



NEW ENGLAND POWER POOL

David T. Doot  
Secretary

December 28, 2017

VIA ELECTRONIC MAIL

**TO: MEMBERS AND ALTERNATES OF THE NEPOOL PARTICIPANTS COMMITTEE**

**RE: Supplemental Notice of January 5, 2018 NEPOOL Participants Committee Meeting**

Pursuant to Section 6.6 of the Second Restated New England Power Pool Agreement, supplemental notice is hereby given that a meeting of the Participants Committee will be held **by teleconference on Friday, January 5, 2018, at 10:00 a.m.** The Participants Committee meeting will be held for the purposes set forth on the attached agenda and posted with the meeting materials at [http://nepool.com/NPC\\_2018.php](http://nepool.com/NPC_2018.php). The dial-in number for the meeting, to be used only by those who otherwise attend NEPOOL meetings, is 1-866-803-2146; Passcode: 7169224. For your information, this meeting is recorded, as are all the NEPOOL Participants Committee meetings.

FOR PARTICIPANTS WHO DO NOT TYPICALLY RECEIVE INVOICES FROM ISO-NE, PLEASE NOTE THAT **INVOICES FOR 2018 NEPOOL ANNUAL FEES WILL BE ISSUED IN FEBRUARY.** If you are a member of the Pool on January 1, 2018, you will be assessed the NEPOOL Annual Fee in the February Monthly Statements that will be issued on Monday, February 12, 2018. To avoid a Payment Default and possible financial penalties, that invoice must be paid in full by Wednesday, February 14, 2018, so please plan accordingly. If there are questions, you can call ISO New England or Pat Gerity (860-275-0533).

Wishing you all a very Happy New Year!

Respectfully yours,

\_\_\_\_\_/s/\_\_\_\_\_  
David T. Doot, Secretary

## FINAL AGENDA

1. To approve the draft minutes of the Participants Committee meeting held on December 8, 2017. Draft minutes of the December 8 meeting marked to show changes from the draft circulated with the initial notice are included with this supplemental notice and posted with the meeting materials.
2. To adopt and approve the action recommended by the Reliability Committee set forth on the Consent Agenda included with this supplemental notice.
3. To receive an ISO Chief Executive Officer Report.
4. ISO Chief Operating Officer Report. The December COO Report, reflecting data for the full month of December, will be circulated following the meeting (on or about January 12). Accordingly, there will not be a presentation by or discussion with the COO during this meeting.
5. To consider and take action, as appropriate, on revisions to the Financial Assurance Policy reflecting a revised methodology for calculating the FCM Financial Assurance obligation. Background materials and a draft resolution are include and posted with this supplemental notice.
6. To receive a report on current matters relating to regional wholesale power and transmission arrangements that are pending before the regulators and the courts. The litigation report will be circulated and posted in advance of the meeting.
7. To receive reports from Committees, Subcommittees and other working groups:
  - Markets Committee
  - Reliability Committee
  - Transmission Committee
  - Budget & Finance Subcommittee
  - GIS Agreement Working Group
  - Others
8. To receive a report on administrative matters.
9. To transact such other business as may properly come before the meeting.

## PRELIMINARY

The annual meeting of the NEPOOL Participants Committee was held beginning at 10:00 a.m. on Friday, December 8, 2017, at the Colonnade Hotel, Boston, Massachusetts, pursuant to notice duly given. A quorum determined in accordance with the Second Restated NEPOOL Agreement was present and acting throughout the meeting. Attachment 1 identifies the members, alternates, and temporary alternates attending the meeting.

Mr. Thomas Kaslow, Chair, presided and Mr. David Doot, Secretary, recorded.

### **EXECUTIVE SESSION: SECTOR FEEDBACK ON ISO NEW ENGLAND BOARD MEMBER SELECTION PROCESS**

The Committee began the meeting in Executive Session to afford Participants an opportunity to provide feedback on the incumbent ISO-NE directors eligible for re-election to the ISO Board of Directors when their terms expire in 2018. Committee members provided their views on those current Board members. Mr. Doot explained that the Participants Committee representatives of the Joint Nominating Committee (JNC) would share feedback that members provided in Executive Session or outside of the meeting with the JNC as appropriate for consideration in recommending a future slate for consideration by the Participants Committee.

