

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of December 5, 2018

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

I. Complaints/Section 206 Proceedings

2	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19; ER18-2235)	Nov 5	Settlement Judge Dring submits contested settlement report to the Commission
		Nov 14	Munis move to have expunged from the record Settlement Judge's views on the merits of the settlement
		Nov 15	Chief Judge terminates settlement judge procedures
		Nov 29	FERC Trial Staff supports Munis' Nov 14 motion
3	Base ROE Complaints I-IV: (EL11-66, EL13-33; EL14-86; EL16-64)	Nov 14	FERC extends time to submit initial and reply briefs, to Jan 11, 2019 and Mar 8, 2019, respectively
		Nov 15	Customers withdraw emergency motion for clarification
		Nov 16	CT PURA, EMCOS, MMWEC, NHEC jointly request disclosure of sources underlying Figures 2 and 3 in <i>Order Directing Briefs</i>

II. Rate, ICR, FCA, Cost Recovery Filings

* 6	ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER19-447)	Dec 1	ISO-NE and NEPOOL jointly file ICR-Related Values and HQICCs for the 2019/20 ARA3, 2020/21 ARA2; and 2021/22 ARA1; comment date Dec 21
		Dec 3-5	Dominion, Exelon, NESCOE intervene
* 6	FCA13 Qualification Informational Filing (ER19-295)	Nov 7	ISO-NE submits required FCA13 informational filing
		Nov 6-21	NEPOOL, ENE, Eversource, National Grid, NESCOE, NRG, Vineyard Wind intervene
* 7	ICR-Related Values and HQICCs – 2022-23 Capacity Commitment Period (ER19-291)	Nov 6	ISO-NE and NEPOOL file ICR-Related Values for the 2022-23 Capacity Commitment Period
		Nov 16	NEPOOL submits supplemental comments
		Nov 9-27	Dominion, ENE, Exelon, LSPower, National Grid, NRG intervene
		Nov 28	FirstLight, NEPGA, NESCOE submit protests
9	FCA13 De-List Bids Filing (ER18-2047)	Nov 13	FERC accepts filing, eff. Sep 18, 2018
9	Mystic 8/9 Cost of Service Agreement (ER18-1639)	Nov 2	Parties submit post-hearing initial briefs
		Nov 16	Parties submit post-hearing reply briefs

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

* 12	<i>Order 841</i> Compliance Filing (ER19-470)	Dec 3	ISO-NE and NEPOOL (and for the OATT portions, the PTO AC) jointly file changes; comment date Dec 24
		Dec 4	ESA, and AEE et al. request 45-day extension of comment deadline
		Dec 4-6	AEE, ESA, RENEW intervene
* 12	CASPR Conforming Changes (ER19-444)	Nov 30 Dec 3-5	ISO-NE and NEPOOL jointly file changes; comment date Dec 21 Calpine, Dominion, ENE, Exelon, LS Power, NESCOE, RENEW intervene

* 12	ICR and Related Values Assumptions Updates (ER19-343)	Nov 15 Nov 15-29	ISO-NE and NEPOOL jointly file changes to the assumptions used in ISO-NE Tariff Section III's ICR and Related Values calculations; comment date Dec 6 Dominion, Eversource, FirstLight, National Grid, NESCOE, NRG intervene
* 12	FCM Parameter Consolidation (ER19-335)	Nov 14 Nov 19-30	ISO-NE and NEPOOL jointly file changes to Market Rule 1 to postpone the triennial review of CONE, Net CONE, and ORTP values and the recalculation of DDBT values to FCA16 Dominion, Eversource, National Grid, NESCOE, NRG intervene
13	New Capacity Resource Delayed Commercial Operation Changes (ER19-169)	Nov 8-13 Nov 13 Nov 28	Dominion, Eversource, National Grid intervene NEMACOS and PSEG protest changes ISO-NE and NEPOOL answer NEMACOS and PSEG protests
13	Waiver Request: CSO Termination (Clear River) (ER19-94)	Nov 9 Nov 19	Clear River answers ISO-NE answer and Burrillville, RI protest FERC denies waiver request
14	Enhanced Storage Participation Changes (ER19-84)	Nov 15	ISO-NE and NEPOOL answer ESA's Oct 31 protest
14	Effective Date Change: § III.14 (ER18-2506)	Nov 14	FERC accepts change, eff. Apr 1, 2019
14	ISO-NE eTariff Corrections: (ER18-2489)	Nov 9	FERC accepts corrections, eff. Jun 1, 2018 and Oct 1, 2018, as requested
14	CSO Termination: Clear River Unit 1 (ER18-2457)	Nov 19	FERC accepts CSO termination, eff. Nov 19, 2018
15	Fuel Security Retention Proposal (ER18-2364)	Dec 3	FERC accepts ISO-NE's proposal, eff. Oct. 20, 2018; directs ISO-NE to submit an annual informational filing for the duration of the interim mechanism regarding the applicability of its (i) study triggers, (ii) study assumptions, and (iii) study scenarios compared to actual experiences, starting with the winter of 2022/23
17	Economic Life Determination Revisions (ER18-1770)	Nov 9	FERC accepts revisions, eff. Aug 10, 2018

IV. OATT Amendments / TOAs / Coordination Agreements



* 21	Interconnection Process Enhancement: Retiring Resources Treatment (ER19-449)	Nov 30 Dec 3	ISO-NE and NEPOOL jointly file changes; comment date Dec 21 Exelon intervenes
* 22	Blackstart Rate Update (ER19-251)	Nov 1 Nov 9-13	ISO-NE and NEPOOL jointly file changes Blackstart rate, Schedule 16, and the Tariff's centralized definitions section (I.2.2) National Grid, NRG intervene
22	Cluster Participation Deposit Refund Revisions (ER19-161)	Nov 9-13	National Grid, NRG intervene

V. Financial Assurance/Billing Policy Amendments



No Activity to Report

VI. Schedule 20/21/22/23 Changes



* 22	Schedule 21-ES: Berkshire LSA (ER19-309)	Nov 8	Eversource files LSA for firm and non-firm point-to-point service to Berkshire Wind
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23	Schedule 21-NSTAR: Revised Depreciation Rates (ER19-123)	Nov 30	FERC accepts revised general plant depreciation rates for transmission service (est. annual decrease of \$181,000 for NSTAR (East) and \$773,000 for NSTAR (West)), eff. Jul 1, 2018
23	Schedule 21-ES: Revised Depreciation Rates (ER19-122)	Nov 30	FERC accepts revised general plant depreciation rates for transmission service (est. \$3.7 million annual decrease), eff. May 1, 2018
23	Schedule 21-EM: Corrections to § 10.2 (ER19-64)	Nov 30	FERC issues deficiency letter regarding changes to Emera Maine Penalties for Exceeding Non-Firm Capacity Reservation; responses to deficiency letter due Dec 31
24	Schedule 22: Kibby Wind LGIA (ER18-2432)	Nov 7	FERC accepts LGIA, eff. Aug 16, 2018
24	Schedule 21-EM: BHD Tax Law & Settlement Changes (ER18-1213)	Nov 9	FERC accepts changes, eff. Jun 1, 2018

VII. NEPOOL Agreement/Participants Agreement Amendments

25	132nd Agreement (Press Membership Provisions) (ER18-2208)	Nov 30	NEPOOL responds to FERC's Oct 31 deficiency letter; comment date on response Dec 21
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VIII. Regional Reports

* 26	ISO-NE FERC Form 3Q (2018/Q3) (not docketed)	Nov 29	ISO-NE submits quarterly financial report for 2018 Q3
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IX. Membership Filings

* 27	December 2018 Membership Filing (ER19-446)	Nov 30	Memberships: Alpha Gas & Electric; Eagle's View Partners; Thordin ApS; Terminations: Food City & East Ave. Energy; Name Change: Enel X North America (f/k/a EnerNOC); comment date Dec 21
27	October 2018 Membership Filing (ER19-2)	Nov 14	FERC accepts (i) the memberships of Algonquin Gas Transmission; BSW ProjectCo; Cypress Creek Renewables; EIP Investment; Hartree Partners; Pawcatuck Solar Center; StateWise Energy Massachusetts; Syncarpha Billerica, Bondsville, Hancock, and North Adams; Sunrun; and Three Corners Solar; and (ii) the terminations of Abest Power & Gas; Canton Mountain Wind; and Covanta Haverhill
* 27	Suspension Notices – Clear Choice Energy; Union Atlantic Electricity (not docketed)	Nov 6	ISO-NE files notices of suspension of Clear Choice Energy and Union Atlantic Electricity from New England Markets

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

* 28	Order 851: Rev. Rel. Standard: TPL-007-2 (RM18-8)	Nov 15	FERC approves revised TPL-007-2, eff. Jan 25, 2019
28	Revised GMD Research Work Plan (RM15-11)	Nov 15	FERC (in Order 851) accepts Plan submitted Apr 19, 2018

XI. Misc. - of Regional Interest

30	203 Application: NEP (Vuelta and Old Wardour Interconnection Assets) (EC18-85)	Nov 2	National Grid files notice that acquisition was consummated on Nov 1, 2018
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* 30	New England Ratepayers Assoc. Complaint (EL19-10)	Nov 2 Nov 7-30 Nov 27 Dec 3 Dec 4	NERA files complaint Calpine, Eversource, National Grid, NRG, DC Office of People's Counsel intervene NH requests extension of time to file comments Comments supporting the Petition filed by: NH OCA, the NH Generator Group, EPSA, and a group of NH customers; a Protest filed by the State of New Hampshire. The New England Small Hydro Coalition filed comments on what constitutes an avoided cost rate in NH FERC grants State of NH 2-week extension of time to file comments
* 33	NSTAR/MATEP Revised Distribution Service Agreement (ER19-431)	Nov 29	NSTAR files revised distribution service agreement; comment date Dec 20
* 33	NSTAR/HQ US MMWEC Use Rights Transfer Agreement (ER19-409)	Nov 28	NSTAR files Agreement; comment date Dec 19
* 33	TSA's: First Amendments to EDC New England Clean Energy Connect TSA's (ER19-324 et al.)	Nov 9	CMP files first amendments to EDC Agreements
* 33	E&P Agreement: CMP/Three Corners Solar (ER18-2454)	Nov 9	FERC accepts E&P Agreement, eff. Nov 19, 2018
34	MPD OATT Changes (ER18-1244)	Nov 9	FERC accepts changes, eff. Jun 1, 2018

XII. Misc. - Administrative & Rulemaking Proceedings



* 37	NOPR: Public Util. Trans. ADIT Rate Changes (RM19-5)	Nov 15 Nov 26	FERC issues <i>ADIT NOPR</i> ; comment date Dec 24, 2018 APPA, EEI, NRECA jointly request 30-day extension of comment date, to Jan 22, 2019
* 37	NOPR: Amended FPA Section 203(a)(1)(B)	Nov 15	FERC issues <i>Section 203(a)(1)(B) NOPR</i> ; comment date Dec 31, 2018
38	<i>Order 845</i> : LGIA/LGIP Reforms (RM17-8)	Nov 13	FERC dismisses AWEA request for rehearing of the Oct 3 Extension Notice; requests for rehearing of <i>Order 845</i> remain pending
39	<i>Order 841</i> : Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)	Nov 16	FERC issues <i>Correcting Amendment</i> that restores incorrectly replaced text to 18 CFR § 35.28(g)(11), eff. Nov 26, 2018

XIII. Natural Gas Proceedings



44	New England Pipeline Proceedings • Portland Express Project (CP18-251)	Nov 5	PNGTS notifies the FERC that service commenced on the Portland Express Project on November 1, 2018.
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XIV. State Proceedings & Federal Legislative Proceedings



No Activity to Report

XV. Federal Courts



49	FCM Resource Retirement Reforms (17-1275)	Nov 19	Oral argument held before Judges Katsas, Silberman and Williams
49	Base ROE Complaints II & III (2012 & 2014) (15-1212)	Nov 13	Parties file 13th status report indicating that proceedings upon which request for abeyance was requested remain ongoing

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: December 6, 2018

RE: Status Report on Current Regional Wholesale Power and Transmission Arrangements Pending Before the Regulators, Legislatures and Courts

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”),¹ state regulatory commissions, and the Federal Courts and legislatures through December 5, 2018. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings
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- **RTO Insider Press Policy Complaint (EL18-196)**

On August 31, RTO Insider LLC filed a Complaint pursuant to Section 206 of the Federal Power Act (“FPA”) against NEPOOL requesting that the FERC either (i) find that NEPOOL’s press policy “unlawful, unjust and unreasonable, unduly discriminatory and contrary to the public interest, and direct NEPOOL to cease and desist” from implementing its policy; or (ii) “if the [FERC] finds that NEPOOL can sustain such a ban as a “private” entity, [] direct that NEPOOL’s special powers, privileges and subsidies be terminated and that an open stakeholder process be used by [ISO-NE]” (“Press Policy Complaint”). The Press Policy Complaint, which was also filed as a “protest” to NEPOOL’s filing of the 132nd Agreement (see ER18-2208 in Section VIII below), broadens RTO Insider’s efforts to “be in the room” and on terms it prefers. On September 6, NEPOOL moved for an extension of the standard and noticed 20-day response deadline by seven business days, to October 1, 2018, to respond to the Complaint. On September 7, RTO Insider submitted a notice that it did not oppose NEPOOL’s extension request. The FERC denied that request on September 12.

NEPOOL answered the Complaint on September 20. NEPOOL cited numerous jurisdictional and procedural reasons why RTO Insider’s claims fail and should be summarily rejected. NEPOOL also answered RTO Insider’s arguments on the merits, should the FERC decide not to reject the Complaint summarily. Comments supporting the Complaint were submitted by the New Hampshire Office of Consumer Advocate (“NH OCA”), the Reporters Committee for Freedom of Press (“RCFP”), Bill Short, Public Interest Organizations (“PIOs”), and Public Citizen. Doc-less interventions only were submitted by Conservation Law Foundation (“CLF”), National Grid, NESCOE, New York Transmission Owners (“NYTOs”), the Sustainable FERC Project and Natural Resources Defense Council (“NRDC”).

On October 5, NEPOOL answered elements of the NH OCA and PIOs’ September 20 pleadings. Also on October 5, RTO Insider and PIOs answered NEPOOL’s September 20 answer. On October 15, NEPOOL filed a limited response to the October 5 pleadings of RTO Insider and PIOs. The Complaint is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

- **PER Settlement Agreement (EL16-120)**

On October 19, 2018, pursuant to the FERC's *September 20 Order*² in this proceeding, ISO-NE submitted a refund report addressing its recalculation of hourly PER values using the Adjusted PER Strike Price for the September 30, 2016 through May 31, 2018 period. In its report, ISO-NE reported that there was one month (October 2017) during which the initial hourly PER determinations used for settlement were changed by applying the Adjusted PER Strike Price. Since PER Adjustments involve a 12-month rolling calculation methodology, the settlements for the months of November 2017 through October 2018 were impacted. For the months of November 2017 through February 2018, the recalculated PER Adjustments were handled through the data reconciliation process. Beginning with March 2018, PER Adjustments associated with the PER values for October 2017 were calculated using the Adjusted PER Strike Price and were included in the initial monthly settlement statements. Amounts were identified in the report. Comments on the refund report, if any, were due on or before November 9; none were filed. The refund report is pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), Jamie Blackburn (202-218-3905; jblackburn@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19; ER18-2235)**

As previously reported, the Settling Parties³ filed on August 17 in ER18-2235 a Joint Offer of Settlement (the "Settlement") to resolve all issues in the Section 206 proceeding instituted by the FERC on December 28, 2015.⁴ The Settlement proposes changes to Section II.25, Schedules 8 and 9, Attachment F (including the addition of Interim Formula Rate Protocols ("Interim Protocols")), and the Schedule 21s to the ISO-NE OATT. If approved, the changes to Attachment F are to be effective mid-June, 2019, with the remaining changes to be effective January 1, 2020. The Interim Protocols, as well as the changes to Section II.25 and Schedules 8 and 9 were supported by the Participants Committee at its July 24 meeting.

On September 6, **NESCOE** filed comments supporting the Settlement. Comments opposing the Settlement were filed by Municipal PTF Owners⁵ and FERC Trial Staff. The **Municipal PTF Owners** ("Munis") assert that the Settlement worsens, rather than improves, the issues of "lack of transparency, clarity and specificity that led the Commission [to] find the existing Attachment F formula unjust and unreasonable", discriminates against load directly connected to PTF and exempted by Section II.12(c) of the ISO-NE Tariff from paying costs associated with service across non-PTF facilities, contravenes numerous settled rate principles without explanation or justification,⁶ and imposes an unacceptable moratorium and burden on parties inclined to challenge Attachment F.

² *New England Power Generators Assoc. v. ISO New England Inc.*, 164 FERC ¶ 61,190 (Sep. 20, 2018) ("*September 20 Order*") at P 21, Ordering Paragraph (C) (denying NESCOE's request for clarification and accepting the compliance filing submitted in ER18-1153).

³ "Settling Parties" are identified as: CMP; CMEEC/CTMEEC; CT OCC; CT PURA; Emera Maine; Eversource (CL&P, PSNH, NSTAR); Fitchburg and Unital; Green Mountain Power; Maine Electric Power Co.; ME OPA; MPUC, MA AG, MA AG, MA DPU, MMWEC, National Grid; NESCOE; NHEC; NH PUC; New Hampshire Transmission; RI DPUC; UI; VT DPS; VEC; VELCO; and Vermont Transco, LLC ("VTransco").

⁴ *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) ("*RNS/LNS Rates and Rate Protocols Order*"). The *RNS/LNS Rates and Rate Protocols Order* found 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"). 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". The FERC encouraged the parties to make every effort to settle this matter before hearing procedures are commenced. The FERC-established refund date is January 4, 2016.

⁵ "Municipal PTF Owners" are: Braintree, Chicopee, Middleborough, Norwood, Reading, Taunton, and Wallingford.

