qualification deposit deadline.<sup>44</sup> The one-day waiver allows BSW to continue to participate in the FCA13 qualification process. In granting the Waiver, the FERC found that BSW’s requested waiver satisfied the FERC’s four conditions for granting a waiver.<sup>45</sup> Unless the June 21 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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. 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.

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<sup>42</sup> BSW is a 50/50 joint venture between Orsted North America Inc. and Eversource Investment, LLC, an affiliate of Eversource Energy.

<sup>43</sup> The BSW project is a proposed utility-scale offshore wind farm, including a battery storage solution, located approximately 25 miles of the south coast of Massachusetts and 15 miles off the coast of Martha’s Vineyard.

<sup>44</sup> *BSW ProjectCo LLC*, Docket No ER18-1691 (June 21, 2018) (unpublished letter order).

<sup>45</sup> See *Id.* at PP 12-14. The FERC’s four conditions for granting a tariff waiver are: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.

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 were due on or before May 23, 2018. NEPOOL filed limited comments (1) to report on ISO-NE's engagement with regional stakeholders prior to the Waiver Request filing; and (2) to emphasize the importance that any future changes to the Tariff or Market Rules to address system reliability issues be explored through the long-standing, FERC-approved NEPOOL Participant Processes, which will minimize the need for subsequent waivers of the filed rate for that purpose. Comments from nearly 40 additional parties were also filed. Those comments were separately summarized by NEPOOL counsel in materials circulated and posted for the June 1 meeting. Doc-less interventions only were filed by APPA, Avangrid Networks, Calpine, Cavus Energy, ConEd, CT OCC, Dominion, EDP Renewables, Emera, Engie, EPSA, HQUS, LS Power, MA AG, Maine Public Advocate, National Grid, NRG/GenOn, NSTAR/Yankee Gas, PJM IMM, Public Citizen, Solar RTO Coalition, and Taunton. Answers were filed by on June 7 by ISO-NE, NEPOOL, Algonquin, Exelon, and NEPGA. Those answers were summarized as part of a separate, supplemental summary of the Mystic-related proceedings dated June 9 that was previously circulated and is [posted on the NEPOOL website](#). On June 13, Eversource filed an answer to the EMM's May 24 pleading. On June 15, FirstEnergy included in this proceeding its renewed request that the FERC immediately adopt the proposal that FirstEnergy Service Co. filed in Docket No. RM18-1 to ensure the continued operation of critical nuclear and coal-fired generators while a long term solution is developed. Answers to ISO-NE's June 7 answer were filed by Cavus, MA AG, MPUC, NEPGA, and NextEra. Those answers and FirstEnergy's renewed request for emergency action are separately summarized in a supplemental summary that is being circulated and posted concurrently with this Report.

ISO-NE's Wavier filing is pending before the FERC. 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)).

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

The PER Settlement Compliance Filing remains pending. As previously reported, 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. Comments on this filing were 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)**

Rehearing of the FERC's order accepting and ISO-NE's Competitive Auctions with Sponsored Policy Resources ("CASPR") revisions,<sup>46</sup> summarized in more detail in prior Reports, remains pending. Those requests

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<sup>46</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("CASPR Order").

were filed by (i) *NextEra/NRG* (which challenged the RTR Exemption Phase Out); (ii) *ENECOS*<sup>47</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>48</sup> (which challenged the CASPR construct in its entirety, asserting that state-sponsored resources should not be subject to the MOPR); and (iv) *Public Citizen* (which also challenged 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. On May 7, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending. 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, 2017 order accepting updated FCM Cost of New Entry ("CONE"), Net CONE and Offer Review Trigger Price ("ORTP") values.<sup>49</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>50</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>51</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

<sup>47</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>48</sup> "Clean Energy Advocates" are, collectively the Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, Conservation Law Foundation, and RENEW Northeast, Inc.

<sup>49</sup> *ISO New England Inc.*, 161 FERC ¶ 61, 035 (Oct. 6, 2017) ("*CONE/ORTP Updates Order*"), *reh'g requested*.

<sup>50</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>51</sup> *2013/14 Winter Reliability Program Remand Order* at P 17.

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

- **2017 Tax Law Waiver Request: Identified PTOs (ER18-1722)**

On May 31, certain Participating Transmission Owners (“Identified PTOs”)<sup>52</sup> requested a limited one-time waiver of certain provisions of Attachment F of Section II of the ISO-NE OATT to allow them to reflect the recent reduction in the federal income tax rate to 21% in the 2018 projected RNS transmission revenue requirement rate, effective on June 1, 2018. Comments on this filing were due on or before June 7. NEPOOL filed comments to identify a concern that the PTOs did not provide any notice to NEPOOL before filing the Waiver Request, and urging the FERC to encourage PTOs in the future to provide notice and, as appropriate engage in the NEPOOL stakeholder process before proposing changes to the Tariff or its implementation. The PTOs answered NEPOOL’s comments on June 18. The MA AG, MPUC and NESCOE filed doc-less interventions. This matter is pending before the FERC. 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)).