### **GENERAL SESSION**

The Committee came out of Executive Session at 10:20 a.m. and was joined by ISO representatives and guests. Mr. Kaslow welcomed the members, alternates and guests who were present, including the ISO Board members Ray Hill and Phil Shapiro and New England State Officials.

### **APPROVAL OF CORRECTIONS TO OCTOBER 13, 2017 MEETING MINUTES AND PRELIMINARY NOVEMBER 3, 2017 MINUTES**

Mr. Doot referred the Committee to corrections to the minutes of the October 13, 2017 meeting and to the preliminary minutes of the November 3, 2017 meeting, as circulated in

advance of the meeting. He explained that the October 13 minutes previously voted on incorrectly reported that the vote on the Installed Capacity Requirement (ICR) and related values for the 2021-22 (FCA12) Capacity Commitment Period, which was greater than 60% but not 66.67%, failed. He referred the Committee to NEPOOL Counsel's memorandum explaining the correction to the reporting ~~and vote spreadsheet~~ to reflect that the motion passed with a 60.63% vote in favor. Following motion duly made and seconded, the corresponding corrections to the minutes of the October 13 meeting, as well as ~~and~~ the preliminary minutes of the November 3 meeting, were unanimously approved.

#### **CONSENT AGENDA**

Mr. Kaslow referred the Committee to the Consent Agenda that was circulated in advance of the meeting. Following motion duly made and seconded, the Consent Agenda was unanimously approved without comment.

#### **ELECTION OF 2018 PARTICIPANTS COMMITTEE OFFICERS**

Mr. Doot referred the Committee to the proposed slate of 2018 NEPOOL Participants Committee Officers circulated and posted in advance of the meeting, explaining that the vote was to ratify the ~~prior~~ votes taken by secret ballot the month before and to elect the Secretary and Assistant Secretary for the following year.

The following motion was duly made, seconded and unanimously approved without discussion:

WHEREAS, Section 4.6 of the Participants Committee Bylaws sets forth procedures for the nomination and election of a Chair and Vice-Chairs of the Participants Committee; and

WHEREAS, pursuant to those procedures the individuals identified in the following resolution were nominated and elected for 2018 to the offices of Chair or Vice-Chair, as set forth opposite their names; and

WHEREAS Section 7.1 of the Second Restated NEPOOL Agreement provides that officers be elected at the annual meeting of the Participants Committee.

NOW, THEREFORE, IT IS

RESOLVED, that the Participants Committee hereby adopts and ratifies the results of the election held in accordance with Section 4.6 of the Bylaws and elects the following individuals for 2018 to the offices set forth opposite their names to serve until their successors are elected and qualified:

Chair	Thomas W. Kaslow
Vice-Chair	Calvin A. Bowie
Vice-Chair	Nancy P. Chafetz
Vice-Chair	Brian E. Forshaw
Vice-Chair	Douglas Hurley
Vice-Chair	Frederick R. Plett
Secretary	David T. Doot
Assistant Secretary	Paul N. Belval

## **2017 NEPOOL ANNUAL REPORT**

Mr. Doot referred the Committee to the 2017 NEPOOL Annual Report, “Seeking Solutions.- Working Together”, that was circulated ~~before the meeting~~ and ~~was~~ posted on the NEPOOL website before the meeting. He noted the active involvement of the Chairman in preparing the Report. He thanked Participant contributors, who had provided information and materials for the Report. He also acknowledged with appreciation the hard work of the Day Pitney team, led by Editor-in-Chief Harold Blinderman with critical support from Pat Gerity and Cindy Jacobs, for their efforts designing, assembling and finalizing the Report with the Chairman’s guidance.

Mr. Doot welcomed and encouraged stakeholder feedback on the Report.

## **REMARKS BY FERC COMMISSIONER NEIL CHATTERJEE**

Mr. Kaslow welcomed FERC Commissioner Neil Chatterjee and introduced him to the Committee. He also welcomed Commissioner Chatterjee’s Legal Advisor, Ms. Mindi Sauter,

and his Strategic Advisor & Communications Director, Ms. Lindsee Gentry, who had both accompanied the Commissioner to New England.