⁶ The elements of the Settlement that Municipal PTF Owners assert contravene settled rate principles include: provision for a fixed accrual for Post-Employment Benefits Other than Pension ("PBOPs"); continued TO use of net proceeds of debt, rather than gross proceeds of debt, in establishing capital structures under their proposed revenue requirement formula; inappropriate allocation of rental revenues from secondary uses of transmission facilities; the addition of miscellaneous intangible plant (Account 303), and depreciation and

FERC Trial Staff asserted that the Settlement, as filed, is not fair and reasonable nor is it in the public interest “because it would result in unreasonable rates and contains fundamental defects”,⁷ and opposed the Settlement terms which would bind non-settling parties to the terms of the Settlement and establish a standard of review for changes to the Settlement. FERC Trial Staff suggested that these defects could be corrected in a comprehensive compliance filing, and requested that the FERC either (i) conditionally approve the Settlement subject to the submission of such a corrective compliance filing, or (ii) reject the Settlement in its entirety and set the entire matter for hearing.

Reply comments were submitted by NEPOOL, NESCOE and the MA AG. In its limited comments, **NEPOOL** noted that it supported the Interim Protocols and that it had no objection to the Settlement. **NESCOE** reiterated its support for the Settlement in its reply comments, urging the FERC to reject any arguments that consumer-interested parties “were not familiar with the issues relating to the Settlement or that they reached a settlement for any reason other than their view that it is in the best interests of consumers.”⁸ **MA AG** urged the FERC to approve the Settlement as submitted, despite the objections of FERC Trial Staff and Municipal PTF Owners, because it complies with the *RNS/LNS Rates and Rate Protocols Order* and represents a carefully negotiated resolution to numerous complex ratemaking and transparency issues.⁹

Settlement Judge Report. On November 5, Settlement Judge Dring submitted the contested settlement to the Commission. In his report, Judge Dring noted his “complete agreement with the statements that were filed in support of this settlement.” He referred the Commission to the TOs’ reply comments for the reasons why Trial Staff’s and Municipal PTF Owners opposition are in error. On November 14, the Munis moved that the Commission expunge from the record in this proceeding the Settlement Judge’s views on the merits of the settlement, arguing that the inclusion of those views exceeds the regulatory limits of the settlement judge’s role. On November 29, FERC Trial Staff supported the Munis’ motion, providing additional arguments as to how the settlement report exceeds the judge’s authority and was otherwise deficient.

The settlement is pending before the Commission. Given this proceeding’s procedural posture, Chief Judge Cintron terminated settlement judge procedures on November 15, subject to final action by the Commission. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Base ROE Complaints I-IV: (EL11-66, EL13-33; EL14-86; EL16-64)**

There are four proceedings pending before the FERC in which consumer representatives seek to reduce the TOs’ return on equity (“Base ROE”) for regional transmission service.

amortization of intangibles, to rate base; and the creation of a Regulatory Asset for an unspecified Massachusetts state tax rate change (without explanation).

⁷ Included in the “fundamental defects” of the Settlement identified by FERC Trial Staff are that it: (1) enables the TOs to conduct extra-formulaic, ad hoc ratemaking for all externally-sourced inputs every year; (2) enables certain PTOs to over-recover certain plant costs; (3) enables certain PTOs to recover greater than 50% of Construction Work in Progress (“CWIP”) in rate base (4) violates prior FERC orders about which customer groups can be made to pay incentive returns; (5) fails to appropriately calculate federal and state income taxes and, in particular, fails to account for excess Accumulated Deferred Income Taxes (“ADIT”) created by the Tax Cuts and Jobs Act; (6) does not contain a fixed and stated ROE; and (7) does not contain a fixed and stated PBOPs expense.

⁸ Reply Comments of the New England States Committee On Electricity, Docket Nos. ER18-2235 and EL16-19, at p. 2 (filed Sep. 28, 2018).

⁹ Reply Comments of the Massachusetts Attorney General in Support of Settlement, Docket Nos. EL16-19 and ER18-2235 (filed Sep. 28, 2018).

- **Base ROE Complaint I (EL11-66).** In the first Base ROE Complaint proceeding, the FERC concluded that the TOs' ROE had become unjust and unreasonable,¹⁰ set the TOs' Base ROE at 10.57% (reduced from 11.14%), capped the TOs' total ROE (Base ROE *plus* transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion 531-A*).¹¹ However, the FERC's orders were challenged, and in *Emera Maine*,¹² the DC Circuit Court vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in Opinion 531 are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.
- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)¹³ and third (EL14-86)¹⁴ ROE complaint proceedings were consolidated for purposes of hearing and decision, though the parties were permitted to litigate a separate ROE for each refund period. After hearings were completed, ALJ Sterner issued a 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.¹⁵ The *Initial Decision* also lowered the ROE ceilings. Parties to these proceedings filed briefs on exception to the FERC, which has not yet issued an opinion on the ALJ's *Initial Decision*.
- **Base ROE Complaint IV (EL16-64).** The fourth and final ROE proceeding¹⁶ also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.¹⁷ The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a

¹⁰ The TOs' 11.14% pre-existing Base ROE was established in *Opinion 489. Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008), *order granting clarific.*, 124 FERC ¶ 61,136 (2008), *aff'd sub nom.*, Conn. Dep't of Pub. Util. Control v. FERC, 593 F.3d 30 (D.C. Cir. 2010) ("*Opinion 489*").

¹¹ *Coakley Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), *order on paper hearing*, 149 FERC ¶ 61,032 (2014) ("*Opinion 531-A*"), *order on reh'g*, 150 FERC ¶ 61,165 (2015) ("*Opinion 531-B*").

¹² *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).

¹³ 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%.

¹⁴ 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.

¹⁵ *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*").

¹⁶ 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.

¹⁷ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under section 206 of the FPA.¹⁸ Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in Emera Maine and Directing Briefs. On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.¹⁹ The FERC indicated its intention that the methodology be its policy going forward, including in the four currently pending New England proceedings. The FERC established a paper hearing on how its proposed methodology should apply to those four pending ROE proceedings.²⁰

At highest level, the new methodology will determine whether (1) an existing ROE is unjust and unreasonable under the first prong of FPA section 206 and (2) if so, what the replacement ROE should be under the second prong of FPA section 206. In determining whether an existing ROE is unjust and under the first prong of Section 206, the FERC stated that it will determine a "composite" zone of reasonableness based on the results of three models: the Discounted Cash Flow ("DCF"), Capital Asset Pricing Model ("CAPM"), and Expected Earnings models. Within that composite zone, a smaller, "presumptively reasonable" zone will be established. Absent additional evidence to the contrary, if the utility's existing ROE falls within the presumptively reasonable zone, it is not unjust and unreasonable. Changes in capital market conditions since the existing ROE was established may be considered in assessing whether the ROE is unjust and unreasonable.

If the FERC finds an existing ROE unjust and unreasonable, it will then determine the new just and reasonable ROE using an averaging process. For a diverse group of average risk utilities, FERC will average four values: the midpoints of the DCF, CAPM and Expected Earnings models, and the results of the Risk Premium model. For a single utility of average risk, FERC will average the medians rather than the midpoints. The FERC said that it would continue to use the same proxy group criteria it established in *Opinion 531* to run the ROE models, but it made a significant change to the manner in which it will apply the high-end outlier test.

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.²¹ The new ROE would be effective as of the date of Opinion 531-A, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC

¹⁸ *Id.* at P 2.; Finding of Fact (B).

¹⁹ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) ("*Order Directing Briefs*").

²⁰ *Id.* at 19.

²¹ *Id.* at P 59.

notice granting a request by the TOs and Customers²² for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively.

On November 15, citing language in a MISO proceeding that provided the clarification they sought,²³ Customers withdrew their motion seeking clarification of the *Order Directing Briefs*. On November 16, CT PURA, EMCOS, MMWEC, and NHEC jointly asked the FERC to identify and, where not already in the record in these four proceedings, release the sources, data sets, and analyses underlying Figure 2 and Figure 3 in the *Order Directing Briefs* (at least one figure appeared to be based on proprietary information not available or included in the record). That request remains pending before the FERC.

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com), Joe Fagan (202-218-3901; jfagan@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER19-447)**

On November 30, 2018, ISO-NE and NEPOOL jointly filed materials that identify the Installed Capacity Requirement (“ICR”), Local Sourcing Requirements (“LSR”), Maximum Capacity Limits (“MCL”), Hydro Quebec Interconnection Capability Credits (“HQICCs”), and capacity requirement values for the System-Wide and Marginal Reliability Impact Capacity Demand Curves (collectively, the “ICR-Related Values”) for the third annual reconfiguration auction (“ARA”) for the 2019-20 Capability Year to be held March 1, 2019, the second ARA for the 2020-21 Capability Year to be held August 1, 20189, and the first ARA for the 2021-22 Capability Year to be held June 3, 2019. The ICR-Related Values were supported by the Participants Committee at its November 2, 2018 meeting. A January 29, 2019 effective date was requested. Comments on this filing are due December 21, 2018. Thus far, Dominion, Exelon and NESCOE have filed doc-less interventions. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA13 Qualification Informational Filing (ER19-295)**

On November 6, 2018, ISO-NE submitted its informational filing (the “FCA13 Informational Filing”) for qualification in FCA13. ISO-NE is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by ISO-NE for the upcoming Forward Capacity Auction (“FCA”) at least 90 days prior to each auction. FCA13 is scheduled to begin February 4, 2019. The Informational Filing contained ISO-NE’s determinations that the same three Capacity Zones that were modelled for FCA12 will be modelled for FCA13 -- Southeastern New England (“SENE”), Northern New England (“NNE”) and Rest of Pool. SENE will again be modeled as import-constrained; NNE will be modeled as export-constrained. The Informational Filing reported that there will be 34,925 MW of existing capacity in FCA13 competing with 8,716 MW of new capacity under a Net ICR of 33,750 MW (ICR minus HQICCs). ISO-NE reported also that there were a total of 3,223 MW of Static De-List Bids. A summary of the De-List Bids accepted and those rejected for reliability purposes was included in a privileged Attachment E. ISO-NE qualified 14 demand bids, totaling 2,160 MW, and 86 supply offers, totaling 544 MW, to participate in the substitution auction.

Comments on the FCA13 Informational Filing were due November 21, 2018; none were filed. Doc-less interventions were filed by NEPOOL, ENE, Eversource, National Grid, NESCOE, NRG, Vineyard Wind. This

²² For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG, and EMCOS.

²³ See *Assoc. of Bus. Advocating Tariff Equity, et al. v. Midcontinent Indep. Sys. Op., et al.*, 165 FERC ¶ 61,118, P 20 (Nov. 15, 2018) (clarifying that the *Order Directing Briefs* makes no final determinations, and that the briefs directed may address the justness and reasonableness of any aspect of the newly proposed methodologies).

matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ICR-Related Values and HQICCs – 2022-23 Capacity Commitment Period (ER19-291)**

On November 6, 2018, ISO-NE and NEPOOL filed ICR, LSR for SENE, MCL for NNE, HQICCs, and Marginal Reliability Impact (“MRI”) Demand Curves (collectively, the “2022-23 ICR-Related Values”) for the 2022-23 Capacity Commitment Period (“CCP”). The values will be used in FCA13 to be held in February 2019. With a 2022-23 ICR of 34,719 MW (reflecting tie benefits of 2,000 MW) and HQICCs of 969 MW/mo., the net amount of capacity to be purchased in FCA13 to meet the ICR will be 33,750 MW. The LSR for the SENE Capacity Zone is 10,141. The MCL for the NNE Capacity Zone is 8,545 MW. The Participants Committee supported the 2022-23 ICR-Related Values (those without Clear River in the model) at its October 4, 2018 meeting.

Comments on this filing were due November 27. On November 16, NEPOOL filed comments that explained NEPOOL’s processes and deliberations that preceded the November 6 filing and NEPOOL’s support of the 2022-23 ICR-Related Values (those without Clear River modeled). Protests were filed by FirstLight, NEPGA and NESCOE. FirstLight and NEPGA conditioned their protests on the outcome of the FERC’s December 3 *Fuel Security Proposal Order*. They assert that ISO-NE must “either be required to calculate the Region-Wide Capacity Requirement consistent with the resource performance upon which its region-wide fuel security reliability standard is based or properly recognize that ISO-NE is seeking to retain a Fuel Security RMR Resource for a winter energy demand outside of the Region-Wide Capacity Requirement.” For its part, NESCOE’s limited objection was to the increase in the level of modeled system reserves from 200 MW to 700 MW in ISO-NE’s assumptions used to calculate the ICR-Related Values. NESCOE requested that the FERC direct ISO-NE to use the 200 MW value. Doc-less interventions were filed by Dominion, ENE, Exelon, LSPower, National Grid, NRG. 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).

- **Correction to §IV.A Schedule 5 (Collection of NESCOE Budget) (ER19-140)**

On October 24, ISO-NE filed a correction to Tariff Section IV.A Schedule 5 (Collection of NESCOE Budget) effective for calendar year 2018. The correction updates the calendar year reference in the Schedule that was inadvertently not changed from 2017 to 2018 when the Schedule was updated last year in ER18-85 (NESCOE 2018 Budget Filing). The correction filed in this proceeding ensures that the eTariff properly reflects the calendar year in the effective version of the ISO-NE Tariff. No other correction was needed or made. Comments on this filing were due November 8; none were filed. NEPOOL and NESCOE filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2019 NESCOE Budget (ER19-110)**

This proceeding was initiated by ISO-NE’s October 15 filing of the budget for funding NESCOE’s 2019 operations. The 2019 Operating Expense Budget for NESCOE is \$2,350,787. The amount to be recovered reflects true-ups from 2017 overcollections of \$743,722. Accordingly, if accepted, the NESCOE budget will result in a charge of \$0.00711 per kilowatt (“kW”) of Monthly Network Load. The 2019 NESCOE budget was supported by the Participants Committee at its October 4, 2018 meeting. Comments and any interventions were due on or before November 5. NEPOOL filed comments supporting NESCOE’s 2019 Budget. National Grid submitted a doc-less intervention. This matter is pending before the FERC. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2019 ISO-NE Administrative Costs and Capital Budgets (ER19-107)**

On October 15, ISO-NE filed for recovery of its 2019 administrative costs (the “2019 Revenue Requirement”) and submitted its capital budget and supporting materials for calendar year 2019 (“2019 Capital Budget”, and together with the 2019 Revenue Requirement, the “2019 ISO Budgets”). The 2019 ISO-NE Budgets were filed together pursuant to the Settlement Agreement entered into to resolve challenges to

the 2013 ISO-NE Budgets. In the October 15 filing, ISO-NE reported that the 2019 Revenue Requirement is \$198 million, which decreases to \$188.7 million after the over-collection for 2017 is subtracted. Of that total, ISO-NE's administrative costs (i.e., the 2019 Core Operating Budget) comprise \$168.9 million; depreciation and amortization of regulatory assets, \$29.1 million; and a \$9.3 million true-up from 2017 over-collections.

ISO-NE further reported that the 2019 Capital Budget, like the 2018 Capital Budget, is \$28 million and is comprised of the following (with 2019 projected costs and target completion dates, if available, in parentheses):

▶ Non-Project Capital Expenditures	(\$3.8 million)	▶ Identity and Access Management Phase II (Dec 2019)	(\$600,000)
▶ Energy Management Platform 3.2 Upgrade – Part II (Mar 2020)	(\$3 million)	▶ Energy Storage Device Phase I (Mar 2019)	(\$500,000)
▶ Energy Management Platform 3.2 Upgrade - Part I (Jun 2019)	(\$1.6 million)	▶ New England External Transaction Tool (Sep 2019)	(\$500,000)
▶ Other Emerging Work	(\$1.6 million)	▶ IT Request System Project (June 2019)	(\$500,000)
▶ nGem Software Development (Jun 2019)	(\$1.5 million)	▶ Energy Storage Device Phase II (Mar 2020)	(\$500,000)
▶ Winter Energy Security (Jul 2019)	(\$1.5 million)	▶ Update TranSMART Architecture	(\$500,000)
▶ Enterprise Application Integration Replacement (Dec 2019)	(\$1.5 million)	▶ Capitalized Interest	(\$500,000)
▶ 2019 Issue Resolution -- Phase I (Jun 2019); Phase II (Dec 2019)	(\$1.5 million)	▶ FCM Delayed Commercial Resource Treatment (Mar 2019)	(\$300,000)
▶ Streamline Asset Registration Phase III (May 2020)	(\$1.2 million)	▶ Annual Reconfiguration Transactions (Apr 2019)	(\$300,000)
▶ IMM Data Analysis Phase II (Oct 2019)	(\$1.2 million)	▶ BoPP FA Project (Oct 2019)	(\$300,000)
▶ CIMNET Simultaneous Feasibility Test w/ Data Transfer Enhancements (Jun 2019)	(\$1 million)	▶ Upgrade Security Application Framework (Mar 2019)	(\$200,000)
▶ FCA 14 (Feb 2020)	(\$1 million)	▶ FERC Form 1, 3-Q, 714	(\$200,000)
▶ Energy Market Offer Caps (Order 831) (Oct 2019)	(\$1 million)	▶ CASPR (Feb 2019)	(\$100,000)
▶ Nested Constrained Capacity Zones (Feb 2020)	(\$800,000)	▶ Massachusetts Green High Power Computing Center (Dec 2019)	(\$100,000)
▶ Synchrophasor Initiatives – Next Generation (June 2019)	(\$600,000)	▶ Baseline Telemetry System Improvements (Mar 2019)	(\$100,000)

The 2019 ISO-NE Budgets were supported by the Participants Committee at its October 4, 2018 meeting. Comments on this filing were due November 5, 2018. NEPOOL filed comments supporting the 2019 Budgets on October 26. Doc-less interventions were filed by National Grid and PSEG. This matter is pending before the FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **FCA13 De-List Bids Filing (ER18-2047)**

On November 13, the FERC accepted ISO-NE's July 20 filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the FCA13 Existing Capacity Retirement Deadline.²⁴ As noted previously, ISO-NE reported that it received by March 23, 2018 deadline three Permanent De-List and 11 Retirement De-List Bids for resources located in three Load Zones (New England, SEMASS, and Vermont and NEMA-Boston). The Bid resources had an aggregate capacity of 2,048.799 MWs. Nine of the Bids were for resources under 20 MW that did not meet the affiliation requirements that would have required IMM review. The IMM did review the remaining two suppliers' 5 Bids for 2,026.615 MWs of capacity. The IMM's determination regarding those 5 bids was described in the version of the filing that was filed confidentially as required under §13.8.1(a) of Market Rule 1. ISO-NE added that, because the Economic Life Determination Revisions described in Section III below (ER18-1770) potentially produce a different IMM-determined De-list Bid value, the IMM evaluated each De-list Bid twice, once with and once without the Economic Life Determination Revisions. The Economic Life Determination Revisions produced a different value in two instances. In those instances, the IMM provided a separate IMM-determined price, which it will use in FCA13. Unless the *FCA13 De-List Bid Filing 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).