- **Order 842 (Frequency Response) Compliance Filing (ER18-1523)**

On May 4, 2018, ISO-NE, NEPOOL and the PTO AC filed changes to Schedules 22 and 23 of the ISO-NE OATT to incorporate *Order 842’s pro forma* revisions, as well as some conforming modifications to the defined terms and article numbers used in the OATT’s *pro forma* LGIA and SGIA, and changes to address the time lag between System Impact Studies and LGIA/SGIA execution (“*Order 842 Compliance Changes*”). A May 15, 2018 effective date (the effective date of *Order 842*) was requested. The *Order 842 Compliance Changes* were supported by the Participants Committee at its May 4, 2018 meeting (Agenda Item # 6). Comments on this filing were due on or before May 25, 2018; none were filed. Dominion filed a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

*No Activity to Report*

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

- **Schedule 21-NHT: 2017 Tax Law Waiver Request (ER18-1723)**

On May 31, New Hampshire Transmission, LLC (“NHT”) requested that the FERC waive applicable provisions of Schedule 21-NHT to enable NHT to revise its Annual Transmission Revenue Requirement (“ATRR”) to reflect the reduction in the federal corporate income tax rate, from 35% to 21%, effective January 1, 2018. Comments on this filing were due on or before June 7; none were filed. The MA AG filed a doc-less intervention. 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).

<sup>52</sup> “Identified PTOs” include: Emera Maine, CMP, Maine Electric Power Company (“MEPCO”); New Hampshire Transmission, LLC (“NHT”); National Grid; Eversource (CL&P, NSTAR and PSNH); United Illuminating Company (“UI”); Unitil and Fitchburg; and Vermont Transco.



- **Schedule 21-CMP: 2017 Tax Law Waiver Request (ER18-1719)**

On May 31, CMP requested that the FERC waive applicable provisions of Schedule 21-CMP to enable CMP to revise its ATRR to reflect the reduction in the federal corporate income tax rate, from 35% to 21%, effective January 1, 2018. Comments on this filing were due on or before June 7; none were filed. The MPUC filed a doc-less intervention. 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-UI: 2017 Tax Law Waiver Request (ER18-1718)**

On May 31, UI requested that the FERC waive applicable provisions of Schedule 21-UI to enable UI to revise its ATRR to reflect the reduction in the federal corporate income tax rate, from 35% to 21%, effective January 1, 2018. Comments on this filing were due on or before June 7; 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).

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

As previously reported, Emera Maine filed changes to the Emera Maine, Bangor-Hydro District (“BHD”) Formula Rate on March 29, 2018 to reflect: (i) the reduction to the federal corporate income tax rate resulting from the 2017 Tax Law and the 2017 Annual Update Settlement Agreement 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. On May 14, the FERC issued a deficiency letter requiring Emera Maine to file responses providing additional information. Given the similarities with Emera Maine’s MPD OATT Changes (ER18-1244) (see Section XI below), the deficiency letter addressed both filings. Emera Maine filed its responses on June 13, re-setting the 60-day clock for FERC action. 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>53</sup> March 31, 2016 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 an audit of Emera Maine, DAA found that Emera Maine “inappropriately included the costs of four merger-related capital initiatives in its formula rate recovery mechanisms” and “did not properly record certain merger-related expenses incurred to consummate the merger transaction to appropriate non-operating expense accounts as required by [FERC] regulations [and] inappropriately included costs of merger-related activities through its formula rate recovery mechanisms” without first making a compliance filing as required by the merger orders.

In the *June 2 Order*, the FERC found that the Compliance Filings raised issues of material fact that could not be resolved based on the record, and were more appropriately addressed in hearing and settlement

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<sup>53</sup> *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*June 2 Order*”).

judge procedures.<sup>54</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>55</sup> The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and indicated it would hold the hearing in abeyance pending the outcome of settlement judge procedures.<sup>56</sup> The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.<sup>57</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 May 24, 2018 status report, Judge Dring indicated that the parties reached a settlement in principle, and filed a joint offer of settlement on May 8 ("MPS Merger Cost Recovery Settlement"). Accordingly, he recommended that settlement judge procedures be continued.

**MPS Merger Cost Recovery Settlement.** On May 8, Emera Maine filed the MPS Merger Cost Recovery Settlement to resolve all issues pending before the FERC in the consolidated proceedings set for hearing in the *June 2 Order*. Under the Settlement, permitted cost recovery over a period from June 1, 2018 to May 31, 2021 will be \$390,000 under Attachment P-EM of the BHD OATT and \$260,000 under the MPD OATT. Comments on the MPS Merger Cost Recovery Settlement were due on or before May 29, 2018; none were filed. On June 11, Settlement Judge Dring certified the MPS Merger Cost Recovery Settlement to the FERC.<sup>58</sup> The MPS Merger Cost Recovery Settlement is pending before the FERC.

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

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

On May 31, 2018, NSTAR submitted an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period January 1, 2017 through December 31, 2017. NSTAR stated that the filing complies with the requirements of Section 4 and Attachment D of Schedule 21-NSTAR, as well as the Settlement Agreement approved previously by the FERC.<sup>59</sup> 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)).

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<sup>54</sup> *Id.* at P 24.

<sup>55</sup> *Id.* at PP 25-26.

<sup>56</sup> *Id.* at P 27.

<sup>57</sup> *Id.* at P 21; Ordering Paragraph (B).

<sup>58</sup> *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).

<sup>59</sup> *See NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

**VII. NEPOOL Agreement/Participants Agreement Amendments***No Activity to Report***VIII. Regional Reports**

- **Capital Projects Report - 2018 Q1 (ER18-1571)**

On June 12, the FERC accepted ISO-NE's May 10 Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2018.<sup>60</sup> Report highlights included the following new projects: (i) Energy Storage Device Market Participation (\$3.62 million); (ii) Identity and Access Management ("IAM") Phase I (\$1.22 million); and (iii) 2018 Issue Resolution Phase I (\$400,000). One project with a significant change was the FCM PFP Project (2018 Budget decrease of \$125,000). Unless the June 12 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

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

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

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

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

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

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

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

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

- **2017 IMM Annual Markets Report (ZZ18-4)**

On May 17, the ISO's IMM filed its 2017 Annual Markets Report, which covers the 2017 calendar year period.<sup>63</sup> The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for many years in a row, that the New England Market operated competitively in 2017. The Day-Ahead and Real-Time Energy Markets prices reflected changes in underlying primary fuel prices and electricity demand. There were few periods in the Real-Time Energy Market when relative shortage of energy and reserves impacted price, and overall price-cost markups in the Day-Ahead Energy Market "were within a reasonable range for a competitive

<sup>60</sup> *ISO New England Inc.*, Docket No. ER18-1571 (June 12, 2018) (unpublished letter order).