Commissioner Chatterjee expressed appreciation for the chance to meet and speak with New England stakeholders and said he looked forward to collaborating with New England on the challenging issues facing the industry. He reported that, with the swearing in of Chairman McIntyre ~~had recently been sworn in the day before, and that~~ he was beginning his first full day as Commissioner since he began his service on the Commission as the Chairman in August. He said that, since stepping on to the Commission, with the help of a highly dedicated staff, the Commission ~~had~~s successfully worked through a substantial backlog of cases that had accumulated during the time in 2017 without a quorum. He explained that would not have been possible without the planning and work of Commissioners LaFleur and Honorable during that quorum-less time.

He then discussed the Commission's significant effort on the Grid Resiliency Pricing Rule proposed by the Secretary of the Department of Energy (DOE NOPR). He reported on Chairman McIntyre's request to the DOE for a 30-day extension to the December 11 deadline for FERC action on the proposed rule in order to allow the newest Commissioners to consider and engage fully in deliberations. [Secretary's Note: That request was granted by the DOE Secretary later that day, with January 10, 2018 established as the new deadline for FERC action on the DOE NOPR.]

Commissioner Chatterjee then discussed the following key priorities he hoped to work on during his tenure on the Commission:

1. Impact of state policies on wholesale markets. He explained that, but for the DOE NOPR, this would have been his highest priority in the fall.
2. Cyber security. He stressed the importance of staying ahead of potential cyber-security threats to the generation, transmission and distribution of energy. He said this was a growing issue as technological innovation transformed the industry. He

- identified NERC standards as a floor and not the ceiling for actions to take to maximize protections.
3. Transmission policy. He expressed his view that there was an essential need to build out the nation's energy infrastructure. That need required a transmission policy, with appropriate incentives, that would encourage new transmission while protecting consumers.
  4. Support for new technologies. Commissioner Chatterjee ~~offered~~reflected his view that new technology was driving the industry and regulation needed to keep up. He referenced the FERC's efforts in the energy storage rulemaking (RM16-23), opining that it would benefit both resilience and reliability.
  5. Enhancing FERC internal processes. He wanted the FERC to also focus inward and explore ways to improve the stakeholder and pre-filing processes and FERC's own structure.

Commissioner Chatterjee described the new Commission, expressing appreciation and enthusiasm for the mix of perspectives and experiences that each of the Commissioners bring to the agency, and optimism for what the Commission could achieve going forward. Noting that the FERC's responsibilities were inherently technical and not political, he did not foresee a dramatic shift in direction with the new Commission. He referenced his experiences working with the legislative branch, expressing his preference that policy issues and direction be provided by the legislature for many of the complex challenges facing the industry.

Commissioner Chatterjee concluded his remarks by observing the ~~tremendous~~ time of tremendous opportunity for the industry, driven by technological innovation, evolving economics, and changing energy markets. He expressed a desire to work with stakeholders to address the complicated issues facing the industry in a technically sound and legally defensible way, in order to provide needed regulatory clarity and certainty.

Commissioner Chatterjee agreed in response to a question/comment that the Commission must consider the impact on consumers in all actions it takes to address cyber security threats and other reliability matters. He applauded the diligence and thoroughness of the FERC's professional staff in producing technically and legally sound results. He emphasized the

importance of stakeholder input and engagement to his decision making, and noted the importance and encouraged use of the FERC's pre-filing process. He hoped while at the Commission the FERC would be viewed as a quieter agency doing the "boring good", conducting sound processes in reaching its decisions and better explaining in its actions and decisions the policies and reasoning supporting those actions/decisions.

In response to a request for further guidance on how NEPOOL might position itself for priorities in 2018, Commissioner Chatterjee said that, in addition to his priorities, which he hoped the full Commission would embrace, there was also much-needed reform of the Public Utility Regulatory Policies Act (PURPA), clarity on return on equity issues, and further direction to the industry from the Commission's enforcement program. He encouraged stakeholders to remain vigilant in communicating and continuing dialogue with the Commission.