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

On July 13, the FERC issued an order ("*Mystic COS Agreement Order*")²⁵ regarding the Mystic 8 & 9 Cost-of-Service Agreement ("*COS Agreement*"),²⁶ accepting the COS Agreement but suspending its effectiveness and setting it for accelerated hearings and settlement discussions. The *Mystic COS Agreement Order* was approved by a 3-2 vote, with dissents by Commissioners Powelson and Glick.

The following summarizes the relevant findings in the *Mystic COS Agreement Order*:

- ◆ **Capital Expenditures.**²⁷ The FERC determined that that the record provided by Mystic is insufficient for determining the justness and reasonableness of the amount of reported capital expenditures, and thus directed the participants to submit evidence regarding that issue at the hearing. The FERC also directed the participants to present evidence regarding the appropriate design of the true-up mechanism (to ensure that the rates established reflect actual costs incurred) in the COS Agreement. Regarding a related clawback provision proposed by parties to address "toggling" concerns (i.e., the return of the Mystic units to the market after the term of the Agreement), the FERC noted that ISO-NE may choose to address such a provision in its filing in Docket No. EL18-182 (see Section III below).
- ◆ **Fuel Supply Charge.**²⁸ The FERC rejected arguments that the FPA prohibits any recovery of the Fuel Supply Charge for the Distringas Facility. According to the FERC, the extremely close relationship between the Distringas Facility and Mystic 8 & 9 places costs related to operation of the Distringas Facility within its general practice of considering, when reviewing cost-of-service

²⁴ *ISO New England Inc.*, Docket No. ER18-2047 (Nov. 13, 2018) ("*FCA13 De-List Bid Filing Order*").

²⁵ *Constellation Mystic Power*, 164 FERC ¶ 61,022 (July 13, 2018), *reh'g requested*.

²⁶ The COS Agreement, submitted on May 16, 2018, is between Mystic, Exelon Generation Company, LLC ("ExGen") and ISO-NE. The COS Agreement is to provide 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. The COS 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 Distringas liquefied natural gas ("LNG") facility, and on the continued provision of surplus LNG from Distringas to third parties.

²⁷ *Mystic COS Agreement Order* at PP 19-20.

²⁸ *Id.* at PP 34-37.

rates, a generator's purported costs of fuel. However, the *Mystic COS Agreement Order* clarified, the finding as to jurisdiction does not mean that Mystic is entitled to recover all costs that it claims in connection with the Distrigas Facility. The FERC found that the record provided by Mystic is insufficient for determining the justness and reasonableness of the Fuel Supply Charge, and directed the participants to address this issue at hearing.

- ◆ **Third-Party Sales Revenues.**²⁹ As to the question of sharing revenues from third-party sales of LNG to the LDC or one of the two interstate natural gas pipelines, the FERC agreed with ISO-NE that, absent some sort of partial credit, the Distrigas Facility has little incentive to make LNG sales to third parties. However, it found that allowing Mystic to keep 50% of the margin on third-party sales appeared to be excessive. Accordingly, the FERC directed the parties to address at hearing the appropriate amount of the margin on third-party sales to be retained by Mystic.
- ◆ **Cost Allocation.**³⁰ The FERC ruled that participants need not present evidence at the hearing in this case regarding cost allocation. Parties may instead submit comments, as necessary or relevant, in EL18-182.
- ◆ **Other Hearing Issues.**³¹ With the exception of those issues in the *Mystic COS Agreement Order* as to which the FERC made specific findings, the FERC determined that protestors had raised issues of material fact regarding the proposed expenditures that are best resolved in a hearing. Therefore, among other issues, the FERC set for hearing the amount and rate treatment of the proposed capital expenditures, O&M expenses, and administrative and general expenses for the Mystic Generating Station and the Distrigas Facility.

Challenges to the *Mystic COS Agreement Order* were filed by NESCOE, ENECOS, MA AG, and the NH PUC. On August 21, Constellation answered the NESCOE request for reconsideration. On September 10, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending.

Hearings. Chief Judge Cintron designated Judge Steven L. Sterner as the Presiding Judge for the hearings. Judge Sterner held a prehearing conference on July 26 and on July 27. Discovery took place over the course of August and September and was completed just prior to the start of the hearing, which commenced on September 27 before Judge Sterner. Parties cross-examined Mystic-sponsored witness Heintz and Olson on September 27 and 28, respectively. Hearings were completed on October 9, and a complete hearings record certified to the Commission on October 12.

Post-Hearing Initial and Reply Briefs. Post-hearing initial and reply briefs were submitted directly to the FERC on November 2 and November 16, 2018, respectively. Initial briefs were submitted by: ISO-NE, Constellation Mystic, CT Parties, EDF, Eversource, IECG, MA AG, National Grid, ENECOS, NESCOE, New England LDCs, NextEra/FirstLight, NRG, Repsol, FERC Trial Staff, Gaz Metro LNG. Reply briefs were submitted by: ISO-NE, Constellation, CT Parties, EDF, ENECOS, Eversource, NESCOE, NextEra, NRG, Repsol, FERC Trial Staff, New England LDCs.

This matter is pending before the FERC. If you have questions on this proceeding, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com); Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Sunita Paknikar (202-218-3904; spaknikar@daypitney.com).

²⁹ *Id.* at P 38.

³⁰ *Id.* at P 41.

³¹ *Id.* at P 42.

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

On June 28, VTransco requested clarification and/or rehearing of the FERC's May 29 order rejecting, without prejudice, VTransco's request 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.³² In rejecting the request,³³ 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."³⁴ 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."³⁵

In its June 28 request for clarification and/or rehearing, VTransco asked the FERC (i) to clarify whether, in light of the *Highgate Acquisition Cost Recovery Order's* disallowance of the requested rate treatment, VTransco was directed to recover the transaction costs from local service customers (since the FERC directed VTransco to book those costs to an account explicitly included in charges to local customers under the VTA); (ii) to clarify its approach with respect to VTransco's hold harmless commitment; and (iii) if taking a new policy approach, to grant rehearing and apply any new policy prospectively. The FERC issued a tolling order on July 30, 2018, affording it additional time to consider VTransco's request for rehearing, which remains pending. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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.³⁶ 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*³⁷ 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.³⁸ 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.³⁹ 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

³² *Vermont Transco, LLC*, 163 FERC ¶ 61,152 (May 29, 2018) ("*Highgate Acquisition Cost Recovery Order*").

³³ VTransco requested (and the MA AG challenged its request for) authorization to recover, under the regional formula rate, \$639,780 in costs, including property transfer taxes, closing fees, and advisory fees, related to its acquisition recent of Highgate Transmission Facility ownership shares. 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.

³⁴ *Id.* at P 16.

³⁵ *Id.* at P 18.

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

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

³⁸ *Order Rejecting Filing* at P 1.

³⁹ *Id.* at P 36.

contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **Order 841 Compliance Filing (ER19-470)**

On December 3, ISO-NE and NEPOOL jointly filed changes to Market Rule 1 and the OATT (and the PTO AC joined in the filing of the OATT revisions) in response to the requirements of *Order 841*.⁴⁰ For the majority of the revisions, ISO-NE requested a December 3, 2019 effective date; for a limited number of revisions, ISO-NE requested a January 1, 2024 effective date. The *Order 841* compliance changes were supported by the Participants Committee at its November 2 meeting. Comments on this filing are currently due December 24, 2018. However, a 45-day extension of time has been requested by the Energy Storage Association (“ESA”) and by a group comprised of Advanced Energy Economy (“AEE”), American Wind Energy Association (“AWEA”), Solar Energy Industries Association (“SEIA”), Solar RTO Coalition, and The Wind Coalition. That request for an extension of time is pending before the FERC. In addition, doc-less interventions have thus far been filed by ESA, AEE, and RENEW Northeast (“RENEW”). If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **CASPR Conforming Changes (ER19-444)**

On November 30, ISO-NE and NEPOOL jointly filed Tariff changes that to the Tariff that make enhancements and conforming changes to support the implementation of ISO-NE’s Competitive Auctions with Sponsored Policy Resource (“CASPR”) rules (“CASPR Conforming Changes”). The changes include clarifications to the core CASPR rules, the introduction of a “test price” mechanism that will apply to existing resources that are seeking to retire capacity through the substitution auction, market settlement, FCM Financial Assurance, resource adequacy parameter and planning study rule changes, and an ancillary clarification necessary to permit off-shore wind resources located in federal waters to qualify for use of the Renewable Technology Resource (“RTR”) Exemption. ISO-NE requested that the CASPR Conforming Changes become effective on January 29, 2019 (though some of the rule changes, e.g. changes to the qualification rules, will be used starting with the FCA14 qualification process). The CASPR Conforming Changes were supported by the Participants Committee at its November 2 meeting. Comments on this filing are due on or before December 24, 2018. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ICR and Related Values Assumptions Updates (ER19-343)**

On November 15, ISO-NE and NEPOOL jointly filed changes to the assumptions used in calculation ICR and its Related Values. Specifically, the changes update assumptions used in the calculation of ICR, the Local Resource Adequacy Requirement (“LRA”) (which is an input into the LSR, DCL, the Marginal Reliability Impact values, HQICCs (which are all probabilistically calculated), and the Transmission Security Analysis Requirement (“TSA”) (which is deterministically calculated and an input into the LSR). A January 14, 2019 effective date was requested. The ICR and Related Values Assumptions Updates were supported by the Participants Committee at its October 4 meeting. Comments on this filing are due December 6, 2018. Thus far, Dominion, Eversource, FirstLight, National Grid, NESCOE, and NRG have submitted doc-less interventions. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Parameter Consolidation (ER19-335)**

On November 14, ISO-NE and NEPOOL jointly filed changes to establish a consolidated schedule for review and recalculation of a number of the parameters used in the FCM (“FCM Parameter Consolidation”). The parameters to be updated under the consolidated schedule are: the Cost of New Entry (“CONE”), Net

⁴⁰ See *Electric Storage Participation in Mkts. Operated by Regional Transmission Organizations and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018) (“*Order 841*”).

CONE, Offer Review Trigger Prices (“ORTPs”), the Dynamic De-List Bid Threshold (“DDBT”) and the Capacity Performance Payment Rate. The consolidated schedule would result in all of the parameters being updated for use in the FCA16 auction process, which generally begins in early 2021 and culminates in the Forward Capacity Auction to be held in February 2022. In order for the updated parameters to be ready for use in FCA16, ISO-NE expects that stakeholder review and filing of the updated parameters would occur in 2020. A January 14, 2019 effective date was requested. Comments on this filing were due December 5, 2018; none were filed. Dominion, Eversource, National Grid, NESCOE, and NRG submitted 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).

- **New Capacity Resource Delayed Commercial Operation Changes (ER19-169)**

On October 23, ISO-NE and NEPOOL jointly filed changes to the treatment of the delayed commercial operation of new capacity resources in the FCM. The two principal design changes in this filing are: (1) the removal of ISO-NE mandatory demand bids for new resources that are unable to satisfy all Critical Path Schedule milestones by the start of the Capacity Commitment Period; and (2) a new incentive structure that determines a monthly charge rate for new resources that have not fully demonstrated their Capacity Supply Obligation (“CSO”). The Filing Parties requested a December 24, 2018 effective date for the changes. Comments on the changes are due on or before November 13. The changes were supported by the Participants Committee at its October 4 meeting (Agenda Item #6A). Protests were filed by the Northeastern Massachusetts Consumer-Owned Systems (“NEMACOS”)⁴¹ and PSEG. Doc-less interventions were filed by ConEd Dominion, ENE, Eversource, and National Grid. ISO-NE and NEPOOL answered NEMACOS’ and PSEG’s protests. 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) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Waiver Request: CSO Termination (Clear River) (ER19-94)**

On November 19, the FERC denied Clear River’s waiver request and accepted ISO-NE’s Clear River CSO termination filing (see ER18-2457 below).⁴² As previously reported, Clear River requested, should its protest in ER18-2457 summarized below not be granted, a one-time, limited waiver of Tariff Section III.13.4(c) and any other Tariff provisions that would otherwise permit Clear River’s FCA12 CSO to be terminated, require all of Clear River’s FCM security to be forfeited, and prohibit Clear River from participating in FCA13. Clear River asserted that it is still on schedule to be in service prior to the commencement of the FCA13 CCP (or June 1, 2022) and allowing Clear River to maintain its CSO and eligibility to participate in FCA13 is justified. ISO-NE answered and opposed Clear River’s request. The Town of Burrillville, RI also filed a protest. Doc-less interventions were filed by NEPOOL and National Grid. On November 9, Clear River answered the ISO-NE and Burrillville protests.

In denying the requested Waiver, the FERC found that “on balance, if Clear River is allowed to retain its CSO, or retain its Existing Capacity Resource status, after failing to achieve commercial operation within 63 months after the FCA in which it initially obtained a CSO, it will have undesirable consequences for both system planning and Forward Capacity Market pricing”.⁴³ The FERC noted that the *Clear River CSO Order* “addresses only the CSO termination filing ... and the companion waiver request ... our decision to accept [the] request and deny [the] waiver should not be construed as a determination ... that the Clear River project is not needed, as that question is not before us.”⁴⁴ Challenges, if any, to the *Clear River CSO Order* are due on or before December 19, 2018. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁴¹ “NEMACOS” are Belmont, Concord, Danvers, Georgetown, Groveland, Merrimac, Middleton, Reading, Rowley, and Wellesley.

⁴² *ISO New England Inc. and Clear River Energy LLC*, 165 FERC ¶ 61,137 (Nov. 19, 2018) (“*Clear River CSO Order*”).

⁴³ *Clear River CSO Order* at P 42.

⁴⁴ *Id.* at P 46.

- **Enhanced Storage Participation Changes (ER19-84)**

On October 10, ISO-NE and NEPOOL (“Filing Parties”) jointly filed changes to the Tariff to enable emerging storage technologies to more fully participate in the New England markets (the “Storage Revisions”). The Storage Revisions allow emerging storage technologies to be dispatched in the Real-Time Energy Market in a manner that more fully recognizes their ability to transition continuously and rapidly between a charging state and a discharging state and that provides a means for their simultaneous participation in the energy, reserves, and regulation markets. The Filing Parties requested an April 1, 2019 effective date for the Storage Changes. Comments on the Storage Changes were due October 31. Doc-less interventions were filed by Calpine, Dominion, Eversource, FirstLight, National Grid, NextEra, NRG, and PSEG. ESA protested one element of the Storage Changes, specifically the proposal to automatically de-rate the amount of energy that a continuous storage facility can discharge into the energy market (the “automatic redeclaration” of Economic Maximum Limit and Maximum Consumption Limit). ESA asserted that the operational result of that approach “fails to account for the physical and operational characteristics of electric storage resources and imposes a market-inefficient choice on energy storage to forgo selling all of their stored energy rather than to conserve a significant fraction as operating reserves – for which they receive no compensation more often than not.” On November 15, NEPOOL and ISO-NE answered the ESA protest. 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) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Effective Date Change: § III.14 (ER18-2506)**

On November 14, the FERC accepted ISO-NE’s September 28 filing that deferred the effective date of previously-accepted Tariff revisions that allow ATTRs to register simultaneously as Generator Assets and Dispatchable Asset Related Demands (“DARDs”) from December 1, 2018 to April 1, 2019.⁴⁵ ISO-NE requested the deferral because it cannot implement the previously-filed revisions in the absence of recently-supported enhanced storage participation changes that are to be filed. Unless the November 14 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ISO-NE eTariff Corrections (ER18-2489)**

On November 9, the FERC accepted updates to the ISO-NE eTariff that ensure that the eTariff properly reflects the effective ISO-NE Tariff.⁴⁶ As previously reported, ISO-NE stated that no changes were being made to accepted language nor to previously effective dates. Rather, the Tariff sheets were submitted simply to conform the eTariff versioning, correcting inaccuracies due to administrative oversight and assorted mismatches of filing and effective dates. The corrections were accepted effective June 1, 2018 and October 1, 2018, as requested. Unless the November 9 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).

- **CSO Termination: Clear River Unit 1 (ER18-2457)**

As reported above (*see* ER19-94), the FERC accepted the termination of Invenergy Energy Management LLC’s (“Invenergy”) CSO for Resource No. 38504 (“Clear River Unit 1”) on November 19.⁴⁷ As indicated, ISO-NE will draw down the applicable amount of financial assurance provided by Invenergy and Clear River Unit 1 will not be eligible to participate in FCA13. The CSO termination was accepted effective as of November 19, 2018. Challenges to the *Clear River CSO Order* are due on or before December 19, 2018. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁴⁵ *ISO New England Inc.*, Docket No. ER18-2506 (Nov. 14, 2018) (unpublished letter order).

⁴⁶ *ISO New England Inc.*, Docket No. ER18-2489 (Nov. 9, 2018) (unpublished letter order).

⁴⁷ *See supra* note 42.