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

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

<sup>63</sup> Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

market. For the fourth consecutive year, the forward capacity auction procured surplus capacity, and clearing prices were the result of a competitive auction.” Other highlights included:

- ▶ 2017 Total wholesale costs (\$9.1 billion) were 20% higher than 2016, with the increase driven primarily by capacity market costs associated with FCA 8, which took effect in the second half of 2017, and increased capacity costs \$1.1 billion (93%) over 2016 costs. Capacity costs will increase further in 2018, to an estimated \$3.5 billion, as higher capacity prices from FCA9 take effect, but will decline after June 2019, as new resources enter the market and a higher capacity surplus applies downward pressure to capacity prices.
- ▶ 2017 Energy costs totaled \$4.5 billion, up 9% from 2016, with the increase driven by higher natural gas prices, which averaged \$3.72/MMBtu, up 19% from 2016 prices. The upward pressure of natural gas prices on energy costs was mitigated by lower wholesale electricity demand, particularly in the third quarter (“Q3”) of 2017.
- ▶ Wholesale electricity demand continued to decline, down 2% (by an hourly average of 341MW) from 2016 demand. Q3 demand was down by 8% (nearly 1,280 MW/hour on average), compared to the prior year. The downward trend was driven primarily by the increase in state-sponsored energy efficiency measures, and to a lesser but growing extent, the increase in behind-the-meter photovoltaic installations.

In light of its review, the IMM made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2018. These recommendations will be discussed in more detail at the Participants Committee June 26-28 Summer Meeting (Agenda Item #4).

- **ISO-NE FERC Form 714 (not docketed)**

On May 31, ISO-NE submitted its Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2017. Through its Form 714 filing, ISO-NE reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. These filings are not noticed for comment.

## IX. Membership Filings

- **June 2018 Membership Filing (ER18-1714)**

On May 31, NEPOOL requested that the FERC accept (i) the membership of Group 628, LLC (Supplier Sector); and (ii) the termination of the Participant status of Mid-Maine Waste Action Corporation; Palmco Power CT; Cumulus Master Fund; South Jersey Energy ISO1; and VCharge Inc. This matter is pending before the FERC.

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

On June 12, the FERC accepted (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).<sup>64</sup> Unless the June 12 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)).

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

The *Cyber Security Incident Reporting NOPR*<sup>65</sup> remaining pending before the FERC. On December 21, 2017, the FERC issued the NOPR, which proposes 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”)). 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>66</sup> and were filed by over 15 parties, including by NYPSC, NRG and a number of individual commenters. As noted above, this matter is pending before the FERC.

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

The *Supply Chain Risk Management Standards NOPR* also remains pending before the FERC. The January 18, 2018 NOPR proposes 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>67</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>68</sup> and were filed by over 20 parties, including NERC, ISO/RTO Council, EEI, Joint Trade Associations,<sup>69</sup> and the

<sup>64</sup> *New England Power Pool Participants Comm.*, Docket No. ER18-1485 (Jun3 12, 2018) (unpublished letter order).

<sup>65</sup> *Cyber Security Incident Reporting Rel. Standards*, 161 FERC ¶ 61,291 (Dec. 21, 2017) (“*Cyber Security Incident Reporting NOPR*”).

<sup>66</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>67</sup> *Supply Chain Risk Mgmt. Rel. Standards*, 162 FERC ¶ 61,044 (Jan. 18, 2018) (“*Supply Chain Risk Management Standards NOPR*”).

<sup>68</sup> *Supply Chain Risk Mgmt. Rel. Standards NOPR* was published in the *Fed. Reg.* on Jan. 25, 2018 (Vol. 83, No. 17) pp. 3,433-3,442.

MPUC. On May 11, the American Public Power Association (“APPA”) and National Rural Electric Cooperative Association (“NRECA”) submitted their white paper, “Managing Cyber Supply Chain Risk – Best Practices for Small Entities” for consideration in this proceeding. This matter is pending before the FERC.

- **Order 847: New Reliability Standards: PRC-027-1 and PER-006-1 (RM16-22)**

On June 7, the FERC approved (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).<sup>70</sup> Departing from its proposal in the *Protection System Changes NOPR*,<sup>71</sup> the FERC decided *not* to direct NERC to develop modifications to PRC-027-1. As previously reported, the purpose of the Protection System Changes are intended 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. *Order 847* will become effective August 13, 2018.<sup>72</sup> The new Standards and definitions will become effective on July 1, 2020. Unless *Order 847* is challenged, this proceeding will be concluded.

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

In accordance with *Order 830*,<sup>73</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 were due on or before May 21 and were filed by D. Bardin and FRS. Since the last Report, additional comments were submitted by D. Bardin. This matter is pending before the FERC.

- **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 remains pending before the FERC.