## **ISO CEO REPORT**

Mr. Gordon van Welie, ISO Chief Executive Officer (CEO), reflected on the many challenges to the New England power system and noted that the wholesale markets would continue to evolve in response to many forces being applied by changing state and federal policies, and by the evolution of the technologies for producing and storing electricity. He referred to the ISO's Competitive Auctions with Sponsored Policy Resources (CASPR) Proposal as another step in that evolution. He expressed appreciation for all the hard work that went into developing the CASPR Proposal, all the way back to the Integrating Markets and Public Policy (IMAPP) process started in the Spring of 2016. He acknowledged that the Proposal necessarily chooses from among a number of design objectives that we are fundamentally in tension. He explained that the ISO would be monitoring the effectiveness of this design along with the rest of the wholesale markets and would make adjustments going forward as needed and



appropriate. He expressed his expectation that 2018 would be a challenging year and the issues would be more complex going forward.

He referred the Committee to the summaries of the ISO Board and Board Committee meetings that had occurred since the November 3 Participants Committee meeting, which had been circulated and posted in advance of the meeting. There were no questions or comments on the summaries.

## ISO COO REPORT

Dr. Vamsi Chadalavada, ISO Chief Operating Officer (COO), reviewed highlights from the December COO report, which was circulated in advance of the meeting and posted on the NEPOOL and ISO websites. Focusing on report highlights, which he explained reflected data through November 29, 2017, he reported for November that: (i) Energy Market value was \$336 million, up \$34 million from October 2017 and \$83 million from November 2016; (ii) average natural gas prices were 23% higher than average prices in October 2017; (iii) average Real-Time Hub LMPs (\$33.27/MWh) were 4.9% higher than October 2017 LMPs; (iv) average daily (peak hour) Day-Ahead cleared physical Energy, as a percent of forecasted load, was 98.5% in November, down from 99.4% in October 2017; and (v) daily Net Commitment Period Compensation (NCPC) for November (based on data through November 29, 2017) totaled \$7 million, up \$3.2 million from October and down \$8 million from November 2016. The November 2017 NCPC, which was 2.1% of total Energy Market value, was comprised of (a) \$2.8 million in first contingency payments, which were down \$0.6 million from October, and (b) \$4.2 million in second contingency payments, which were up \$3.9 million from October.

Continuing to focus on the NCPC, Dr. Chadalavada explained that almost all of the second contingency payments were in Northeast Massachusetts and Boston (NEMA), and mostly attributed to the outage reported on in his November report~~last month~~. He said that the line that

was out ~~wais then~~ now back in-service and no further uplift associated with that outage was expected. He reported the Tewksbury Line ~~would~~ be in-service hopefully before the end of ~~2017~~ the year, which ~~would~~ help with ~~the~~ reliability ~~in~~ of NEMA and reduce the need for must-run generation. With the activation of that line, he said that the load level above which Participants ~~could~~ expect must-run generation, absent extraordinary conditions, ~~was~~ ~~approximately would go up to about~~ 20,000 MW. Thus, he ~~wais~~ anticipating fairly minimal uplift in NEMA during routine operations ~~in~~ this winter ~~2017/18~~. In response to questions, he explained that November uplift was caused mostly by limited import capability, with that capability expanding once the Tewksbury Line ~~wais~~ in service, which ~~wais~~ expected to occur on December 20. He said also that some of the NEMA uplift ~~would~~ be reallocated to Regional Network Load.

Dr. Chadalavada reported that the certification of the transmission topology for FCA13 ~~wais~~ nearly complete and ~~would~~ be presented at the January Reliability Committee meeting. Turning to an update ~~on~~ the Winter Reliability Program (Program), he reported that, as of December 1, 86 units had submitted to participate with a total of 3.868 million barrels of oil. Of that oil inventory, 2.867 million barrels would be eligible for compensation under the ~~winter program~~ Program, which reflected a maximum oil program cost exposure of \$29.62 ~~million~~ M (@\$10.33/barrel). He said there was no participation in the liquefied LNG-natural gas pProgram and there were three assets proving 7.5 MW of interruptible capability in the demand response DR-pProgram, which represented a maximum cost exposure of \$23, ~~200~~ K.