- **Order 844 Compliance Filing (ER18-2394)**

On November 29, the FERC accepted changes to Market Rule 1, the Information Policy and the centralized definitions section of the Tariff jointly filed by ISO-NE and NEPOOL in response to the monthly reporting requirements of FERC Order 844⁴⁸ (“Order 844 Changes”).⁴⁹ Each monthly report will be publically available on the ISO website in machine-readable format. The Zonal Uplift Report will be reported 20 days after month’s end, with daily Net Commitment Period Compensation (“NCPC”) dollars by load zone and uplift category. The Resource-Specific Uplift Report will be reported 90 days after month’s end, with total monthly NCPC dollars by resource. The Operator-Initiated Commitment Report will be reported 30 days after month’s end, with the size, transmission zone, commitment reason, and commitment start time for the relevant commitments. Reference is made to the three reports in the Information Policy. With respect to the TCPF Requirements, a new defined term “Transmission Constraint Penalty Factor” was added to the Tariff’s Centralized Definitions Section (§1.2.2) and the Tariff revised to reflect the ISO’s current TCPF implementation. The Order 844 Changes were accepted effective January 1, 2019, as requested. Unless the November 29 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Fuel Security Retention Proposal (ER18-2364)**

On December 3, the FERC accepted ISO-NE’s Fuel Security Retention Proposal.⁵⁰ The Order accepted in all respects changes filed by ISO-NE on August 31, despite the various protests and alternative proposals filed. There was a concurring decision from Commissioner Glick, and a partial dissent from Chairman Chatterjee on the FCA price treatment issue.

As previously reported, ISO-NE filed, in response to the *Mystic Waiver Order*, “interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns”.⁵¹ ISO-NE proposed three sets of provisions to expand its authority on a short-term basis to enter into out-of-market arrangements in order to provide greater assurance of fuel security during winter months in New England (collectively, the “Fuel Security Retention Proposal”).⁵² ISO-NE stated that the interim provisions would sunset after FCA15, with a longer-term market solution to be filed by July 1, 2019, as directed in the *Mystic Waiver Order*. In addition, the ISO-NE transmittal letter described (i) the generally-applicable fuel security reliability review standard that will be used to determine whether a retiring generating resource is needed for fuel security reliability reasons; (ii) the proposed cost allocation methodology (Real-Time Load Obligation, though ISO-NE indicated an ability to implement NEPOOL’s alternative allocation methodology if determined appropriate by the FERC); and (iii) the proposed treatment in the FCA of a retiring generator needed for fuel security reasons that

⁴⁸ As reported in Section XII below, Order 844 directed each RTO/ISO to establish in its tariff requirements to report, on a monthly basis: (1) total uplift payments for each transmission zone, broken out by day and uplift category (Zonal Uplift Report); (2) total uplift payments for each resource (Resource-Specific Uplift Report); and (3) for certain operator-initiated commitments after the Day-Ahead Energy Market, the size of the commitment, transmission zone, commitment reason, and commitment start time (Operator-Initiated Commitment Report). In addition to these reporting requirements, Order 844 requires each RTO/ISO to include in its tariff the transmission constraint penalty factors (“TCPFs”) used in its market software, as well as any circumstances under which those TCPFs can set locational marginal prices, and any process by which the TCPFs can be temporarily changed (“TCPF Requirements”).

⁴⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER18-2394 (Nov. 29, 2018) (unpublished letter order).

⁵⁰ *ISO New England Inc.*, 165 FERC ¶ 61,202 (Dec. 3, 2018) (“Fuel Security Retention Proposal Order”).

⁵¹ *Mystic Waiver Order* at P 55.

⁵² The three sets of provisions include: (1) a trigger mechanism for authorizing ISO-NE action to retain capacity resources it determines are needed for fuel security reliability, as contained in a new Appendix L to Market Rule 1 (the “Appendix L Proposal”); (2) a new Section 13.2.5.2.5A of Market Rule 1 and revisions to Section III.13.2.5.2.5.1, to effectuate ISO-NE’s proposed treatment of resources retained for fuel security in the FCA, the timing and integration of fuel security reliability reviews (including the ISO-NE’s proposed application in the Substitution and Reconfiguration Auctions), and a proposal to allocate the costs associated with retaining units for fuel security (the “Section 13 Revisions”); and (iii) detailed reliability review implementation rules contained in revisions to ISO-NE Planning Procedure 10, Appendix I (the “PP-10 Revisions”).

elects to remain in service. The ISO-NE Fuel Security Changes were considered but not supported by the Participants Committee at its August 24 meeting. There was, however, super-majority support for (1) the Appendix L Proposal with some important adjustments to make that proposal more responsive to the FERC's guidance in the *Mystic Waiver Order* and other FERC precedent, and (2) the PP-10 Revisions, also with important adjustments (together, the "NEPOOL Alternative"). Comments on the Fuel Security Retention Proposal were due September 21.

On September 14, NEPOOL protested the filing and submitted the NEPOOL Alternative. Comments and protests were submitted numerous parties, including by Avangrid, Calpine, Cogentrix, Connecticut,⁵³ Constellation Mystic Power ("Constellation"), Dominion, ENECOS,⁵⁴ Environmental Defense Fund ("EDF"), Eversource, FirstLight, ISO-NE EMM, MA AG, MA DPU, MPUC, National Grid, NEPGA, NESCOE, NextEra, NH PUC, NRG, Participant Parties,⁵⁵ Verso, Vistra, American Petroleum Institute ("API"), APPA, EPSA, "Public Interest Organizations",⁵⁶ and RENEW Northeast ("RENEW"). Doc-less interventions only were filed by Brookfield, Calpine, CLF, ConEd, Energy New England ("ENE"), Exelon, IECG, Invenergy, MMWEC, NESCOE, NHEC, NRG, Repsol (out-of-time), Citizens Energy Corporation, Public Citizen, and NRECA. On October 1, Direct Energy submitted an answer highlighting their view that fuel security costs should be allocated to Regional Network Load. On October 2, NH PUC answered the MA DPU September 21 comments. The MA AG and MA DPU each answered NH PUC, on October 5 and 12, respectively. Answers were also filed by ISO-NE and Constellation (October 9); Answers to ISO-NE's October 9 answer were filed by FirstLight and NEPGA (October 17); NEPOOL (October 18); NextEra (October 22); NRG (October 23); and Vistra/Dynegy (October 24).

Dec 3 Fuel Security Retention Proposal Order. In accepting the ISO-NE Proposal, the FERC addressed, among others, the following topics:

- ◆ **The trigger and assumptions for the fuel security reliability review for retention of resources:** The FERC found the ISO-NE proposal to be reasonable,⁵⁷ but required ISO-NE at the end of each winter to "to submit an informational filing comparing the study assumptions and triggers from the modeling analysis to actual conditions experienced in the winter of 2018/19. The informational filing should also include a description of lessons learned, and explain if changes to study assumptions and triggers are necessary for future studies."⁵⁸
- ◆ **Cost allocation:** The FERC found that cost allocation on a regional basis to Real-Time Load Obligation was just and reasonable and consistent with precedent regarding the past Winter Reliability Programs.⁵⁹
- ◆ **Price treatment:** The FERC found that entering retained resources into the FCAs as price takers would be just and reasonable to ensure that they clear and are counted towards resource

⁵³ For purposes of this proceeding, "Connecticut" is the Connecticut Dept. of Energy and Environ. Protection, Office of Consumer Counsel and Public Utilities Regulatory Authority.

⁵⁴ "ENECOS" in this proceeding are: Braintree, Concord, Georgetown, Hingham, Littleton, Middleborough, Middleton, Norwood, Pascoag, Reading, Taunton, Wellesley, and Westfield.

⁵⁵ "Participant Parties" are: Direct Energy Business, NextEra Energy Marketing, the Associated Industries of Massachusetts ("AIM"), The Energy Consortium ("TEC"), and PowerOptions.

⁵⁶ "Public Interest Organizations" for purposes of this proceeding are: the Sustainable FERC Project, Acadia Center, Natural Resources Defense Council ("NRDC"), and the Sierra Club.

⁵⁷ *Fuel Security Retention Proposal Order* at PP 35-39.

⁵⁸ *Id.* at P 39.

⁵⁹ *Id.* at PP 53-56.

adequacy so that customers do not pay twice for the resource. The FERC said its determination on pricing is consistent with precedent in a 2017 NYISO order.⁶⁰

- ◆ **Term of the interim fuel security provisions and Chapter 3:** The FERC found that it was appropriate to include FCAs 13, 14 and 15 in the term.⁶¹ The FERC stated:

Given the limited amount of time between the July 1, 2019 filing deadline for the longer-term market solution, directed by the Commission, and the close of the FCA 15 retirement submission window in March 2020, we agree that the extension of the ability to retain resources through FCA 15 is a reasonable approach. We agree that it is necessary to implement a longer-term market solution as soon as possible, as discussed by commenters that request limiting the proposal to FCA 13 and 14. This interim solution is solely a stop-gap measure to address the fuel security challenges facing the region while ISO-NE develops its long-term market-based approach.⁶²

Additionally, the FERC stated:

Although the July 2 Order required ISO-NE to file its longer-term market solution no later than June 1, 2019, ISO-NE is free to file that solution earlier and we encourage it do so, if possible. In addition, we anticipate that the long-term market solution will obviate the need to continue to use the interim solution approved in this order. Accordingly, ISO-NE's filing must contain language that will remove from its tariff the short-term solution, if accepted.⁶³

The FERC declined to provide guidance on what the long-term solution(s) should be.⁶⁴

Challenges to the *Fuel Security Retention Proposal Order* are due on or before January 2, 2019. We will be prepared to provide additional details and respond to questions, as appropriate, at the December 7 Annual Meeting. If you have further questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On November 9, the FERC accepted the revised Tariff language that changed the determination of economic life under Section III.13.1.2.3.2.1.2.C of the Tariff.⁶⁵ As previously reported, 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. The revisions were accepted effective as of August 10, 2018, as requested. In accepting the revisions, the FERC found that "it is just and reasonable to consider as part of the Economic Life calculation that a rational resource, in exercising competitive bidding behavior, would seek to exit the market, or retire, before it starts incurring consecutive losses."⁶⁶ The FERC found, contrary to NEPGA's assertions, that the "Economic Life Revisions do not represent a violation of the filed rate doctrine or

⁶⁰ *Id.* at PP 82-88. See *New York Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,189 (Nov 16, 2017) (NYISO order).

⁶¹ *Fuel Security Retention Proposal Order* at PP 96-97.

⁶² *Id.* at P 96.

⁶³ *Id.* at P 93.

⁶⁴ *Id.* at P 102.

⁶⁵ *ISO New England Inc. and New England Power Pool Participants Comm.*, 165 FERC ¶ 61,088 (Nov. 9, 2018) ("*Economic Life Determination Revisions Order*")

⁶⁶ *Economic Life Determination Revisions Order* at P 23.

constitute retroactive ratemaking.”⁶⁷ Further, while the FERC was “mindful of the importance of not disrupting settled expectations based on existing market rules,” the FERC concluded “that under these specific facts, the benefits of the proposed Economic Life Revisions outweigh potential disruptions to market participants’ settled expectations and harm caused by reliance on the existing FCM rules.”⁶⁸ Challenges to the *Economic Life Determination Revisions Order* are due on or before December 10, 2018. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509; EL18-182)**

On July 2, 2018, the FERC issued an order⁶⁹ that (i) denied ISO-NE’s request for waiver of certain Tariff provisions that would have permitted ISO-NE to retain Mystic 8 & 9 for fuel security purposes (ER18-1509); and (ii) instituted an FPA Section 206 proceeding (EL18-182) (having preliminarily found that the ISO-NE Tariff may be unjust and unreasonable in that it fails to address specific regional fuel security concerns identified in the record that could result in reliability violations as soon as year 2022). The *Mystic Waiver Order* required ISO-NE, on or before August 31, 2018 to either: (a) submit interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement (COS Agreement) to address demonstrated fuel security concerns (and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns); or (b) show cause as to why the Tariff remains just and reasonable in the short- and long-term such that one or both of Tariff revisions filings is not necessary. In addition, the FERC *sua sponte* extended the deadline in two Tariff provisions to enable Exelon to postpone its Mystic 8 and 9 retirement decision to and including January 4, 2019.

Addressing the waiver element, the FERC found the waiver request “an inappropriate vehicle for allowing Mystic 8 and 9 to submit a [COS Agreement] in response to the identified fuel security need” and further that the request “would not only suspend tariff provisions but also alter the existing conditions upon which a market participant could enter into a [COS Agreement] (for a transmission constraint that impacts reliability) and allow for an entirely new basis (for fuel security concerns that impact reliability) to enter into such an agreement.” The FERC concluded that “[s]uch new processes may not be effectuated by a waiver of the ISO-NE Tariff; they must be filed as proposed tariff provisions under FPA section 205(d).”⁷⁰ Even if it were inclined to apply its waiver criteria, the FERC stated that it would still have denied the waiver request as “not sufficiently limited in scope.”⁷¹

Although it denied the waiver request, the FERC was persuaded that the record supported “the conclusion that, due largely to fuel security concerns, the retirement of Mystic 8 and 9 may cause ISO-NE to violate NERC reliability criteria.” Finding ISO-NE’s methodology and assumptions in the Operational Fuel-Security Analysis (“OFSA”) and Mystic Retirement Studies reasonable, the FERC directed the filing of both interim and permanent Tariff revisions to address fuel security concerns (or a filing showing why such revisions are not necessary).⁷² The FERC directed ISO-NE to consider the possibility that a resource owner may need to decide, prior to receiving approval of a COS Agreement, whether to unconditionally retire, and provided examples of how to address that possibility.⁷³ The FERC also directed ISO-NE include with any proposed Tariff revisions a mechanism that

⁶⁷ *Id.* at P 24.

⁶⁸ *Id.* at P 27.

⁶⁹ *ISO New England Inc.*, 164 FERC ¶ 61,003 (July 2, 2018), *reh’g requested* (“*Mystic Waiver Order*”).

⁷⁰ *Id.* at P 47.

⁷¹ *Id.* at P 48.

⁷² *Id.* at P 55.

⁷³ *Id.* at PP 56-57.

addresses how cost-of-service-retained resources would be treated in the FCM⁷⁴ and an *ex ante* cost allocation proposal that appropriately identifies beneficiaries and adheres to FERC cost causation precedent.⁷⁵

Requests for Rehearing and or Clarification. The following requests for rehearing and or clarification of the *Mystic Waiver Order* remain pending before the FERC:

- ◆ **NEPGA** (requesting that the FERC grant clarification that it directed, or on rehearing direct, ISO-NE to adopt a mechanism that prohibits the re-pricing of Fuel Security Resources in the FCA at \$0/kW-mo. or at any other uncompetitive offer price);
- ◆ **Connecticut Parties**⁷⁶ (requesting that the FERC clarify that (i) the discussion in the *Mystic Waiver Order* of pricing treatment in the FCM for fuel security reliability resources is not a final determination nor is it intended to establish FERC policy; (ii) the FERC did not intend to prejudge whether entering those resources in the FCM as price takers would be just and reasonable; and (iii) that ISO-NE may confirm its submitted position that price taking treatment for these resources would, in fact, be a just and reasonable outcome. Failing such clarification, Connecticut Parties request rehearing, asserting that the record fails to support a determination that resources retained for reliability to address fuel security concerns must be entered into the FCM at a price greater than zero);
- ◆ **ENECOS** (asserting that the *Mystic Waiver Order* (i) misplaces reliance on ISO-NE “assertions concerning ‘fuel security,’ which do not in fact establish a basis in evidence or logic for initiating” a Section 206(a) proceeding; (ii) impermissibly relies on extra-record material that the FERC did not actually review and that intervenors were afforded no meaningful opportunity to challenge; and (iii) speculation concerning potential future modifications to the FCM bidding rules as to retiring generation retained for fuel security misunderstands the problem it seeks to address, and prejudices the already truncated opportunities for stakeholder input in this proceeding), ENECOS suggest that the FERC should grant rehearing, vacate its show cause directive, strike its dictum concerning potential treatment of FCM bidding for retiring generation retained for “fuel security,” and direct ISO-NE to proceed either in accordance with its Tariff or under FPA Section 205 to address, with appropriate evidentiary support, whatever concerns it believes to exist concerning “fuel security”);
- ◆ **MA AG** (asserting that the decision to institute a Section 206 proceeding was insufficiently supported by sole reliance on highly contested OFSA and Mystic Retirement Studies; and the FERC should reconsider the timeline for the permanent tariff solution and set the deadline for implementation no later than February 2020);
- ◆ **MPUC** (challenging the Order’s (i) adoption of ISO-NE’s methodology and assumptions in the OFSA and Mystic Retirement Studies without undertaking any independent analysis; (ii) failure to address arguments and analysis challenging assumptions in the OFSA and Mystic Retirement Studies; (iii) failure to address the MPUC argument that the Mystic Retirement Studies adopted a completely new standard for determining a reliability problem three years in advance; (iv) unreasonably discounting of the ability of Pay-for-Performance to provide sufficient incentives to Market Participants to ensure their performance under stressed system conditions; and (v) failure to direct ISO-NE to undertake a Transmission Security Analysis consistent with the provisions in the Tariff);

⁷⁴ *Id.* at P 57.

⁷⁵ *Id.* at P 58.

⁷⁶ “Connecticut Parties” are the Conn. Pub. Utils. Regulatory Authority (“CT PURA”) and the Conn. Dept. of Energy and Environ. Protection (“CT DEEP”).

- ◆ **New England EDCs**⁷⁷ (requesting clarification that (i) the central purpose of ISO-NE’s July 1, 2019 filing is to assure that New England adds needed new infrastructure to address the fuel supply shortfalls and associated threats to electric reliability that ISO-NE identified in its OFSA and (ii) that, in developing the July 1, 2019 filing, ISO-NE is to evaluate Tariff revisions (such as those the EDCs described in their request), through which ISO-NE customers would pay for the costs of natural gas pipeline capacity additions via rates under the ISO-NE Tariff);
- ◆ **PIOs**⁷⁸ (asserting that (i) the FERC failed to respond to or provide a reasoned explanation for rejecting the arguments submitted by numerous parties that key assumptions underlying and the results of the ISO-NE analyses were flawed; and (ii) the FERC’s determination that ISO-NE’s analyses were reasonable is not supported by substantial evidence in the record); and
- ◆ **AWEA/NGSA** (asserting that the FERC erred (i) in finding that ISO-NE’s OFSA and subsequent impact analysis of fuel security was reasonable without further examination and (ii) in its preliminary finding that a short-term out-of-market solution to keep Mystic 8 & 9 in operation is needed to address fuel security issues).