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

NERC’s revisions to Sections 600 (Personnel Certification Program) and 900 (Training and Education) of the NERC Rules of Procedure (“ROP”) remain pending. The purpose of the June 26, 2017 revisions is to (i) clarify the

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<sup>69</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>70</sup> *Coordination of Protection Systems for Performance During Faults and Specific Training for Personnel Rel. Standards*, 163 FERC ¶ 61,184 (June 7, 2018) (“*Order 847*”).

<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*”).

<sup>72</sup> *Order 847* was published in the Fed. Reg. on June 13, 2018 (Vol. 83, No. 114) pp. 27,505-27,511.

<sup>73</sup> *Rel. Standard for Trans. System Planned Performance for Geomagnetic Disturbance Events*, Order No. 830, 156 FERC ¶ 61,215 (Sep. 22, 2016) (“*Order 830*”).

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 June 8, the FERC accepted NERC’s proposed changes to its compliance hearing process.<sup>74</sup> The changes adjust how members are appointed to the Hearing Body to address concerns raised by FERC Staff. In addition, the changes align the use of the terms “segment” and “sector” align with the Appendix 2 definitions and the Regional Delegation Agreements between NERC and each Regional Entity. The proposed revisions became effective June 8, the date of the FERC order. Unless the June 8 order is challenged, this proceeding will be concluded.

## 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 were due on or before May 7, 2018; none were filed. On May 24, NEP submitted an addendum to its application, clarifying that (i) NEP’s accounting journal entry for the transaction would be to credit FERC Account 131 (Cash) and debit FERC Account 101 (Electric Plant in Service) each for \$1; and (ii) the book value of equipment (\$1,682,409) will be used by NEP in the calculation of the Direct Assignment Facilities (“DAF”) charge to be invoiced to Old Wardour Holdings, LLC and Vuelta Solar, LLC pursuant to Schedule 21 - NEP, Attachment DAF of the ISO-NE Tariff. Comments, if any, on the addendum are due on or before June 14; none were filed. This matter is pending before the FERC.

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

On May 31, the FERC authorized a transaction pursuant to which NRG Canal will be ultimately be acquired indirectly by Stonepeak Holdings, LLC (“Stonepeak”).<sup>75</sup> Following consummation of the transaction, NRG Canal will no longer be a Related Person to the NRG/GenOn Companies.<sup>76</sup> Among other conditions, the May 31 order required notice within 10 days of the transaction’s consummation, which as of the date of this Report has not been filed.

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

On June 6, NRG provided notice that its acquisition of all of the membership interests in XOOM Energy<sup>77</sup> was consummated on June 1, 2018. Accordingly, XOOM Energy became a Related Person to the NRG/GenOn Companies. Reporting on this proceeding is now concluded.

<sup>74</sup> *N. Amer. Elec. Rel. Corp.*, Docket No. RR17-2 (June 8, 2018) (unpublished letter order).

<sup>75</sup> *GenOn Holdco 10, LLC, NRG Canal LLC and Stonepeak Kestrel Holdings LLC*, 163 FERC ¶ 62,134 (May 31, 2018).

<sup>76</sup> The “NRG/GenOn Companies” are, currently: NRG Power Mktg., 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 Mktg. LLC.

<sup>77</sup> *BlueGreen Holding, LLC et al.*, 163 FERC ¶ 62,128 (May 29, 2018).

- **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>78</sup> Among other conditions, the order required notice within 10 days of the acquisition’s consummation, which has not yet been filed.

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

On May 18, the FERC authorized the acquisition by GIP III Zephyr Acquisition Partners, L.P. (“Buyer”) of, among other things, interests currently held by NRG in NRG Yield, NRG Renew and their public utility subsidiaries and Carlsbad.<sup>79</sup> Following the acquisition, GenConn will remain a Related Person to UI, and will become a Related Person of CPV Towantic, but will no longer be an NRG Related Person. Among other conditions, the order required notice within 10 days of the acquisition’s consummation, which has not yet been filed.

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

On February 28, the FERC authorized<sup>80</sup> the acquisition by HSE Hydro NH AC, LLC (“HSE Hydro NH”)<sup>81</sup> of PSNH’s portfolio of hydroelectric generation assets (the “PSNH Hydro Transaction”).<sup>82</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: 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>83</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.

- **Deepwater Wind PURPA Complaint (EL18-171)**

On June 7, Kathryn Leonard, an individual ratepayer and councilwoman for the City of Newport RI, filed a complaint against the RI PUC, National Grid, and Deepwater Wind Block Island (“Deepwater Wind”) seeking, among other things, declaratory and injunctive relief barring the continued implementation of the Deepwater Wind Rhode Island PPA and prohibiting the RI PUC from “designating renewable power costs as ‘distribution’ costs in any way that prevents consumers from the benefits of purchasing power from competitive sources”. Answers to and comments on this Complaint are due on or before June 27. On June 19, the RI PUC requested a 30-day extension of time, to July 27, to answer the Complaint. National Grid supported that request for an extension of time on June 21. Complainant opposed the request for an extension of time, proposed instead that an extension be granted to July 12. The request for extension of time and the Complaint are 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).

<sup>78</sup> *Boston Energy Trading and Mkt’g LLC*, 163 FERC ¶ 62,052 (Apr. 19, 2018).

<sup>79</sup> *NRG Yield, Inc., NRG Renew LLC and Carlsbad Energy Center LLC*, 163 FERC ¶ 62,101 (May 16, 2018).

<sup>80</sup> *Pub. Srvc. Co. of NH and HSE Hydro NH AC, LLC*, 162 FERC ¶ 62,122 (Feb. 28, 2018).

<sup>81</sup> HSE Hydro NH is a Related Person to Generation Sector Group Seat members Central Rivers Power MA and Pawtucket Power.