He concluded his report referring to the GRIDEX IV exercise, which occurred on November 15 and 16. He explained that drill was a North American-wide electric grid simulation for rReliability cCoordinators, Bbalancing aAuthorities, Transmission Owners and Operators, government entities and industry to respond to a hypothetical physical, cyber and

operational attack on the North American power grid. The simulation was designed to test reactions to low probability, high impact events, including dozens of physical attacks, including two major attacks on the first day simulating the loss of over 6,500 MW of generation, and numerous other simulated physical and cyber attacks on transmission elements. He said that next steps included the following:

- All participants (including those in New England) weare reviewing lessons learned
- New England Lead Planners wouldare meeting December 15 at ISO New England to review lessons learned and draft an “After Action Report”~~on December 15 at ISO New England~~, which he committed to share with the Reliability Committee once finalized, as the ISO did following the GRIDEX III exercise
- NERC wais expected to release an “After Action Report” in spring ~~of~~ 2018
- Corrective actions and lessons learned would be addressed in accordance with individual company~~orporation~~ processes.

## ESTIMATED BUDGET FOR 2018 NEPOOL EXPENSES

Mr. Kenneth Dell Orto, Chair of the Budget & Finance Subcommittee (Subcommittee), referred the Committee to the materials posted in advance of the meeting concerning the estimated budget for 2018 Participant Expenses (a copy of which is included as Attachment 3 to these minutes). He reported that, consistent with past practice, the Subcommittee worked with NEPOOL Counsel, the ISO and NEPOOL’s Independent Financial Advisor to develop the 2018 Budget. He said that the Subcommittee reviewed together and discussed the proposed 2018 Budget and recommended its adoption without objection.

Following motion duly made and seconded, the Committee considered and approved unanimously the following motion without discussion:

RESOLVED, that the Participants Committee adopts the estimated budget for NEPOOL expenses for 2018 as presented at this meeting.

## FTR BOPP FINANCIAL ASSURANCE POLICY CHANGES

Mr. Dell Orto referred the Committee to the materials posted in advance of the meeting concerning changes to the ISO Financial Assurance Policy (FAP) relating to Financial Transmission Rights (FTR) Balance of Planning Period (BoPP) auctions. He reminded the Committee that, in a 2011 FERC filing, the ISO identified BoPP auctions as a key improvement to the FTR markets that it planned to implement after it put in place an arrangement with a third-party exchange to clear all FTR transactions. With a third-party exchange arrangement still hindered by regulatory hurdles, the ISO decided to administer BoPP auctions in the interim. To do so, the ISO worked with the Subcommittee to develop a methodology for incorporating the BoPP auctions into the FTR financial assurance requirements under the FAP. Those changes were supported by the Participants Committee at its December 3, 2016 meeting and filed with the FERC on April 20, 2017 in Docket ER17-1441. Because of concerns with the potential for over-collateralization, which was raised by DC Energy, the ISO withdrew that FERC filing for further stakeholder discussion. The Subcommittee subsequently discussed the proposed changes to the FAP and a number of changes, as outlined in the materials circulated, were proposed to the changes that were presented and supported by the Participants Committee last December.

The following motion was then duly made and seconded:

RESOLVED, that the Participants Committee supports the changes to the ISO FAP relating to the financial assurance requirements for FTR BoPP auctions, as circulated to the Committee and discussed at this meeting, together with such further non-substantive changes as the ISO Chief Financial Officer ~~of ISO New England (ISO)~~ and the ~~Chairman of the~~ Budget & Finance Subcommittee Chairman may approve.

Mr. Bruce Bleiweis of DC Energy reviewed a motion to amend the main motion, as circulated and posted with the meeting materials in advance of the meeting, to modify the standard deviation approach proposed as part of the FAP changes with a percentile approach (95% for long-term auctions) and to include a minimum collateral floor that scales with the size of the portfolio

(5¢/MWh on a month-class portfolio basis). That motion to amend was duly made, seconded and discussed with the Committee. The motion to amend was then voted by a show of hands and was determined to have failed.

The main motion was then voted and passed with opposition by: DC Energy, Direct Energy, NextEra, NRG, Shell, and Texas Retail; and abstentions by: BP, Calpine, CLF, CPV, Dominion, DTE, Emera Energy, Entergy, Galt, IECG, Maine Skiing, ME OPA, Mercuria, NH OCA, PSEG, and the AR Sector Small Renewable Generation Group Seat.