On August 13, CT Parties opposed the NEPGA motion for clarification. On August 14, NEPOOL filed a limited response to Indicated New England EDCs, requesting that the FERC “reject the relief sought in [their motion] to the extent that relief would bypass or predetermine the outcome of the stakeholder process, without prejudice to [them] refiling their proposal, if appropriate, following its full consideration in the stakeholder process.” Answers to the Indicated New England EDCs were also filed by the MA AG, NEPGA, NextEra, and CLF/NRDC/Sierra Club/Sustainable FERC Project. On August 29, the Indicated New England EDCs answered the August 14/16 answers. On August 27, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending.

On October 22, Calpine President and CEO, Thad Hill, filed a [letter](#) to provide additional context to the issues being addressed in the fuel security and Mystic proceedings.

Fuel Security Retention Proposal (ER18-2364). On December 3, the FERC accepted the changes to Market Rule 1 filed by ISO-NE in response to the *Mystic Waiver Order*. Those changes are reported on in ER18-2364 above.

If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; dtodoot@daypitney.com) or Sebastian Lombardi (860-275-0663; 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,⁷⁹ summarized in more detail in prior Reports, remains pending. Those requests were filed by (i) **NextEra/NRG** (which challenged the RTR Exemption Phase Out); (ii) **ENECOS**⁸⁰ (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**⁸¹ (which challenged the CASPR construct in its entirety, asserting that state-sponsored resources should not be subject to the MOPR); and (iv) **Public Citizen**

⁷⁷ The “EDCs” are the National Grid companies (Mass. Elec. Co., Nantucket Elec. Co., and Narragansett Elec. Co.) and Eversource Energy Service Co. (on behalf of its electric distribution companies – CL&P, NSTAR and PSNH).

⁷⁸ “PIOs” are the Sierra Club, Natural Resources Defense Council (“NRDC”), and Sustainable FERC Project.

⁷⁹ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) (“CASPR Order”).

⁸⁰ 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.

⁸¹ “Clean Energy Advocates” are, collectively the NRDC, Sierra Club, Sustainable FERC Project, CLF, and RENEW Northeast, Inc.

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

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

Rehearing remains pending of the FERC's October 6, 2017 order accepting updated FCM CONE, Net CONE and ORTP values.⁸² 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).

- **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.⁸³ 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 ISO-NE'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.⁸⁴ ISO-NE submitted its compliance filing on January 23, 2017, reporting the IMM's conclusion that "the auction was not structurally competitive and a 'small proportion' of the total cost of the program may be the result of the exercise of market power" but that the "vast majority of supply was offered at prices that appear reasonable and that, for a number of reasons, it is difficult to assess the impact of market power on cost." Based on the IMM and additional analysis, ISO-NE recommended that "there is insufficient demonstration of market power to warrant modification of program." In February 13 comments, both TransCanada and the MA AG protested ISO-NE's conclusion and recommendation that modification of the program was unwarranted. TransCanada requested that FERC establish a settlement proceeding where Market Participants could "exchange confidential information to determine what the rates should be" and refunds and "such other relief as may be warranted" provided. On February 28, ISO-NE answered the TransCanada and MA AG protests. On March 10, 2017, TransCanada answered ISO-NE's February 28 answer. This matter is pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Interconnection Process Enhancement: Retiring Resources Treatment (ER19-449)**

On November 30, ISO-NE and NEPOOL jointly filed changes to Schedules 22, 23 and 25 of the OATT and Section III.13.1.1.2.3 of Market Rule 1 to enhance the manner in which capacity retirements are

⁸² *ISO New England Inc.*, 161 FERC ¶ 61, 035 (Oct. 6, 2017) ("*CONE/ORTP Updates Order*"), *reh'g requested*.

⁸³ *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).

⁸⁴ *2013/14 Winter Reliability Program Remand Order* at P 17.

accounted for in certain interconnection studies performed for new resources seeking Capacity Network Resource Interconnection Service (“CNRIS”) and Capacity Network Import Interconnection Service (“CNIIS”) in order to participate in the FCM. These revisions also include a minor conforming change to the definition of Capacity Network Resource Capability (“CNR Capability”) in Schedules 22 and 23 of the OATT. ISO-NE requested a January 29, 2019 effective date (which allows for implementation for FCA13). These revisions were addressed as part of the CASPR-Related Changes (see Section III above) and were supported by the Participants Committee at its November 2 meeting. Comments on this filing are due on or before December 21, 2018. Thus far, Exelon has submitted a doc-less intervention. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Blackstart Rate Update (ER19-251)**

On November 1, ISO-NE and NEPOOL jointly filed changes to Schedule 16 of the ISO-NE OATT. The filing updates the rates for the payment of incremental capital and operating and maintenance (“O&M”) costs for a generator to provide voluntary Blackstart Service (removing the NERC CIP Reliability Standard-related cost recovery provisions that blackstart owners are no longer subject to under the current Reliability Standard as a result of solely providing black start service). The filing also includes clean-up and conforming changes to the Tariff’s consolidated definitions section (1.2.2). Overall the update will result in a slight \$0.9 million reduction in the costs of the Schedule 16 blackstart program. A January 1, 2019 effective date was requested. The Blackstart Rate Update was supported by the Participants by way of the August 24 Consent Agenda. Comments on this filing were due on or before November 23; none were filed. Doc-less interventions were filed by National Grid and NRG. 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).

- **Cluster Participation Deposit Refund Revisions (ER19-161)**

Also on October 23, ISO-NE, NEPOOL and the Participating Transmission Owners Administrative Committee (“PTO AC”) on behalf of the Participating Transmission Owners jointly filed changes to the Clustering Provisions set forth in Schedules 22 (LGIA and LGIP), 23 (SGIA and SGIP) and 25 (Elective Transmission Upgrade (“ETU”) Interconnection Procedures). The changes permit the *ex post* return of a portion of the initial Cluster Participation Deposit (“CPD”) in circumstances when a Cluster Enabling Transmission Upgrade (“CETU”) is being replaced by an Internal Elective Transmission Upgrade (“Internal ETU”) (together, the “CPD Refund Revisions”). The filing parties requested a December 23, 2018 effective date for the CPD Refund Revisions. Comments on the CPD Refund Revisions were due on or before November 13; none were filed. Doc-less interventions were filed by National Grid and NRG. 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).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-ES: Berkshire LSA (ER19-309)**

On November 8, Eversource filed a Local Service Agreement (“LSA”) among NSTAR, Berkshire Wind Power Cooperative Corporation (“Berkshire”)⁸⁵ and ISO-NE. The LSA provides for Firm and Non-Firm Local Point-To-Point Transmission Service for Berkshire’s use of NSTAR (West)’s local facilities for “wheeling-out” power to the regional transmission system. A July 7, 2019 effective date was requested. Comments on this

⁸⁵ Berkshire is a non-profit entity created by 14 Mass. municipal utilities and MMWEC that owns and operates the 15 MW Berkshire Wind Power Project (“Berkshire Wind”) located in Lanesboro, MA.

filing were due on or before November 29; 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).

- **Schedule 21-NSTAR: Revised Depreciation Rates (ER19-123)**

On November 30, the FERC accepted changes to Schedule 21-NSTAR⁸⁶ that change the general plant depreciation and amortization rates and intangible plant amortization rates for NSTAR (East) and the general plant depreciation rates for NSTAR (West) based on prepared depreciation studies founded upon a 12-month period ending June 30, 2016 and approved by the MA DPU. The revised depreciation rates result in an approximately \$181,000 decrease for NSTAR (East) and \$773,000 for NSTAR (West). The changes were accepted, as requested, effective July 1, 2018 (also the effective date of the MA DPU-approved rates). Unless the *Schedule 21-ES Rev Depreciation Rates 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).

- **Schedule 21-ES: Revised Depreciation Rates (ER19-122)**

Also on November 30, the FERC accepted changes to Schedule 21-ES⁸⁷ that revise CL&P's general plant depreciation rates for transmission service consistent with a Settlement Agreement approved by the CT PURA.⁸⁸ The revised general plant depreciation rates (resulting in an estimated \$3.7 million decrease) will be used in the transmission revenue requirements calculations in both Attachment F and Schedule 21-ES of the ISO-NE OATT. The changes were accepted, as requested, effective as of May 1, 2018 (also the effective date of the CT PURA-approved Settlement Agreement). Unless the *Schedule 21-ES Rev Depreciation Rates 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).

- **Schedule 21-EM: Corrections to § 10.2 (ER19-64)**

On November 30, the FERC issued a deficiency letter regarding Emera Maine's October 9 filing changes to Schedule 21-EM Section 10.2 (Emera Maine Penalties for Exceeding Non-Firm Capacity Reservation). In the October 9 filing, Emera Maine stated the changes were needed to correct errors in that section that date back to an October 11, 2007 *Order 890* compliance filing in which changes addressing unreserved use penalties were incorporated. Emera Maine hypothesized that the errors were the result of parallel changes to the section addressing penalties for unreserved use of *firm* transmission service being copied verbatim to the section addressing penalties for unreserved use of *non-firm* transmission service (without then changing references to firm to non-firm). In addition to changing references to firm to non-firm, Emera Maine also changed the basis upon which the penalty for exceeding non-firm reserved capacity for a greater than one-month period will be based.⁸⁹ Emera Maine requested a December 9, 2018 effective date for the changes.

Deficiency Letter. On November 30, the FERC issued a deficiency letter informing Emera Maine that its October 9 filing was deficient and that additional information is required in order to process the filing. Emera Maine was directed to file, on or before December 31, responses to a series of questions. Emera Maine's responses will be noticed for comment and will re-set the 60-day clock for FERC action.

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

⁸⁶ *ISO New England Inc.*, Docket No ER19-123 (Nov. 30, 2018) ("*Schedule 21-NSTAR Rev Depreciation Rates Order*").

⁸⁷ *ISO New England Inc.*, Docket No ER19-122 (Nov. 30, 2018) ("*Schedule 21-ES Rev Depreciation Rates Order*").

⁸⁸ The Settlement Agreement, dated Jan. 11, 2018 and as amended Mar. 23, 2018, is among CL&P, CT OCC and the CT PURA Prosecutorial Staff. See Decision on Application of the Conn. Light and Power Co. d/b/a/ Eversource Energy to Amend its Rate Schedule, CT PURA Docket No. 17-10-46 (Apr. 18, 2018).

⁸⁹ The basis for the penalty changed from "a rate for *annual* Non-Firm Point-to-Point Transmission Service" to "a rate of *12 times the rate for monthly* Non-Firm Point-To-Point Transmission Service".

- **Schedule 22: Kibby Wind LGIA (ER18-2432)**

On November 7, the FERC accepted a fully executed, conforming Large Generator Interconnection Agreement (“LGIA”) by and among ISO-NE, Central Maine Power (“CMP”) and Helix Maine Wind to govern the interconnection of the Kibby Wind Power Project.⁹⁰ The Filing Parties explained that the LGIA was filed in eTariff so that the eTariff record would align with the Filing Parties’ Electronic Quarterly Reports, and to provide clarity as to which version of agreement governs the interconnection of the Kibby Project. The LGIA was accepted effective as of August 16, 2018, as requested. Unless the November 7 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On November 9, the FERC accepted Emera Maine’s changes to the Bangor-Hydro District (“BHD”) Formula Rate.⁹¹ Those changes 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. Emera Maine responded to two separate deficiency letters in response to the changes in this proceeding. Emera Maine’s response to the first deficiency letter was filed on June 13; Emera Maine’s response to the second deficiency letter was filed on September 10. Unless the *November 9 Order* is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

The MPS Merger Cost Recovery Settlement, filed by Emera Maine on May 8, 2018 to resolve all issues pending before the FERC in the consolidated proceedings set for hearing in the *MPS Merger-Related Costs Order*,⁹² remains pending before the FERC. As previously reported, 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 Dring⁹³ certified the MPS Merger Cost Recovery Settlement to the FERC.⁹⁴ 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; 860-275-0533).

⁹⁰ *ISO New England Inc. and Central Maine Power Co.*, Docket No. ER18-2432 (Nov. 7, 2018) (unpublished letter order).

⁹¹ *Emera Maine et al.*, 165 FERC ¶ 61,086 (Nov. 9, 2018) (“November 9 Order”).

⁹² *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*MPS Merger-Related Costs Order*”). In the *MPS Merger-Related Costs Order*, the FERC accepted, but established hearing and settlement judge procedures for, filings by Emera Maine seeking 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”). 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. The *MPS Merger-Related Costs Order* set resolution of the issues of material fact for hearing and settlement judge procedures, consolidating the separate compliance filing dockets.

⁹³ ALJ John Dring was the settlement judge for these proceedings. There were five settlement conferences: three in 2016 and two in 2017. In his most recent May 24, 2018 status report, Judge Dring indicated that the parties reached a settlement in principle, had filed a joint offer of settlement on May 8 (“*MPS Merger Cost Recovery Settlement*”), and recommended that settlement judge procedures be continued. The Settlement remains pending before the FERC and settlement judge procedures, for now, have not been terminated.

⁹⁴ *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).

- **Schedule 21-GMP Annual True Up Calculation Informational Filing (ER12-2304)**

On October 30, 2018, pursuant to Section 4 of Schedule 21-GMP, GMP submitted its annual informational filing containing the true-up recalculation of its actual (rather than estimated) costs for the January 1, 2017 through December 31, 2017 time period. The FERC did 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).

VII. NEPOOL Agreement/Participants Agreement Amendments

- **132nd Agreement (Press Membership Provisions) (ER18-2208)**

The 132nd Agreement remains pending before the FERC. As previously reported, NEPOOL filed changes to the NEPOOL Agreement (the “Amendments”) implemented by the One Hundred Thirty-Second Agreement Amending New England Power Pool Agreement (“132nd Agreement”) on August 13. The Amendments make clear that NEPOOL *membership* is not open to Press. Specifically, the Amendments prohibit Press from becoming a NEPOOL Participant or the designated representative of a Participant. A November 1, 2018 effective date was requested. The 132nd Agreement was approved in balloting following the Summer Meeting. Comments on this filing were due September 14.⁹⁵

Early protests were submitted by Union of Concerned Scientists (“UCS”), the New England Professional Chapter of the Society of Professional Journalists (“NE SPJ”), Bill Short, and RTO Insider. In justifying their position that the Amendments should be rejected, UCS suggested that “Press participation in NEPOOL improves our collective problem-solving abilities, not reduces them.” NE SPJ argues that “not allowing reporters access to public policy debates that will determine changes to the electricity markets ... is doing a disservice to energy consumers.” NEPOOL submitted a preliminary response to the UCS and NE SPJ protests on September 6. As its comments, RTO Insider submitted a copy of its Complaint (see EL18-196, Section I above). NEPOOL answered that submission on September 20. Bill Short filed a protest on September 11. On September 14, NHOCA, Public Interest Organizations,⁹⁶ Reporters Committee for Freedom of Press (“RCFP”), and Public Citizen filed protests. Those protests largely repeated arguments previously made and answered, but also sought to re-litigate whether New England arrangements satisfy the FERC’s *Order 719* requirements, and premised their *Order 719* and other arguments and requests for relief on misunderstandings both of NEPOOL’s position and of the applicable law. On October 1, NEPOOL responded to the NH OCA, Public Interest Organizations, and RCFP protests. On October 2, Public Citizen responded to NEPOOL’s response. On October 5, RTO Insider answered NEPOOL’s October 1 answer. Separate letters on these matters were submitted by a group of U.S. Congressman and a group of Senators.⁹⁷ In addition, doc-less interventions were submitted by Avangrid, ConEd, Eversource, National Grid, and NESCOE.

Deficiency Letter. On October 31, the FERC issued a deficiency letter informing NEPOOL that its filing was deficient and that additional information was required in order to process the filing. NEPOOL was directed to file, and filed, responses to the FERC’s questions on November 30. Comments, if any, on NEPOOL’s responses are due December 21. NEPOOL’s response re-set the 60-day statutory clock for FERC action.

⁹⁵ The FERC initially noticed a Sep. 4 comment date. Public Citizen requested a 30-day extension of that deadline. NEPOOL responded to that request asking that, in any action the FERC might take in response to Public Citizen’s request, it preserve the opportunity for full consideration of any appropriate responses prior to any final determination. NEPOOL offered to defer the requested effective date for the Amendments as necessary. On Aug. 22, the FERC granted a 10-day extension of time, to Sep. 14, for comments.

⁹⁶ “Public Interest Organizations” are the Sustainable FERC Project, Conservation Law Foundation (“CLF”), Earthjustice, and Natural Resources Defense Council (“NRDC”).

⁹⁷ The Congressmen included: Joseph P. Kennedy, III; Frank Pallone, Jr.; Bobby L. Rush; Fred Upton; Richard Neal; Peter Welch; Niki Tsongas; James P. McGovern; Katherine Clark; Seth Moulton; Michael Capuano; and David Cicilline. The Senators included: Richard Blumenthal, Sheldon Whitehouse; Jack Reed; Edward Markey; Elizabeth Warren; and Jeanne Shaheen. NEPOOL did not respond to either letter.