<sup>82</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>83</sup> *GenOn Energy Inc.*, 161 FERC ¶ 62,063 (Oct. 31, 2017).



- **PJM Clean MOPR Complaint (EL18-169)**

On May 31, in a proceeding that could impact potentially impact New England's markets, CPV Power Holdings, L.P. ("CPV"), Calpine Corporation ("Calpine"), and Eastern Generation, LLC ("Eastern Generation") (collectively, "PJM MOPR Complainants") filed a complaint requesting that the FERC protect PJM's Reliability Pricing Model ("RPM") market from below-cost offers for resources receiving out-of-market subsidies by requiring PJM to adopt a "Clean MOPR" (i.e. a MOPR applicable to all subsidized resources and without categorical exemptions like those in PJM's MOPR-Ex proposal). PJM MOPR Complainants state that the Complaint offers the FERC a procedural vehicle to require adoption of the "Clean MOPR" that Complainants opine is not otherwise available in pending FERC proceedings (EL16-49 (PJM MOPR Complaint)<sup>84</sup> and ER18-1314 (PJM's pending MOPR changes)). They assert that the "Clean MOPR" is required to effectively address the impacts of state subsidy programs, and is consistent with the FERC's MOPR principles identified in the *CASPR Order*. Comments on the PJM Clean MOPR Complaint were due on or before June 20. PJM's answer, as well as comments and protests from over 25 parties were filed. Given its potential to impact New England, NEPOOL filed a doc-less motion to intervene. More than 30 other parties also intervened. 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)) or Sunita Paknikar (202-218-3904; [spaknikar@daypitney.com](mailto:spaknikar@daypitney.com)).

- **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, 2017 in the NYISO proceeding; January 30, 2017 in the PJM proceeding, and, as with the proceedings themselves, remain pending before the FERC. If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **NSTAR/Milford Related Facilities Agreement (ER18-1574)**

On May 11, NSTAR filed its Related Facilities Agreement ("RFA") with Milford Power LLC. The RFA provides the terms and conditions governing NSTAR's activities, and Milford's associated cost responsibility, for upgrades to its Medway #65 relay equipment at the line terminals of the 201-501 Line ("Related Facilities") to accommodate the capacity expansion of Milford's facility. An April 30, 2018 effective date, the date of the most recent LGIA between Milford, National Grid and ISO-NE that triggered the need for the RFA, was requested. Comments on this filing were due on or before June 1; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Emera/MPD OATT Order 842 Compliance Filing (ER18-1569)**

On May 11, Emera Maine filed changes to the Large and Small Generator Interconnection Procedures and Agreements in its Open Access Transmission Tariff for Maine Public District (the "MPD OATT") in compliance with *Order 842*. A May 15, 2018 effective date (the effective date of *Order 842*) was requested.

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<sup>84</sup> The "PJM MOPR Complaint" seeks a FERC order expanding the PJM MOPR in the Base Residual Auction for the 2019/2020 Delivery Year to prevent the artificial suppression of prices in the Reliability Pricing Model ("RPM") market by below-cost offers for existing resources whose continued operation is being subsidized by State-approved out-of-market payments. Complainants in the MOPR Complaint are Calpine, Dynegy, Eastern Generation, Homer City Generation, the NRG Companies, Carroll County Energy, C.P. Crane, the Essential Power PJM Companies, GDF SUEZ Energy Marketing NA, Oregon Clean Energy, and Panda Power Generation Infrastructure Fund.

Comments on this filing were due on or before June 1; 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)**

As previously reported, 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. 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>85</sup> On May 4, Emera Maine answered the MPUC, MOPA and MCG. MCG answered that May 4 answer on May 10.

**Deficiency Letter.** On May 14, the FERC issued a deficiency letter requiring Emera Maine to file responses providing additional information. Given the similarities with Emera Maine's Schedule 21-EM: BHD Tax Law & Settlement Changes (ER18-1213) (see Section VI above), the deficiency letter addressed both filings. Emera Maine filed its responses to the deficiency letter on June 13, re-setting the 60-day clock for FERC action. Comments, if any, on the deficiency letter responses are due on or before July 5. On June 21, MCG protested the deficiency letter responses and reiterated its request that the FERC "accept the March 30 Filing by Emera Maine and allow the tariff changes to go into effect on June 1, 2018, subject to refund and subject to hearing and settlement judge procedures." 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: Show Cause Order – Footprint Power (IN18-7)**

On June 18, 2018, the FERC issued an order<sup>86</sup> directing Footprint Power LLC and Footprint Power Salem Harbor Operations LLC (collectively, "Footprint") to show cause why they should not (i) be found to have violated the ISO-NE Tariff and FERC regulations by submitting what Enforcement Staff has concluded were false and misleading supply offers for, and by failing to report the fuel status and related operational status of, Salem Harbor Unit 4 in June and July of 2013; and as a result (ii) disgorge \$2.05 million in CSO payments and be assessed a \$4.2 million civil penalty. Enforcement Staff alleges that from June 26 through July 25, 2013, Footprint submitted supply offers that Unit 4 could not satisfy because Salem Harbor lacked usable fuel, and failed to report to ISO-NE that Salem Harbor's lack of usable fuel reduced Unit 4's output capabilities and availability as a capacity resource. In addition, Staff alleges that Footprint omitted material information from and/or misrepresented the fuel status of Salem Harbor and related operational status of Unit 4 in its communications with ISO-NE. Footprint must file an answer on or before July 1, 2018.

- **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.

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<sup>85</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.