#### **OP-22 REVISIONS (ADDITIONAL PMU INSTALLATIONS FOR RELIABILITY)**

Ms. Mariah Winkler, Reliability Committee Chair, referred the Committee to materials circulated in advance of the meeting concerning revisions to Operating Procedure No. 22 (Disturbance Monitoring Requirements) (OP-22 Revisions). The OP-22 Revisions introduced rules for installing new phasor measurement units (PMU) to improve system reliability. She reported that the Reliability Committee considered the OP-22 Revisions over the course of three meetings and recommended Participants Committee support for the OP-22 Revisions at its November 15 meeting.

The following motion was duly made and seconded:

RESOLVED, that the Participants Committee supports the OP-22 Revisions, as recommended by the Reliability Committee at its November 15, 2017 meeting and as reflected in the materials distributed to the Participants Committee for its December 8, 2017 meeting, together with such non-substantive changes as may be agreed to by the Chair and Vice-Chair of the Reliability Committee.

An Avangrid representative stated that, while Avangrid would support the OP-22 Revisions, he noted a perceived lack of clarity with respect to the allocation of costs for PMU installations and requested that the ISO address those concerns at an upcoming meeting of the Reliability Committee.

The Committee considered and unanimously approved the motion to support the OP-22

Revisions, with abstentions noted by CLF, MA AG and National Grid.

### **CASPR PROPOSAL**

Mr. Alex Kuznecow, Markets Committee Chair, referred the Committee to materials circulated in advance of the meeting concerning revisions to the Forward Capacity Market (FCM) rules proposed by the ISO to implement its CASPR Proposal. He referred to NEPOOL Counsel's memorandum that provided background on the ISO's proposed package of Tariff revisions and information about NEPOOL Technical Committee deliberations on the CASPR subject, including consideration of amendments to the ISO's ~~P~~proposal. He ~~explained~~~~reviewed~~ that, reflecting stakeholder input received through NEPOOL's IMAPP process, the ~~ISO has explained that its~~ CASPR Proposal ~~w~~ais designed conceptually to accommodate, over time, the entry in the FCM of resources ~~that are~~ developed in response to sponsored public policy actions/initiatives, while preserving competitively-based capacity prices for non-sponsored resources. Under the ISO's proposed CASPR design, the ISO would conduct the Forward Capacity Auction (FCA) in two stages. In the first stage (or the primary FCA), existing and new capacity resources would clear based generally on all current FCM rules, including rules designed to mitigate the offers of capacity seeking to offer below competitive levels, including from state-sponsored resources. In the second stage (the Substitution Auction or SA), existing resources that cleared in the primary FCA would be able to transfer their capacity obligations to new Sponsored Policy Resources that did not clear, with the existing resource agreeing to retire early in exchange for a "severance" payment.

Mr. Kuznecow reported that the NEPOOL Markets Committee, following several months of discussion, took a series of votes at its November 8-9, 2017 meeting on the ISO's earlier CASPR proposal and suggested amendments to it. He summarized the nine amendments to the

ISO's proposal that were considered by the Markets Committee, only one of which passed (the NESCOE Proposal). Continuing, he explained that the once-amended main motion did not receive sufficient support needed for a Markets Committee recommendation. The Markets Committee also voted on the ISO's unamended CASPR ~~proposal~~Proposal, which failed with a 27.59% Vote in favor.

Since that meeting, the ISO further considered stakeholder input and ~~sought is now seeking~~ Participants Committee consideration and vote on an updated proposal ~~that was~~ reflected in the ISO's November 30, 2017 memorandum to NEPOOL circulated to members and posted with the materials for the meeting. He summarized that the ~~November 30 ISO~~ proposal modified the ISO's ~~its~~ earlier proposal so as to include the following two stakeholder amendments that were previously considered by the Markets Committee: (1) the FirstLight amendment to limit Substitution Auction capacity transfers between zones (FirstLight Amendment #1); and (2) the Natural Resources Defense Council/Conservation Law Foundation amendment to modify the ISO's earlier proposed definition of a "Sponsored Policy Resource" (NRDC/CLF Amendment).

In addition, Mr. Kuznecow reported that the Reliability Committee and Transmission Committee each separately considered and recommended Participants Committee support for minor conforming revisions to the Definitions section of the Tariff (Section I.2.2.) for the term "Forward Capacity Auction-". Mr. Doot explained that the proposed revision to the Tariff Definitions section was also included in the comprehensive set of Market Rule revisions considered by the Markets Committee and that approval of the ISO's CASPR Proposal (as modified on November 30) would require a 60% NEPOOL Vote by the Participants Committee to pass.