If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com), Dave Doot (860-275-0102; dttdoot@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

VIII. Regional Reports

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

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

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A⁹⁸ and 531-B⁹⁹* also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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

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

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

- **Capital Projects Report - 2018 Q3 (ER19-113)**

ISO-NE's October 15 Capital Projects Report and Unamortized Cost Schedule, which covers the third quarter ("Q3") of calendar year 2018 (the "Report"), remains pending. ISO-NE is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights include the following new projects: (i) Streamline Asset Registration Phase III (\$1.94 million); (ii) CASPR (\$1.525million); (iii) Synchrophasor Initiatives – Next Generation (\$968,900); (iv) Update Security Application Framework (\$495,000); and (v) Lawson Lease Management (\$125,800). The following three projects had significant changes: (i) CIMNET Simultaneous Feasibility Test with Data Transfer Enhancements (2018 Budget decrease of \$800,000); (ii) FERC Form 1, 3-Q and 714 (2018 Budget decrease of \$456,700); and (iii) Identity and Access Management Phase II (2018 Budget increase of \$857,000). Comments on this filing were due November 5. NEPOOL filed comments on October 29 supporting the filing. National Grid submitted a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **ISO-NE FERC Form 3Q (2018/Q3) (not docketed)**

On November 29, ISO-NE submitted its 2018/Q3 FERC Form 3Q (quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

⁹⁸ *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁹⁹ *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

IX. Membership Filings

- **December 2018 Membership Filing (ER19-446)**

On November 30, NEPOOL requested that the FERC accept (i) the memberships of Alpha Gas & Electric (Supplier Sector); Eagle's View Partners (Supplier Sector); and Thordin ApS (Supplier Sector); (ii) the termination of the Participant status of: Food City & East Ave. Energy (End User Sector); and (iii) the name change of Enel X North America (f/k/a EnerNOC). Comments on this filing are due on or before December 21

- **October 2018 Membership Filing (ER19-2)**

On November 14, the FERC accepted, effective October 1, 2018,¹⁰⁰ (i) the memberships of Algonquin Gas Transmission, LLC (Gas Industry Participant); BSW ProjectCo, LLC [Related Person to the Eversource Companies (Transmission Sector)]; Cypress Creek Renewables, LLC (Provisional Member); EIP Investment, LLC (Provisional Member); Hartree Partners, LP (Supplier Sector); Pawcatuck Solar Center, LLC (Provisional Member); StateWise Energy Massachusetts LLC [Related Person to SFE Energy Massachusetts (Supplier Sector)]; Syncarpha Billerica, Bondsville, Hancock, and North Adams [Related Persons to the Syncarpha Companies (AR Sector)]; Sunrun (AR Sector, DG Sub-Sector); and Three Corners Solar LLC (Provisional Member); and (ii) the termination of the Participant status of Abest Power & Gas; Canton Mountain Wind; and Covanta Haverhill Associates. Unless the November 14 order is challenged, this proceeding will be concluded.

- **Suspension Notices (not docketed)**

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

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Oct 19/Nov 6	Clear Choice Energy, LLC	TBD
Nov 2/Nov 6	Union Atlantic Electricity	TBD

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

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

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

- **New Reliability Standard: CIP-012-1 (RM18-20)**

On September 18, 2018, NERC filed for approval a new Reliability Standard -- CIP-012-1 (Cyber Security – Communications between Control Centers), and associated Glossary definitions, implementation plan, VRFs and VSLs (together, the “Control Center Cyber Security Communication Changes”). NERC stated that the changes modify the Critical Infrastructure Protection (“CIP”) Reliability Standards to require Responsible Entities to implement controls to protect communication links and sensitive Bulk Electric System (“BES”) data communicated between BES Control Centers. CIP-012-1 requires Responsible Entities to develop a plan to mitigate the risks posed by unauthorized modification (integrity) and unauthorized disclosure (confidentiality) of Real-time Assessment and Real-time monitoring data. The plan must include the following three components: (1) identification of security protection used to meet the security objective; (2) identification of where the Responsible Entity applied the security protection; and (3) identification of the responsibilities of each Responsible

¹⁰⁰ *New England Power Pool Participants Comm.*, Docket No. ER19-2 (Nov. 14, 2018) (unpublished letter order).

Entity for applying the security protection. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Order 851: Revised Reliability Standards: TPL-007-2 (RM18-8)**

On November 15, the FERC issued *Order 851*¹⁰¹ approving revised Reliability Standard TPL-007-2 (Transmission System Planned Performance for Geomagnetic Disturbance (“GMD”) Events). In addition, the FERC directed NERC to develop and submit revisions to TPL-007-2 (1) to require the development and implementation of corrective action plans to mitigate assessed supplemental GMD event vulnerabilities; and (2) to authorize extensions of time to implement corrective action plans on a case-by-case basis. *Order 851* will become effective January 25, 2019.¹⁰²

- **Order 850: Revised Reliability Standards: CIP-005-6, CIP-010-3, CIP-013-1 (RM17-13)**

On October 18, the FERC issued *Order 850*¹⁰³ approving CIP Reliability Standards -- CIP-005-6 (Cyber Security – Electronic Security Perimeter(s)), CIP-010-3 (Cyber Security – Configuration Change Management and Vulnerability Assessments) and CIP-013-1 (Cyber Security – Supply Chain Risk Management) (together, the “Supply Chain Cybersecurity Risk Management Changes”). In addition, the FERC directed NERC to develop and submit modifications to the supply chain risk management Reliability Standards so that the scope of the Reliability Standards include Electronic Access Control and Monitoring Systems (“EACMS”). As previously reported, the Supply Chain Cybersecurity Risk Management Changes were 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, although 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,¹⁰⁴ *Order 850* approved the 18-month period proposed by NERC.¹⁰⁵ *Order 850* will become effective December 26, 2018.¹⁰⁶

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

In *Order 851*, the FERC accepted the revised GMD research work plan submitted by NERC on April 19, 2018.¹⁰⁷ The Revised Work Plan addressed the research on topics related to GMD and their impacts on the reliability of the Bulk-Power System (“BPS”). The Revised Plan demonstrated 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.

XI. Misc. - of Regional Interest

- **203 Application: Plymouth Rock/Engie (EC19-19)**

On October 30, Plymouth Rock Energy, LLC (“Plymouth Rock”) requested FERC authorization for a transaction pursuant to which ENGIE Resources (“Engie”) will indirectly acquire 100% of the equity interests in Plymouth Rock. Following the consummation of the transaction, Plymouth Rock and Engie will be Related

¹⁰¹ *Geomagnetic Disturbance Rel. Standard; Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, Order No. 851, 165 FERC ¶ 61,124 (Nov. 15, 2018) (“*Order 851*”).

¹⁰² *Order 851* was published in the *Fed. Reg.* on Nov. 25, 2018 (Vol. 83, No. 227) pp. 60,347 – 60,360.

¹⁰³ *Supply Chain Risk Mgmt. Rel. Standards*, Order No. 850, 165 FERC ¶ 61,020 (Oct. 18, 2018) (“*Order 850*”).

¹⁰⁴ See *Supply Chain Risk Mgmt. Rel. Standards*, 162 FERC ¶ 61,044 (Jan. 18, 2018) (“*Supply Chain Risk Management Standards NOPR*”) at P 44.

¹⁰⁵ *Order 850* at P 3.

¹⁰⁶ *Order 850* was published in the *Fed. Reg.* on Oct. 26, 2018 (Vol. 83, No. 208) pp. 53,992 – 54,005.

¹⁰⁷ *Order 851* at P6.

Persons. Comments on this filing were due on or before November 20; none were filed. This matter is pending before the FERC.

- **203 Application: CPV Towantic/Osaka Gas USA (EC19-16)**

On October 26, 2018, CPV Towantic requested FERC authorization for transaction that will result in Osaka Gas USA acquiring a 25% direct equity ownership interest in CPV Towantic. Comments on this filing were due on or before November 16; none were filed. This matter is pending before the FERC..

- **203 Application: ECP/Fawkes Holdings (Wheelabrator) (EC19-14)**

On October 19, Wheelabrator Technologies Inc. (“Wheelabrator”) requested FERC authorization for a transaction pursuant to which Fawkes Holdings, LLC (a Related Person to Macquarie Energy) will acquire all of the issued and outstanding shares of common stock of Wheelabrator currently held by the Energy Capital Partners companies (“ECP”). Following the consummation of the transaction, Wheelabrator will be a Macquarie Related Person and no longer a Calpine Related Person. Comments on this filing were due on or before November 9; none were filed. The PJM IMM filed a doc-less intervention. This matter is pending before the FERC.

- **203 Application: VTransco Acquisition of BED/Stowe Highgate Share (EC18-137)**

On August 10, VTransco requested FERC authorization for its acquisition of the ownership shares of the Burlington and Stowe Electric Departments in the Highgate Transmission Facility.¹⁰⁸ VTransco stated that, after the close of the Transaction, VTransco will be the sole owner of the Highgate Transmission Facility. Comments on this application were due on or before August 31; none were filed. Avangrid submitted a doc-less intervention. On October 5, VTransco submitted an informational filing notifying the FERC of certain Vermont Public Utilities Commission (“VT PUC”) approvals.

Deficiency letter. On October 11, the FERC issued a deficiency letter, asking VTransco for additional information on a “hold harmless” commitment and if VTransco does not intend to make a hold harmless commitment, to explain whether the acquisition will result in offsetting benefits such that a ratepayer protection mechanism, like a hold harmless commitment, is not necessary or to demonstrate that the acquisition will not have an adverse effect on rates. VTransco responded to the deficiency letter on October 24. In its response, VTransco clarified that it will hold transmission customers harmless and will not include transaction-related costs in its transmission revenue requirements for a period of five years following the acquisition. Should it seek to recover the transaction-related costs in rates, VTransco committed to demonstrate off-setting benefits in a separate filing under section 205 of the FPA. Comments on VTransco’s response were due on or before November 14; none were filed. This matter is again pending before the FERC.

- **203 Application: Linde Energy Services (EC18-132)**

On September 14, the FERC authorized a transaction pursuant to which Linde AG will divest the parent of Linde Energy Services (“Linde”), Linde North America, Inc. to an unaffiliated third-party, now known as “Messer Industries GmbH” (the divestiture was expected to be a condition to FTC approval of the Linde AG/Praxair Inc. merger).¹⁰⁹ Among other conditions, the order required notice within 10 days of the acquisition’s consummation, which has not yet been filed.

- **203 Application: Wheelabrator Technologies (EC18-130)**

On September 19, the FERC authorized the disposition of up to 49% of the indirect ownership interests in Wheelabrator Technologies (“WTI”) indirectly held public utility subsidiaries resulting from an initial public offering

¹⁰⁸ The Highgate Transmission Facility is the United States portion of a line that extends from a site near Bedford Substation, in Québec, to a substation in Highgate, Vermont, crossing the International Boundary near Saint Armand, Québec, and Franklin, Vermont, and provides an interconnection between Hydro-Québec TransÉnergie and the transmission system in Vermont owned by VTransco.

¹⁰⁹ *Linde Energy Services, Inc.*, 164 FERC ¶62,147 (Sep. 14, 2018).

of up to approximately 49% of WTI's common stock. Among other conditions, the order required notice within 10 days of the acquisition's consummation, which has not yet been filed.

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

As previously reported, the FERC authorized New England Power's ("NEP") acquisition from Vuelta Solar, LLC of certain interconnection assets associated with the 9.88 MW Vuelta and Old Wardour solar facilities located in East Brookfield, Massachusetts.¹¹⁰ On November 2, National Grid submitted a notice that the acquisition was consummated on November 1, 2018. Reporting on this proceeding is now concluded.

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

As previously reported, the FERC approved certain conversions of GenOn notes into common equity of, and corporate structure changes that will result in, a "reorganized GenOn".¹¹¹ 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, which has not yet been filed, this proceeding will be concluded.

- **New England Ratepayers Association Complaint (EL19-10)**

On November 2, 2018, the New England Ratepayers Association ("NERA") filed a complaint seeking declaratory order finding that (i) New Hampshire Senate Bill 365 ("SB 365"),¹¹² which mandates a purchase price for wholesale sales by seven generators operating in NH, (i) is preempted by the Federal Power Act; (ii) SB 365 violates Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA") (because SB 365 does not satisfy the requirement under PURPA and the FERC's implementing regulations¹¹³ that rates set by the states for wholesale sales by QFs may not exceed the purchasing utilities' avoided costs; and (iii) NH is preempted from ordering purchases that are contrary to the FERC's order terminating PSNH's mandatory purchase obligation on a service territory-wide basis for QFs with a net capacity in excess of 20 MW. NERA asked the FERC to issue a ruling by February 1, 2019 (the date NH customers may first bear the costs of SB 365). Comments on the NERA Complaint were due on or before December 3, 2018. Comments supporting the Petition were filed by: NH OCA, the NH Generator Group,¹¹⁴ EPSA, and a group of NH customers; a Protest was filed by the State of New Hampshire.¹¹⁵ The New England Small Hydro Coalition filed comments that, while not taking a position on NERA's preemption argument, disagreed with the premise that underlies NERA's argument as to what constitutes an avoided cost rate in New Hampshire. Doc-less interventions were filed by Calpine, Eversource, National Grid, NRG, and the DC Office of People's Counsel. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

¹¹⁰ *New England Power Co.*, 164 FERC ¶ 62,058 (Aug. 1, 2018).

¹¹¹ *GenOn Energy Inc.*, 161 FERC ¶ 62,063 (Oct. 31, 2017).

¹¹² SB 365, 2018 N.H. Laws Ch. 379, An Act relative to the use of renewable generation to provide fuel diversity, codified at N.H. Rev. Stat. Chapter 362-H.

¹¹³ 18 C.F.R. §§ 292.304(a); 292.101(b)(6) (2018).

¹¹⁴ The NH Generator Group is comprised of the following entities: Bridgewater Power Company, L.P., DG Whitefield LLC, Pinetree Power – Tamworth LLC, Pinetree Power, Inc., Springfield Power, LLC, and Wheelabrator Concord Company, L.P.

¹¹⁵ Although the State of New Hampshire requested and was eventually granted a two-week extension of time to file its comments, that extension was noticed on December 4, 2018, after the initial comment date and the submission of NH's comments.

- **PJM MOPR-Related Proceedings (EL18-178; ER18-1314; EL16-49)**

On June 29, the FERC issued an order (“*PJM Order*”)¹¹⁶ regarding out-of-market support affecting the PJM capacity market.¹¹⁷ Opening with the statement that “the integrity and effectiveness of the capacity market administered by [PJM] have become untenably threatened by out-of-market payments provided or required by certain states for the purpose of supporting the entry or continued operation of preferred generation resources,” the *PJM Order* determined that the PJM Tariff is currently unjust and unreasonable, rejected PJM’s Section 205 Filing, granted in part Calpine’s Complaint, and established a paper hearing to resolve the “price-suppressive” effects of out-of-market support for certain resources. Commissioners LaFleur and Glick both dissented, and Commissioner Powelson wrote a separate concurrence.

In the *PJM Order*, the FERC found “that it has become necessary to address the price suppressive impact of resources receiving out-of-market support.” The FERC agreed with Calpine and PJM that changes to the PJM Tariff were required, but did not accept the changes proposed in the Calpine Complaint or the PJM Filing, finding that neither had been shown to be just and reasonable, and not unduly discriminatory or preferential. The majority stated that it was unable to determine, based on the record of either proceeding, the just and reasonable rate to replace the rate in PJM’s Tariff. The *PJM Order* therefore found the PJM Tariff unjust and unreasonable, granted the Calpine Complaint, in part, and *sua sponte* initiated a new FPA section 206 proceeding (EL18-178), consolidating the record of the two earlier proceedings, and setting for paper hearing the issue of how to address a proposed alternative put forth in the *PJM Order*,¹¹⁸ which would modify two existing aspects of the PJM Tariff, “or any other proposal that may be presented.”

16 requests for clarification and/or rehearing of the *PJM Order* were filed on July 30. On August 29, 2018, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending.

Paper Hearing; Additional Briefing; PJM’s Extended RCO Proposal. Following an August 22 notice of extension of time, interested parties were invited to submit their initial round of testimony, evidence, and/or argument by October 2, 2018. Initial briefs, comments and submissions were filed by over 50 parties. In its October 2 submission, PJM submitted a revised proposal, which includes an expanded MOPR coupled with a “Extended Resource Carve-Out” proposal (“Extended RCO”). The proposed MOPR would apply to all fuel and technology types and to both existing and new resources (a change from the original MOPR, which only

¹¹⁶ *Calpine Corp. et al.*, 163 FERC ¶ 61,236 (June 29, 2018), *clarif. and/or reh’g requested*.

¹¹⁷ The *PJM Order* addressed two separate, but related proceedings. The first, EL16-49, was initiated by a complaint originally filed by Calpine, joined by additional generation entities (“Calpine Complaint”) on March 21, 2016, and later amended on January 9, 2017. The Calpine Complaint argued that PJM’s MOPR was unjust and unreasonable because it did not address the impact of existing resources receiving out-of-market payments on the capacity market, and proposed interim tariff revisions that would extend the MOPR to a limited set of existing resources. The Calpine Complaint also requested the FERC to direct PJM to conduct a stakeholder process to develop and submit a long-term solution. The second proceeding was PJM’s filing of its proposed revisions to its Tariff, pursuant to section 205 of the FPA in ER18-1314 (“PJM Filing”). The PJM Filing consisted of two alternate proposals designed to address the price impacts of state out-of-market support for certain resources. The first approach, preferred by PJM but not supported by its stakeholders, consisted of a two-stage annual auction, with capacity commitments first determined in stage one of the auction and the clearing price set separately in stage two (“Capacity Repricing”). The second alternative approach, proposed in the event that the FERC determined that Capacity Repricing was unjust and unreasonable, would have revised PJM’s MOPR to mitigate capacity offers from both new and existing resources, subject to certain proposed exemptions (“MOPR-Ex”).