<sup>86</sup> *Footprint Power LLC and Footprint Power Salem Harbor Ops. LLC*, 163 FERC ¶ 61,198 (June 18, 2018).

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.

## XII. Misc. - Administrative & Rulemaking Proceedings

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

In *Order 841*<sup>87</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>88</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, 2018, 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 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)**

On January 8, 2018, the FERC initiated a new Grid Resilience in RTO/ISOs proceeding (AD18-7)<sup>89</sup> and terminated the DOE NOPR rulemaking proceeding (RM18-1).<sup>90</sup> In terminating the DOE NOPR proceeding, the FERC

<sup>87</sup> *Elec. Storage Participation in Mkts. Operated by Regional Trans. Orgs. and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018), *clarif. requested* ("Order 841").

<sup>88</sup> *Elec. Storage Participation in Mkts. Operated by Regional Trans. Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) ("*Storage NOPR*").

<sup>89</sup> *Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018), *reh'g requested*.

<sup>90</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"

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).** AD18-7 was initiated to evaluate the resilience of the bulk power system in RTO/ISO regions. The FERC 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>91</sup> as the most significant resilience challenge facing the New England region. ISO-NE reported that it has established a process to discuss market-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.

**Industry Comments.** Following a 30-day extension issued on March 20, reply comments were due on or before May 9, 2018. NEPOOL’s comments, which were approved at the May 4 meeting, were filed May 7, and were among over 100 sets of initial comments filed. A summary of the comments that seemed most relevant to New England and NEPOOL was circulated to the Participants Committee on May 15 and is posted on the [NEPOOL website](#). On May 23, NEPOOL submitted a limited response to 4 sets of comments, opposing the suggestions made in those pleadings to the extent that the suggestions would not permit full use of the Participant Processes. Supplemental comments and answers were also filed by FirstEnergy, MISO South Regulators, and EDF. Since the last Report, NEI filed supplemental comments, Exelon and American Petroleum Institute filed reply comments, and FirstEnergy included in this proceeding its motion for emergency action also filed and summarized above in ER18-1509 (ISO-NE Waiver Filing: Mystic 8 & 9). This matter is pending before the FERC.

**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. Action on that request is pending.

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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>91</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.”

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

On March 15, the FERC opened an inquiry (“NOI”)<sup>92</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>93</sup> bonus depreciation,<sup>94</sup> or other rates (not otherwise being addressed in the concurrently issued show cause orders). Comments on the NOI were due on or before May 21, 2018,<sup>95</sup> and were filed by over 45 parties, including Avangrid, Eversource, Exelon MA AG et al., National Grid, PSEG, APPA, and EEI. Reply comments and answers were filed by Dominion, EQT Midstream Partners, INGAA, Six Cities,<sup>96</sup> Tallgrass Pipelines, and TransCanada. This matter is pending before the FERC.

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

On March 15, 2018, the FERC issued a NOPR<sup>97</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:

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>98</sup>

Comments to the *Pipeline Rates NOPR* were due on or before April 25, 2018,<sup>99</sup> and were submitted by over 30 parties. Answers and reply comments were submitted by 10 parties. There was no activity since the last Report. This matter is pending before the FERC.

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<sup>92</sup> *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Comm.-Jurisdictional Rates*, 162 FERC ¶ 61,223 (Mar. 15, 2018).

<sup>93</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>94</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>95</sup> The NOI was published in the *Fed. Reg.* on Mar. 21, 2018 (Vol. 83, No. 55) pp. 12,371 – 12,376.

<sup>96</sup> “Six Cities” are the California Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside.

<sup>97</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*”).

<sup>98</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>99</sup> The *Pipeline Rates NOPR* was published in the *Fed. Reg.* on Mar. 26, 2018 (Vol. 83, No. 58) pp. 12,888 – 12,901.

- **Order 846: Withdrawal of Pleadings (RM18-7)**

On May 17, 2018, the FERC issued *Order 846*<sup>100</sup> adopting a more accurate title for, and clarifying the text of, Rule 216 of the FERC's Rules of Practice and Procedure. Specifically, *Order 846* changes Rule 216's title from "Withdrawal of pleadings and tariff or rate filings (Rule 216)" to "Withdrawal of pleadings (Rule 216)", and changes 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). *Order 846* became effective June 22, 2018.

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

On April 19, 2018, the FERC issued its final rule,<sup>101</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>102</sup> promote more informed interconnection decisions,<sup>103</sup> and enhance the interconnection process.<sup>104</sup> Based on the comments received on its December 15, 2016 NOPR<sup>105</sup> in this proceeding as well as other factors, *Order 845* declined to 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 July 23, 2018, and requires compliance filings to be filed on or before August 7, 2018. On May 17, the ISO/RTO Council ("IRC") requested a 70-day extension of time, to October 16, 2018, for the submission of compliance filings, which NEPOOL supported in comments submitted on May 23. On May 26, Southern Companies separately moved for a 90-day extension of time. On June 1, the FERC issued a notice extending the compliance date by 90 days for all so that New England's filing is now due on or before November 5. Plans for expedited Principal Committee consideration to support the earlier deadline have been cancelled.

Requests for rehearing and/or clarification of *Order 845* were filed by APPA, Arizona Public Service Company, AWEA, California Utilities,<sup>106</sup> Duke, EEI, EON Climate & Renewables, MISO Transmission Owners, NYISO, SCE, and Southern Company Services. On June 6, ISO-NE answered AWEA's request for clarification. AWEA answered ISO-NE's answer on June 14. On June 18, the FERC issued a tolling order affording it additional time to consider the requests for rehearing and/or clarification, which remain pending before the FERC.

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<sup>100</sup> *Withdrawal of Pleadings*, Order No. 846, 163 FERC ¶ 61,118 (May 17, 2018) ("*Order 846*").

<sup>101</sup> *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (Apr. 19, 2018) ("*Order 845*").

<sup>102</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>103</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>104</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>105</sup> *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016) ("*LGIP/LGIA Reforms NOPR*"). The *LGIP/LGIA Reforms NOPR* was published in the *Fed. Reg.* on Jan. 13, 2017 (Vol. 82, No. 9 pp. 4,464-4,501).

<sup>106</sup> "California Utilities" are Pacific Gas and Elec. ("PG&E"), So. Cal. Edison ("SCE"), and San Diego Gas & Elec. ("SDG&E").

- **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 September 7, 2018).<sup>107</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:

- (1) ensure that a resource using the participation model is eligible to provide all capacity, energy and ancillary services that the resource is technically capable of providing in the markets;
- (2) ensure that a resource using the participation model can be dispatched and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer consistent with existing market rules that govern when a resource can set the wholesale price;
- (3) account for the physical and operational characteristics of electric storage resources through bidding parameters or other means; and

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<sup>107</sup> *Order 844* was published in the *Fed. Reg.* on Apr. 25, 2018 (Vol. 83, No. 80) pp. 18,134-18,157.

- (4) establish a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW.

Additionally, each RTO/ISO must specify that the sale of electric energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale locational marginal price. RTO/ISOs must file any necessary tariff changes on or before November 30, 2018 (270 days from *Order 841*'s publication in the Federal Register)<sup>108</sup> and implement those tariff provisions within one year of that compliance filing. *Order 841* became 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>109</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>110</sup> and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

- **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>111</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

<sup>108</sup> *Order 841* was published in the *Fed. Reg.* on Mar. 6, 2018 (Vol. 83, No. 44) pp. 9,580-9,633.

<sup>109</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

<sup>110</sup> The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150) pp. 51,726-51,772.

<sup>111</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*.



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>112</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 ("P3") 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. On May 9, PJM requested expedited action on its request for clarification and answered Competitive Suppliers' and PJM Utilities Coalition's responses thereto. The requests for clarification and/or rehearing of *Order 842* remain pending before the FERC.

- **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<sup>113</sup> 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. Pursuant to a May 23 order extending the comment deadline by 30 days,<sup>114</sup> comments are now due on or before July 25, 2018. Since the last Report, a large number of individual and mass mailed comments were filed.

- **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 methodology.<sup>115</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>116</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>117</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, Tallgrass 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. Since the last Report, one set of comments, from OFI SteelPath, Inc., was filed.

<sup>112</sup> *Order 842* was published in the *Fed. Reg.* on Mar. 6, 2018 (Vol. 83, No. 44) pp. 9,636-9,677.

<sup>113</sup> The NOI was published in the *Fed. Reg.* on Mar. 6, 2018 (Vol. 83, No. 44) pp. 9,636-9,677.

<sup>114</sup> *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,138 (May 23, 2018).

<sup>115</sup> *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (Mar. 15, 2018).

<sup>116</sup> *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2016).

<sup>117</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)).

- **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>118</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>119</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>120</sup> Accordingly, the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in "unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index." The \$20.16 million civil penalty was at the top of the FERC's Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP's violation of a FERC order within 5 years of the scheme. BP's penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP's request for rehearing of the order establishing a hearing in this proceeding.<sup>121</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, 2016, 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>122</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

<sup>118</sup> *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

<sup>119</sup> *BP America Inc.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

<sup>120</sup> *BP Penalties Order* at P 3.

<sup>121</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>122</sup> *BP America Inc.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

25, 2018, and revised that answer on January 31. On February 9, BP replied to FERC Staff's revised answer. This matter remains 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>123</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>124</sup>

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA's parent company, Total, S.A. ("Total"), and TGPNA's affiliate, Total Gas & Power, Ltd. ("TGPL"), to show cause why they should not be held liable for TGPNA's, Hall's, and Tran's conduct, and be held jointly and severally liable for their disgorgement and civil penalties based on Total's and TGPL's significant control and authority over TGPNA's daily operations. Respondents filed their answer on July 12, 2016. OE Staff replied to Respondents' answer on September 23, 2016. Respondents answered OE's September 23 answer on January 17, 2017, and OE Staff responded to that answer on January 27, 2017. This matter remains pending before the FERC.

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

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

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>125</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.

<sup>123</sup> *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("TGPNA Show Cause Order").

<sup>124</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.

<sup>125</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).

- **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. Action on this matter is pending before the FERC.

- **Atlantic Bridge Project (CP16-9)**

- ▶ 132,700 Dth/d of firm transportation to new and existing delivery points on the Algonquin system and 106,276 Dth/d of firm transportation service from Beverly, MA to various existing delivery points on the Maritimes & Northeast system.
- ▶ 6.3 miles of replacement pipeline along Algonquin in NY and CT; new 7,700-horsepower compressor station in Weymouth, MA; more horsepower at existing compressor stations in CT and NY.
- ▶ 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>126</sup>
- ▶ Certain facilities,<sup>127</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>128</sup> Remaining Project capacity will be available when the remaining Project facilities are placed into service following Director of OEP authorization.

<sup>126</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>127</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>128</sup> *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Oct. 27, 2017).