¹¹⁸ The proposed alternative approach would (i) modify PJM’s MOPR such that it would apply to new and existing resources that receive out-of-market payments, regardless of resource type, but would include few to no exemptions; and (ii) in order to accommodate state policy decisions and allow resources that receive out-of-market support to remain online, establish an option in PJM’s Tariff that would allow, on a resource-specific basis, resources receiving out-of-market support to choose to be removed from the PJM capacity market, along with a commensurate amount of load, for some period of time. That option, which is similar in concept to the Fixed Resource Requirement (“FRR”) that currently exists in PJM’s Tariff, is referred to as the “FRR Alternative.” Unlike the existing FRR construct, the FRR Alternative would apply only to resources receiving out-of-market support. Both aspects of the proposed replacement rate, along with a series of questions that need to be addressed, are more fully explained and raised in the *PJM Order*.

applied to new gas-fired units). The Extended RCO would provide a means for states to support particular subsidized generation assets by removing them from certain aspects of the PJM capacity market and not subjecting them to MOPR in PJM's capacity market.

Reply testimony, evidence, and/or argument was due on or before November 6, 2018. Over 60 sets of reply briefs, evidence, etc. were filed. Since that time, a few parties submitted answers and additional comments which, together with all of the initial briefs and reply briefs are pending before the FERC.

The FERC committed in the *PJM Order* to make every effort to issue an order establishing the just and reasonable replacement rate no later than January 4, 2019. The FERC also established a refund effective date of March 21, 2016, the date of the original Calpine Complaint in EL16-49. For further information on this proceeding, please contact Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

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

The June 7 complaint filed by Kathryn Leonard, an individual ratepayer and councilwoman for the City of Newport RI ("Complainant"), against the RI PUC, National Grid, and Deepwater Wind Block Island ("Deepwater Wind") remains pending before the FERC. The Complaint seeks, 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". Following a partially granted request for an extension of time by the RI PUC, answers to and comments on this Complaint were due on or before July 13. Answers were filed by Deepwater Wind, National Grid and the RI PUC. On July 23, Complainant objected separately to each of the answers. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

This proceeding, which could potentially impact New England's markets, remains pending. As previously reported, CPV Power Holdings, L.P. ("CPV"), Calpine Corporation ("Calpine"), and Eastern Generation, LLC ("Eastern Generation") (collectively, "PJM MOPR Complainants") filed a complaint on May 31, 2018 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)¹¹⁹ 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) or Sunita Paknikar (202-218-3904; spaknikar@daypitney.com).

- **NYISO MOPR Proceeding (EL13-62)**

As in the PJM MOPR Proceeding, NEPOOL filed limited comments requesting that any FERC action or decision be limited narrowly to the facts and circumstances as presented, and that any changes ordered by

¹¹⁹ 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.

the FERC not circumscribe the results of NEPOOL's stakeholder process or predetermine the outcome of that process through dicta or a ruling. The NYISO MOPR Proceeding remains pending before the FERC.

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

- **NSTAR/MATEP Revised Distribution Service Agreement (ER19-431)**

On November 29, NSTAR filed a revised Distribution Service Agreement ("Revised Distribution Agreement") for wholesale distribution service to MATEP LLC ("MATEP"). The Revised Distribution Agreement amends the Original Distribution Agreement (i) primarily by expanding the definition of the Brighton Tie Lines to include an incremental, fourth radial 13.8 kV circuit that will be used to enhance MATEP's ability to meet the needs of its own retail customers and to provide wholesale distribution service to MATEP for the purposes of continuing its power sales in the capacity and energy markets in New England, and (ii) by amending various terms and conditions to clarify and enhance those provisions stemming from the expansion of the definition of the Brighton Tie Lines. A January 30, 2019 effective date was requested. Comments on this filing are due on or before December 20. If there are questions on this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **NSTAR/HQ US MMWEC Use Rights Transfer Agreement (ER19-409)**

On November 28, NSTAR filed an agreement by which it will transfer MMWEC's use rights over the Phase I/II HVDC facilities to HQUS (MMWEC itself does not have a mechanism to effectuate the transfer). A December 20, 2018 effective date was requested. Comments on this filing are due on or before December 19. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **TSAs: First Amendments to EDC New England Clean Energy Connect TSAs (ER19-324 et al.)**

On November 9, CMP filed first amendments to 3 of its previously filed and accepted, cost-based transmission service agreements ("TSAs") with the participants that will fund the construction, operation and maintenance of CMP's portion of a the NECEC Transmission Line. The amendments to the agreements with Eversource (NSTAR), National Grid and Unitil (the "EDC Agreements") make only two changes – (i) extension of the date that triggers an increase in monthly transmission service payments by the EDCs to CMP while Regulatory Approval for the Project is pending (from January 25, 2019 to June 25, 2019) and (ii) extension of the date by which any party to the EDC Agreements may terminate the EDC Agreement if Regulatory Approval is not received (from January 25, 2020 to June 25, 2020). Comments on the first amendments were due on or before November 30; none were filed. Doc-less interventions were filed by Eversource and National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **NSTAR/HQ US ENE Use Rights Transfer Agreement (ER19-146)**

On October 19, NSTAR filed an agreement by which it will transfer ENE's use rights over the Phase I/II HVDC facilities to HQUS (ENE itself does not have a mechanism to effectuate the transfer). A November 20, 2018 effective date was requested. Comments on this filing were due on or before November 9; none were filed. This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **E&P Agreement: CMP/Three Corners Solar (ER18-2454)**

On November 9, the FERC accepted the Engineering and Procurement Agreement ("E&P Agreement") CMP filed between itself and Three Corners Solar ("3CS").¹²⁰ The E&P Agreement authorizes CMP to begin engineering and procurement activities in order to advance the interconnection of 3CS' proposed solar

¹²⁰ *Central Maine Power Co.*, Docket No. ER18-2454 (Nov. 9, 2018) (unpublished letter order).

generating facility that will interconnect to CMP's Albion Road Substation near Benton, Maine. The E&P Agreement was accepted effective as of November 19, 2018, as requested. Because CMP filed the E&P Agreement more than 30 days after the commencement of service, it has calculated, issued, and reported (on November 6) on the time value refunds issued to 3CS to remedy the failure to submit the filing in a timely manner. Unless the November 9 order is challenged, reporting on this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On November 9, the FERC accepted (together with Emera Maine's Tax Law & Settlement Changes in ER18-1213 above) Emera Maine's 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.¹²¹ Emera Maine responded to two separate deficiency letters in response to the changes in this proceeding. Emera Maine's response to the first deficiency letter was filed on June 13; Emera Maine's response to the second deficiency letter was filed on September 10. In accepting the MPD OATT Changes, the FERC noted Emera Maine's stated intent to follow subsequent FERC guidance on issues raised in the NOI on the 2017 Tax Law's effects on FERC-jurisdictional rates (see RM18-12 below) or in subsequent proceedings related to the NOI. The FERC was not persuaded by the MPUC's and MCG's arguments challenging Emera Maine's changes, amortization proposals, sufficiency of detail, or the need for the revisions' estimated rate impacts. Accordingly, though without foreclosing any potential further action to address the effects of the 2017 Tax Law, the FERC found that hearing and settlement judge procedures were not necessary.¹²² Unless the *November 9 Order* is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **FERC Enforcement Action: Show Cause Order – Footprint Power (IN18-7)**

As previously reported, the FERC issued an order¹²³ on June 18, 2018 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 alleged 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 alleged 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. On July 13, Footprint submitted a "Notice of De Novo Election", which requires the FERC to institute an action in the appropriate United States district court for a *de novo* review of the matter should the FERC assess civil penalties that Footprint fails to pay within 60 days. Following a FERC-granted extension of time to answer, Footprint filed its answer on August 2.

On September 19, OE Staff submitted its response to Footprint's August 2 answer. Finding merit in Footprint's defense relating to the start-up requirements of Salem Harbor Unit 4, Staff agreed with Footprint that its conduct during the June 27 through July 17, 2013 portion (the "Cold Start Period") of the "Relevant Period" (i.e., June and July 2013) did not violate the ISO-NE Tariff provisions and FERC regulations at issue,¹²⁴ re-evaluated

¹²¹ *Emera Maine et al.*, 165 FERC ¶ 61,086 (Nov. 9, 2018) ("*Emera BHD Tax Law & Settlement Changes Order*")

¹²² *November 9 Order* at P 45.

¹²³ *Footprint Power LLC and Footprint Power Salem Harbor Ops. LLC*, 163 FERC ¶ 61,198 (June 18, 2018).

¹²⁴ Staff still believes that Footprint violated the ISO-NE Tariff and FERC regulations during the remaining portion of the Relevant Period, from July 18 to July 25, when Footprint submitted Day-Ahead Limited Energy Generator ("LEG") offers to which the Cold Start Period defense does not apply.

its position and recommended that the FERC vacate the Order to Show Cause. On September 26, Footprint answered OE Staff's residual findings, and urged the Commission to promptly and definitively end this matter. This matter is again pending before the FERC.

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

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

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

XII. Misc. - Administrative & Rulemaking Proceedings

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

On January 8, 2018, the FERC initiated a new Grid Resilience in RTO/ISOs proceeding (AD18-7)¹²⁵ and terminated the DOE NOPR rulemaking proceeding (RM18-1).¹²⁶ In terminating the DOE NOPR proceeding, the FERC concluded that the Proposed Rule and comments received did not support FERC action under Section 206 of the FPA, but did suggest the need for further examination by the FERC and market participants of the risks that the bulk power system faces and possible ways to address those risks in the changing electric markets. On February 7, 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.

¹²⁵ *Grid Rel. and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018), *reh'g requested*.

¹²⁶ As previously reported, the FERC opened the DOE NOPR proceeding in response to a September 28, 2017 proposal by Energy Secretary Rick Perry, issued under a rarely-used authority under §403(a) of the Department of Energy ("DOE") Organization Act, that would have required RTO/ISOs to develop and implement market rules for the full recovery of costs and a fair rate of return for "eligible units" that (i) are able to provide essential energy and ancillary reliability services, (ii) have a 90-day fuel supply on site in the event of supply disruptions caused by emergencies, extreme weather, or natural or man-made disasters, (iii) are compliant with all applicable environmental regulations, and (iv) are not subject to cost-of-service rate regulation by any State or local authority. More than 450 comments were submitted in response to the DOE NOPR, raising and discussing an exceptionally broad spectrum of process, legal, and substantive arguments. A summary of those initial comments was circulated under separate cover and can be found with the posted materials for the November 3, 2017 Participants Committee meeting. Reply comments and answers to those comments were filed by over 100 parties.

ISO-NE Response. In its response, ISO-NE identified fuel security¹²⁷ 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, NEI, and EDF. Exelon and American Petroleum Institute filed reply comments. FirstEnergy included in this proceeding its motion for emergency action also filed in ER18-1509 (ISO-NE Waiver Filing: Mystic 8 & 9), which Eversource answered (in both proceedings). Since the last Report, reply comments were filed by APPA and American Municipal Power ("AMP") and the Nuclear Energy Institute ("NEI") moved to lodge presentations by the National Infrastructure Advisory Council. Since the last Report, on September 26, American Nuclear Society submitted comments. 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.

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

On March 15, the FERC opened an inquiry ("NOI")¹²⁸ seeking comments on the effect of the 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 ADIT,¹²⁹ bonus depreciation,¹³⁰ 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, 2018,¹³¹ and were filed by over 45 parties, including

¹²⁷ 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."

¹²⁸ *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Comm.-Jurisdictional Rates*, 162 FERC ¶ 61,223 (Mar. 15, 2018).

¹²⁹ 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.

¹³⁰ 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."

¹³¹ The NOI was published in the *Fed. Reg.* on Mar. 21, 2018 (Vol. 83, No. 55) pp. 12,371 – 12,376.

Avangrid, Eversource, Exelon MA AG et al., National Grid, PSEG, APPA, and EEl. Reply comments and answers were filed by Dominion, EQT Midstream Partners, INGAA, Six Cities,¹³² Tallgrass Pipelines, and TransCanada. This matter is pending before the FERC.

- **NOPR: Public Util. Trans. ADIT Rate Changes (RM19-5)**

On November 15, 2018, the FERC issued a NOPR (“*ADIT NOPR*”) proposing to require all public utility transmission providers with transmission rates under an OATT, a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the 2017 Tax Cuts and Jobs Act (“2017 Tax Law”).¹³³ Specifically, for transmission formula rates, the FERC is proposing (i) to require that public utilities deduct excess accumulated deferred income taxes (“ADIT”) from or add deficient ADIT to their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT; (ii) to require all public utilities with transmission formula rates to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information; (iii) to require all public utilities with transmission stated rates to determine the amount of excess and deferred income tax caused by the 2017 Tax Law’s reduction to the federal corporate income tax rate and return or recover this amount to or from customers. Comments on the *ADIT NOPR* are due on or before December 24, 2018.¹³⁴ On November 26, APPA, EEl and NRECA requested an additional 30 days (to January 22, 2019) to file comments in response to the *ADIT NOPR*. That motion is pending before the FERC.

- **NOPR: Amended FPA Section 203(a)(1)(B) (RM19-4)**

Also on November 15, 2018, the FERC issued a NOPR proposing to revise its regulations relating to mergers or consolidations by a public utility (“*Section 203(a)(1)(B) NOPR*”).¹³⁵ Specifically, the FERC proposes to revise its regulations (i) to establish that a public utility must seek authorization under amended section 203(a)(1)(B) of the Federal Power Act to merge or consolidate, directly or indirectly, its facilities subject to the jurisdiction of the Commission, or any part thereof, with the facilities of any other person, or any part thereof, that are subject to the jurisdiction of the FERC *and have a value in excess of \$10 million*, by any means whatsoever; and (ii) to establish a notification requirement for mergers or consolidations by a public utility if the facilities to be acquired have a value in excess of \$1 million and such public utility is not required to secure FERC authorization under amended section 203(a)(1)(B). Comments on the *Section 203(a)(1)(B) NOPR* are due on or before December 24, 2018.¹³⁶

- **Order 849: Pipeline Rates (RM18-11)**

Rehearing of *Order 849*¹³⁷ remains pending. As previously reported, in *Order 849*, the FERC adopted procedures 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. With certain exceptions,¹³⁸ the procedures adopted are generally the

¹³² “Six Cities” are the California Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside.

¹³³ *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, 165 FERC ¶ 61,117 (Nov. 15, 2018).

¹³⁴ The *ADIT NOPR* was published in the *Fed. Reg.* on Nov. 23, 2018 (Vol. 31, No. 226) pp. 59,331-59,343.

¹³⁵ *Implementation of Amended Section 203(a)(1)(B) of the Federal Power Act*, 165 FERC ¶ 61.091 (Nov. 15, 2018).

¹³⁶ The *Section 203(a)(1)(B) NOPR* was published in the *Fed. Reg.* on Nov. 29, 2018 (Vol. 31, No. 230) pp. 61,338-61,342.

¹³⁷ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Fed. Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (July 18, 2018) (“*Order 849*”).

¹³⁸ *Order 849* modifies the *Pipeline Rates NOPR*’s proposed treatment of master limited partnership (MLP) pipelines and other pass-through entities in several respects, makes several changes to proposed FERC Form 501-G, and provides a guarantee that the FERC will not initiate a NGA section 5 rate investigation for a three-year moratorium period of an interstate pipeline that makes a limited NGA section 4 rate reduction filing that reduces its ROE to 12 percent or less.

same as the FERC proposed in its March 15, 2018 *Pipeline Rates NOPR*¹³⁹ and require interstate pipelines to (a) file a one-time report, FERC Form No. 501-G, that will 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.¹⁴⁰ *Order 849* became effective September 13, 2018.¹⁴¹

Requests for rehearing of *Order 849* were filed by Enable Mississippi River Transmission and Enable Gas Transmission, Natural Gas Pipeline Company of America, and Process Gas Consumers Group and American Forest and Paper Association. On September 17, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending before the FERC.

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

In *Order 841*¹⁴² (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*.¹⁴³ All comments filed in response to the *Storage NOPR* will be incorporated by reference into Docket No. RM18-9 and further comments regarding the proposed distributed energy resource aggregation reforms, including comments regarding the April 10-11 technical conference in AD18-10,¹⁴⁴ were also to be filed in RM18-9. On June 26, over 50 parties submitted post-technical conference comments in this proceeding, including comments from ISO-NE, Calpine, Direct, Eversource, Ictec, NRG, Utility Services, EEI, EPRI, EPSA, NARUC, NRECA, and SEI. This matter is pending before the FERC.

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

As previously reported, the FERC issued on April 19, 2018, its final rule,¹⁴⁵ *Order 845*, revising its *pro forma* Large Generator Interconnection Procedures ("LGIP") and *pro forma* LGIA to implement 10 specific reforms designed to improve certainty for interconnection customers,¹⁴⁶ promote more informed interconnection decisions,¹⁴⁷ and enhance the interconnection process.¹⁴⁸ Based on the comments received

¹³⁹ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Fed. Income Tax Rate*, 162 FERC ¶ 61,226 (Mar. 15, 2018) ("*Pipeline Rates NOPR*").

¹⁴⁰ Pipelines could 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). If the pipeline chooses options (3) or (4), the FERC will consider, after reviewing both the one-time report and the comments of others, whether to initiate a NGA Section 5 investigation.

¹⁴¹ *Order 849* was published in the *Fed. Reg.* on July 30, 2018 (Vol. 83, No. 146) pp. 36,672-36,717.

¹⁴² *Elec. Storage Participation in Mkts. Operated by Regional Trans. Orgs. and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018), reh'g and/or clarif. requested ("*Order 841*").

¹⁴³ *Elec. Storage Participation in Mkts. Operated by Regional Trans. Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) ("*Storage NOPR*").

¹⁴⁴ 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. Technical conference materials are posted on the FERC's eLibrary. Interested persons were invited 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 were to be filed in RM18-9; comments on the potential effects of DERs on the bulk power system, in AD18-10.

¹⁴⁵ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (Apr. 19, 2018) ("*Order 845*").

¹⁴⁶ 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.

on its December 15, 2016 NOPR¹⁴⁹ 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* became effective July 23, 2018.

Requests for Rehearing. The Requests for rehearing and/or clarification of *Order 845* remain pending. Those requests were filed by APPA, Arizona Public Service Company, AWEA, California Utilities,¹⁵⁰ 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. Answers to AWEA's answers were filed by Ameren on June 21 and the MISO Transmission Owners on June 29. 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.