- ▶ 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.
- ▶ On May 31, the DC Circuit issued a *per curiam* order that holds this case in abeyance pending further order of the court.<sup>129</sup> The court based its order on the parties' representation that they have agreed on a schedule by which to resolve their dispute. The parties were directed to file status reports at 90-day intervals August 29 and to file motions to govern future proceedings within 30 days of respondents' final decision to issue, condition, or deny petitioner's permit application.
- **Constitution Pipeline (CP13-499) and Wright Interconnection Project (CP13-502)**
  - ▶ Constitution Pipeline Company and Iroquois Gas Transmission (Wright Interconnection) concurrently filed for Section 7(c) certificates on June 13, 2013.
  - ▶ 650,000 Dth/d of firm capacity from Susquehanna County, PA (Marcellus Shale) through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
  - ▶ New 122-mile interstate pipeline.
  - ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
  - ▶ Final EIS completed on Oct 24, 2014.
  - ▶ Certificates of public convenience and necessity granted Dec 2, 2014.
    - By letter order issued July 26, 2016, the Director of the Division of Pipeline Certificates (Director) granted Constitution's requested two-year extension of time to construct the project.
    - Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays (see below).
  - ▶ On April 22, 2016, New York State Department of Environmental Conservation (NY DEC) denied Constitution's application for a Section 401 permit under the Clean Water Act.
    - On August 18, 2017, the 2nd Circuit denied Constitution's petition for review of the NY DEC decision, concluding that (1) the court lacked jurisdiction over the Constitution's claims to the extent that they challenged the timeliness of the decision; and (2) the NY DEC acted within its statutory authority in denying the certification, and its denial was not arbitrary or capricious.
    - 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)

<sup>129</sup> *Algonquin Gas Trans. v. Mass. Dept. of Env'tl. Protection*, Case No. 18-1045, DC Cir. (May 31, 2018).

- On January 11, 2018, the FERC denied Constitution’s Petition.<sup>130</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>131</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 Florida and the southeast United States (“SMP Project”).
  - ▶ Certificates of public convenience and necessity were granted Feb. 2, 2016.<sup>132</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>133</sup>

<sup>130</sup> *Constitution Pipeline Co.*, 162 FERC ¶ 61,014 (Jan. 11, 2018), *reh’g requested*.

<sup>131</sup> *Id.* at P 23.

<sup>132</sup> *Fla. Southeast Connection, LLC*, 154 FERC ¶ 61,080, 61 (Feb. 2, 2016) (order issuing certificate).

<sup>133</sup> *Sierra Club v. FERC*, 2017 U.S. App. LEXIS 15911 (D.C. Cir. Aug. 22, 2017).

- 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.<sup>134</sup> 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. On May 11, 2018, the FERC issued a tolling order affording it additional time to consider the April 13 request for rehearing, which remains pending.
- **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>135</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 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

<sup>134</sup> *Fla. Southeast Connection, LLC*, 162 FERC ¶ 61,233 (Mar. 14, 2018), *reh’g requested*.

<sup>135</sup> *Millennium Pipeline Co., L.L.C.*, 157 FERC ¶ 61,096 (Nov. 9, 2017).

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>136</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>137</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>138</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>139</sup>
- **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").

<sup>136</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>137</sup> *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,186 (Nov. 15, 2017) ("*November 15 Order*").

<sup>138</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>139</sup> *Millennium Pipeline Co., L.L.C.*, 163 FERC ¶ 61,009 (Apr. 4, 2018).



- ▶ 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>140</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>141</sup> Requests for rehearing of the January 19 Order and the subsequent tolling order were denied.<sup>142</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.

- **Engie/Exelon: Request for Temp. Waiver of Capacity Release Regs. & Policies (RP18-806)**

On May 8, Engie and Exelon, as part of the Everett LNG Terminal sale, jointly request waiver of FERC's capacity release regulations and related natural gas pipeline transportation policies to facilitate the assignment and permanent release of several long-term firm natural gas transportation agreements at existing rates. Comments on the waiver request were due on or before May 21, 2018. ENECOS protested the waiver request. ENECOS asserted that the waiver request does not "constitute a 'fully justified proposal' for the 'non-

<sup>140</sup> *National Fuel Gas Supply Corp. v. NYSDEC et al.*, , 2d Cir. No. 17-1164.

<sup>141</sup> *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh'g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

<sup>142</sup> *PennEast Pipeline Co., LLC*, 163 FERC ¶ 61,159 (May 30, 2018).

discriminatory and transparent' release of capacity in connection with the Everett Terminal," a non-open access terminal, because it does not describe the relationship of the waivers sought "to the larger transaction of which those waivers area part". In addition, ENECOS question the assertion that no approval under Section 3 of the Natural Gas Act ("NGA") is required in light of the unaddressed potential for vertical market power associated with the larger transaction. Interventions were filed by NESCOE, MA AG, and out-of-time by Taunton Municipal Lighting Plant, EDF and New England LDCs. On June 1, Engie and Exelon answered ENECOS' protest. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)).

#### 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>143</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).

#### 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>143</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>144</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. On May 10, the TOs opposed and CAPs supported the April 30 motion. TOs and EMCOS filed answers to the May 10 motions on May 17. These motions remain pending before the Court.

- **FCM Resource Retirement Reforms (17-1275)**  
**Underlying FERC Proceedings: ER16-551<sup>145</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>146</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>147</sup> ER15-1137<sup>148</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>144</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>145</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>146</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>147</sup> 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).

<sup>148</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>149</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 eleventh such report filed, was filed on May 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>150</sup> EL15-23<sup>151</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>152</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>149</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

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

<sup>151</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

<sup>152</sup> *New England Power Generators Assoc. v FERC*, 881 F.3d 202 (DC Cir. 2018).

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