Compliance Filing Deadline – Now 90 Days from the FERC's To-Be-Issued Order on Rehearing. *Order 845* initially required 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, to November 5. EEI then asked for a further extension of time for transmission providers to submit their required compliance filings, 90 days following a FERC order on the pending rehearing requests. The American Wind Energy Association ("AWEA") opposed the EEI request. On October 3, the FERC issued a notice ("Oct 3 Extension Notice") granting EEI's request and indicating that compliance filings are now due within 90 days of the FERC's order addressing the pending requests for rehearing, which remain pending before the FERC. In light of the extension, ISO-NE has deferred final consideration of New England's proposed compliance changes pending the FERC's order on rehearing. On October 15, AWEA requested rehearing of the Oct 3 Extension Notice. On November 13, the FERC dismissed AWEA's request (i) because the Oct 3 Extension Notice is not procedurally subject to rehearing pursuant to Rule 713(a); (ii) the timing of compliance filings submissions is within the FERC's discretion; and (iii) the Oct 3 Extension Notice did not change or stay *Order 845's* effective date (rather, it simply extends the date that compliance filings are due).

- **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."¹⁵¹

¹⁴⁷ 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.

¹⁴⁸ 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.

¹⁴⁹ *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.

¹⁵⁰ "California Utilities" are Pacific Gas and Elec. ("PG&E"), So. Cal. Edison ("SCE"), and San Diego Gas & Elec. ("SDG&E").

¹⁵¹ 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

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)¹⁵² and implement those tariff provisions within one year of that compliance filing. New England's *Order 841* compliance filing changes will be considered by the Participants Committee at its November 2 meeting (Agenda Item #5). *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 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.

Correcting Amendment. On November 16, the FERC issued a "correcting amendment" to restore regulatory text, adopted in *Orders 831/831-A*, that had been incorrectly replaced – rather than added to - in the regulatory text adopted in *Order 841*.¹⁵³ The text being restored was added as a new paragraph to 18 CFR § 35.28(g)(11).¹⁵⁴ Nothing in the *Correcting Amendment Order* was intended to alter any previous compliance requirements, effective dates established under *Orders 831/831-A* or *841*, nor any tariff changes previously accepted by the FERC in compliance with those orders. The *Correcting Amendment* became effective November 26, 2018.¹⁵⁵

- **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.¹⁵⁶ 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

characteristics of electric storage resources through bidding parameters or other means; and (4) establish a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW.

¹⁵² *Order 841* was published in the *Fed. Reg.* on Mar. 6, 2018 (Vol. 83, No. 44) pp. 9,580-9,633.

¹⁵³ *Offer Caps in Mkts. Operated by Regional Transmission Organizations and Indep. Sys. Operators, et al.*, 165 FERC ¶ 61,136 (Nov. 16, 2018) ("*Correcting Amendment Order*").

¹⁵⁴ (11) A resource's incremental energy offer must be capped at the higher of \$1,000/MWh or that resource's cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at \$2,000/MWh. The actual or expected costs underlying a resource's cost-based incremental energy offer above \$1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above \$1,000/MWh and the actual or expected costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource's actual costs are verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds \$2,000/MWh. All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of \$1,000/MWh.

¹⁵⁵ The *Correcting Amendment* was published in the *Fed. Reg.* on Nov. 26, 2018 (Vol. 83, No. 227) p. 60,347.

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

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, 2016¹⁵⁷ and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

- **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 NOI¹⁵⁸ 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,¹⁵⁹ comments were due on or before July 25, 2018. Literally thousands of individual and mass mailed comments were filed. Since the last Report, Spectra Energy Partners submitted an answer to the comments that various parties submitted in this proceeding, the New Jersey State Agriculture Development Committee submitted comments, and the FERC responded individually to each of the members of the US Congress that submitted comments (individually or collectively) in this proceeding. This matter remains pending before the FERC.

- **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.¹⁶⁰ 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 NOI¹⁶¹ 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*¹⁶² 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 ("MLPA"), NGAA, SPPP, LP, Oil Pipe Lines, Plains Pipeline, Tallgrass Pipelines, and TransCanada. On July 18, the FERC issued its order on rehearing,¹⁶³ dismissing the requests for rehearing and clarification and providing guidance regarding the

¹⁵⁷ The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150) pp. 51,726-51,772.

¹⁵⁸ The NOI was published in the *Fed. Reg.* on Apr. 26, 2018 (Vol. 83, No. 80) pp. 18,020-18,032.

¹⁵⁹ *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,138 (May 23, 2018).

¹⁶⁰ *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (Mar. 15, 2018), *order on reh'g*, 164 FERC ¶ 61,030 (July 18, 2018).

¹⁶¹ *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2016).

¹⁶² *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.

¹⁶³ *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 164 FERC ¶ 61,030 (July 18, 2018) ("*Order on Rehearing*").

treatment of Accumulated Deferred Income Taxes (“ADIT”) where the income tax allowance is eliminated from cost-of-service rates under the FERC’s post-*United Airlines* policy. On August 17, the MLPA requested clarification and/or reconsideration of the *Order on Rehearing*, which is pending before the FERC. On September 4, R. Gordon Gooch answered MLPA’s August 17 pleading. Petitions for review were filed in the D.C. Circuit by Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC, as well as by SFPP, L.P., in September 2018. Those appeals are pending in Case Nos. 18-1252, et al. in the D.C. Circuit.

XIII. Natural Gas Proceedings

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

- **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*¹⁶⁴ 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.¹⁶⁵ 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.”¹⁶⁶ 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.¹⁶⁷ 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

¹⁶⁴ *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) (“*BP Penalties Order*”).

¹⁶⁵ *BP America Inc.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

¹⁶⁶ *BP Penalties Order* at P 3.

¹⁶⁷ *BP America Inc.*, 147 FERC ¶ 61,130 (May 15, 2014) (“*BP Hearing Order*”), *reh’g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.¹⁶⁸

BP moved, on December 11, 2017, to lodge, to reopen the proceeding, and to dismiss, or in the alternative, for reconsideration based on changes in the law it asserted are dispositive and that have occurred since BP filed its request for rehearing of the *BP Penalties Order*. FERC Staff asked for, and was granted, additional time, to January 25, 2018, to file its Answer to BP's December 11 motion. FERC Staff filed its answer on January 25, 2018, and revised that answer on January 31. On February 9, BP replied to FERC Staff's revised answer. This matter 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 order¹⁶⁹ 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 2012.¹⁷⁰

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

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

¹⁶⁸ *BP America Inc.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

¹⁶⁹ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁷⁰ 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.

Staff's conclusions regarding the subject's conduct.¹⁷¹ NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **New England Pipeline Proceedings**

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

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

- ▶ On April 20, 2018, Portland Natural Gas Transmission System LP ("PNGTS") submitted an abbreviated application for a certificate of public convenience and necessity seeking authorization for 40,000 Dth/d of increased pipeline capacity; intended to be the first phase of a three-phase system expansion known as the Portland Xpress ("PXP") Project.
- ▶ Phase I is intended to increase PNGT's certificated capacity on its Northern Facilities from Pittsburg, NH, to Westbrook, ME, and its certificated capacity by 1,641 Mcf/d on its Joint Facilities (shared with Maritimes and Northeast Pipeline LLC) from Westbrook, ME to Dracut, MA.
- ▶ PNGTS 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 were proposed to the existing pipeline infrastructure. Rather, the addition of 40,000 Mcf/d of capacity on the Northern Facilities is created through pressure reductions at Westbrook, ME into the Joint Facilities.
- ▶ Eight precedent agreements were executed with firm shippers totaling 137,378 Dth/d under PNGT's Rate Schedule FT, and were filed under seal at the FERC as part of the certificate application.
- ▶ On October 26, 2018 the FERC granted PNGTS' requested authorizations, amending PNGT's existing NGA section 3 authorization and its Presidential Permit to increase the maximum authorized capacity at its border-crossing facilities at the US/Canadian international border near Pittsburg, NH.¹⁷² All other requirements and conditions of the FERC's prior orders authorizing PNGT's construction and operation of the facilities remain in effect. PNGTS accepted its certificate on October 29, 2018.
- ▶ On November 5, 2018, PNGTS notified the FERC that service had commenced on the Portland Express Project on November 1. Reporting on this project is now concluded.

- **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.

¹⁷¹ 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).

¹⁷² *Portland Nat. Gas Transmission Sys.*, 165 FERC ¶ 61,049 (Oct. 26, 2018).

- ▶ Certificate of public convenience and necessity granted Jan. 25, 2017.¹⁷³
 - ▶ Certain facilities,¹⁷⁴ 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, 2017.¹⁷⁵ Remaining Project capacity will be available when the remaining Project facilities are placed into service following Director of OEP authorization.
 - ▶ Algonquin files notice that construction of Salem Pike, Needham, Pine Hills and Plymouth meter and regulating stations began on April 2, 2018. Detailed information regarding construction activities can be found in the weekly construction reports filed in this docket.
 - ▶ On February 16, 2018, Algonquin filed with the DC Circuit Court of Appeals, pursuant to NGA Section 19(d)(2), a petition for review of the MA DEP's failure to issue, condition, or deny a minor-source air permit for Algonquin's proposed natural gas compressor station in the Town of Weymouth, MA by the July 31, 2016 deadline established by the FERC. Algonquin seeks an order establishing a deadline for the MA DEP to issue, condition, or deny the permit.
 - ▶ On May 31, the DC Circuit issued a *per curiam* order that holds this case in abeyance pending further order of the court.¹⁷⁶ 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 and to file motions to govern future proceedings within 30 days of respondents' final decision to issue, condition, or deny petitioner's permit application.
 - ▶ The first status report was filed on August 24, and indicated that the case should continue to be held in abeyance. A second report was filed November 21. The next status report will be due in late February.
- **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).

¹⁷³ 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*").

¹⁷⁴ 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).

¹⁷⁵ *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Oct. 27, 2017).

¹⁷⁶ *Algonquin Gas Trans. v. Mass. Dept. of Env'tl. Protection*, Case No. 18-1045, DC Cir. (May 31, 2018).

- ▶ 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)
 - On January 11, 2018, the FERC denied Constitution's Petition.¹⁷⁷ 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.¹⁷⁸
 - On February 12, 2018, Constitution Pipeline requested rehearing of the January 11, 2018 order. FERC denied Constitution's request for rehearing of the January 2018 order.¹⁷⁹ On September 14, 2018, Constitution filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit.¹⁸⁰
- ▶ 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.
- ▶ On June 25, 2018, Constitution requested a further 2-year extension of the deadline to complete construction of its project, given the delays caused by the on-going fight over the water quality certification from the NYSDEC. Iroquois made a similar request on August 1, 2018. Constitution's request was opposed by several parties and Constitution

¹⁷⁷ *Constitution Pipeline Co.*, 162 FERC ¶ 61,014 (Jan. 11, 2018), *reh'g requested*.

¹⁷⁸ *Id.* at P 23.

¹⁷⁹ *Constitution Pipeline Co., LLC*, 164 FERC ¶ 61,029 (2018) (September 2018 Waiver Rehearing Order).

¹⁸⁰ *Constitution*, Petition for Review in U.S. Court of Appeals for the D.C. Circuit, Docket No. CP18-5-000 (filed Sept. 14, 2018).

answered some of the opposition pleadings. The FERC granted the requested two-year extension of time on November 5, 2018.¹⁸¹

- **Non-New England Pipeline Proceedings**

The following pipeline projects could affect ongoing pipeline proceedings in New England and elsewhere:

- **Northern Access Project (CP15-115)**

- ▶ The New York State Department of Environmental Conservation (“NY DEC”) and the Sierra Club requested rehearing of the *Northern Access Certificate Rehearing Order* on August 14 and September 5, respectively. On August 29, National Fuel Gas Supply Corporation and Empire Pipeline (“Applicants”) answered the NY DEC’s August 14 rehearing request and request for stay. On September 12, 2018 the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remains pending.
- ▶ On August 6, the FERC dismissed or denied the requests for rehearing of the *Northern Access Certificate Order*.¹⁸² Further, in an interesting twist, the FERC found that a December 5, 2017 “Renewed Motion for Expedited Action” filed by National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (the “Companies”), in which the Companies asserted a separate basis for their claim that the NY DEC waived its authority under section 401 of the Clean Water Act (“CWA”) to issue or deny a water quality certification for the Northern Access Project, served as a motion requesting a waiver determination by the FERC,¹⁸³ and proceeded to find that the NY DEC was obligated to act on the application within one year, failed to do so, and so waived its authority under section 401 of the CWA.
- ▶ As previously reported, the FERC issued an order, on Feb. 3, 2017, authorizing the Companies 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”).¹⁸⁴ The Allegheny Defense Project and Sierra Club (collectively, “Allegheny”) requested rehearing of the *Northern Access Certificate Order*.
- ▶ Despite the FERC’s *Northern Access Certificate Order*, the project remained 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.¹⁸⁵ Oral argument was held on November 16, 2017. The Court’s decision is pending, and it remains to be seen how the Court will factor in the FERC’s waiver determination in the *Northern Access Rehearing & Waiver Determination Order*.
- ▶ On November 26, 2018, the Applicants filed a request at FERC for a three year extension of time, until February 3, 2022, to complete construction and to place the certificated

¹⁸¹ *Constitution Pipeline Co.*, 165 FERC ¶ 61,081 (Nov. 5, 2018).

¹⁸² *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 164 FERC ¶ 61,084 (Aug. 6, 2018) (“*Northern Access Rehearing & Waiver Determination Order*”).

¹⁸³ The DC Circuit has indicated that project applicants who believe that a state certifying agency has waived its authority under CWA section 401 to act on an application for a water quality certification must present evidence of waiver to the FERC. *Millennium Pipeline Co., L.L.C. v. Seggos*, 860 F.3d 696, 701 (D.C. Cir. 2017).

¹⁸⁴ *Nat’l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 (2017) (“*Northern Access Certificate Order*”), reh’g denied 164 FERC ¶ 61,084 (Aug 6, 2018) (“*Northern Access Certificate Rehearing Order*”).

¹⁸⁵ *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

facilities into service. The Applicants cited the fact that they “do not anticipate commencement of Project construction until early 2021 due to New York’s continued legal actions and to time lines required for procurement of necessary pipe and compressor facility materials.” The request 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, 2018.¹⁸⁶ Requests for rehearing of the January 19 Order and the subsequent tolling order were denied.¹⁸⁷ The FERC orders were appealed to the DC Circuit and are pending in Case No. 18-1128.
- ▶ 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.

XIV. State Proceedings & Federal Legislative Proceedings

- **Massachusetts Emissions Allowance Auctions**

In an action that could have implications for the New England Markets, the Massachusetts (MA) Department of Environmental Protection (“MA DEP”) 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 7.74¹⁸⁸ of those regulations reduces carbon dioxide (“CO₂”) emissions from MA-based power plants by imposing an annually declining aggregate emissions cap on MA’s 21 large fossil fuel-fired generators. Operators of those facilities will have to offset their CO₂ production with allowances (a limited authorization to emit one metric ton of CO₂ in a calendar year). Allowances will be allocated directly in 2018 based on historical generation. Beginning with compliance year 2019, Section 7.74 requires auctioning of the emissions allowances that facilities must use to comply with the regulation. Allowances may be traded between facilities and a limited quantity may be banked from year to year. On December 15, 2017, MassDEP filed final amendments to correct errors for two facilities in the 2018 allowance allocations. These amendments were published in the Massachusetts register on December 29, 2017.

On July 30, 2018, the MA Executive Office of Energy and Environmental Affairs (“MA EEA”) and MA DEP filed final amendments to Section 7.74 for publication in the MA Register on August 10. The amendments are designed to phase in auction requirements, modify allowance banking requirements and extend emergency

¹⁸⁶ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh’g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

¹⁸⁷ *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098 (Aug. 10, 2018).

¹⁸⁸ Additional information about 310 CMR 7.74 (Reducing CO₂ Emissions from Electricity Generating Facilities) is available at: <http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/ghg/electricity-generatoremissions-limits.html>.

deferred compliance to the entire year.¹⁸⁹ Questions regarding 310 CMR 7.74 can be directed to Will Space (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).

- **FCM Resource Retirement Reforms (17-1275)**
Underlying FERC Proceedings: ER16-551¹⁹⁰
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*. All briefing is complete and oral argument was held on November 19, 2018 before a panel comprised of Judges Katsas, Silberman and Williams. This matter is pending before the Court.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹⁹¹
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 (“Petition”). 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 twelfth such report filed, was filed on August 13, 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. On October 3, 2018, Intervenor for Respondent¹⁹² moved jointly to dismiss the Petition for the same reasons the Court dismissed DC Circuit Case No. 18-1077 as reported in the last Report. On October 15, the TOs filed a response in which they indicated that they do not oppose the Intervenor’s request that the Petition for Review be dismissed with leave to refile the appeal at the close of agency proceedings on Complaints II or III, but only to the extent that the Court determines that FERC’s interpretation of the statutory constraints created by the 15-month refund period in its Order Denying Rehearing is not a final agency order under the Federal Power Act; otherwise the TOs requested that the motion be denied. The most recent status report, the thirteenth such report filed, was filed on November 13, 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.

¹⁸⁹ The text of the final amendments and a Response to Comments document are available at <https://www.mass.gov/guides/electricity-generator-emissions-limits-310-cmr-774>.

¹⁹⁰ *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*”).

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

¹⁹² “Intervenor for Respondent” are Belmont, Braintree, Concord, CT PURA, Georgetown, Groveland, Hingham, Littleton, MMWEC, Merrimac, Middleton, National Consumer Law Center; NHEC, Reading, Rowley, Taunton, and Wellesley.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹⁹³ EL15-23¹⁹⁴
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).¹⁹⁵ 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.

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

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

¹⁹⁵ *New England Power Generators Assoc. v FERC*, 881 F.3d 202 (DC Cir. 2018).

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