**Main Motion – Modified ISO CASPR Proposal**

The following motion was then duly made and seconded:

RESOLVED, that the Participants Committee supports the revisions to Tariff Section I.2.2. and Section III of Market Rule 1 relating to the CASPR subject, as proposed by ISO New England in the package circulated to this Committee with the December 1, 2017 supplemental notice, together with such non-substantive changes as may be approved by the Chair and Vice-Chair of the Markets Committee.

Mr. Doot reviewed that, consistent with past practice, if sponsors of amendments previously rejected by a Technical Committee decided not to advance those amendments for vote by the Participants Committee but later advocated d in support of them at FERC, neither NEPOOL nor the ISO would raise procedural concerns at the FERC based on the failure to submit the amendments for a Participants Committee vote.

The intent of the NRDC/CLF amendment incorporated into the ISO CASPR Proposal was clarified in response to questions by NESCOE's representative. That intent was to limit the scope of supply eligibility in the Substitution Auction only to those resources that would appropriately be considered renewable resources or clean energy resources pursuant to a statute or regulation in a New England Sstate in place by January 1, 2018 that provides out-of-market revenue to such a renewable or clean energy resource. The ISO explained that, to qualify as a Sponsored Policy Resource, the resource would be required to submit during the Show--of-Interest period as part of its new capacity qualification package documentation, d demonstrating that the resource satisfies the criteria specified in the Tariff definition. Based on that information, the ISO would also evaluate whether a resource receives sponsored out-of-market revenues for purposes of estimating a resource's Offer Review Trigger -Price for the relevant FCA. Continuing, the ISO clarified that the definition wais intended to limit resources eligible for the Substitution Auction only to those MW of renewable and/or clean energy procured in the particular New England state pursuant to statutes and regulations in effect for that state as of January 1, 2018. If Sstates later seek to procure clean or renewable energy pursuant to changes in its statutes or regulations that occur after



January 1, 2018, the ISO would work with the Sstate(s) and stakeholders to consider subsequent changes to the definition of Sponsored Policy Resource to accommodate such policy change(s).

Stakeholders sought further clarification about the ISO's intent for identifying Sponsored Policy Resources. The ISO explained in response to a specific example that a resource providing energy in a sState that does not currently have statutes or regulations on its books on January 1 for the sponsored procurement of large-scale hydro would not qualify as a Sponsored Policy Resource in that sState. If the sState changes its law so that such procurement would be permissible effective January 2, 2018, it still would not qualify as a Sponsored Policy Resource unless or until the Tariff definition was adjusted ~~in the Tariff language~~. Any such Tariff change, if voluntary, would need to be made under Section 205 of the Federal Power Act, preceded by full review and consideration through the complete stakeholder process. The ISO also noted that, if there was disagreement on whether a Tariff change was warranted, a party ~~could~~ file a Section 206 complaint at the FERC to have changes ordered to the Tariff.

In response to this discussion, some representatives expressed concern with the possibility of a broader definition for Sponsored Policy Resources in the future, arguing for certainty in the definition in order to assess risk and exposure. The ISO responded that NEPOOL and the ISO ~~had~~ve a history of working through a similar issue with Standard Market Design, and the result was agreement on the treatment for renewable resources that was still part of the Tariff rules ~~today~~. While there was a clear ISO desire to have a definition that would work no matter how technology might evolves, ~~the~~ ISO recognized~~s~~ the difficulty predicting what the future may hold and decided in its proposal to include a definition of Sponsored Policy Resource that would apply to those resources that weare already specifically contemplated ~~today~~. The ISO ~~would~~ remain open to adjusting based on new information and circumstances but decided it preferable to limit the scope of supply eligibility in the Substitution Auction to current knowledge and circumstances.

The ISO also clarified in response to another question that the modified language of Sponsored Policy Resource included in ISO's final CASPR Proposal would exclude fossil fuel resources.

A member requested that the ISO accelerate to earlier in the year its commitment to consider mitigation rules for demand bids in the Substitution Auction (referred to in materials as Calpine Amendment #1) in order to ensure implementation in time for FCA14. ISO responded that it intended to have such mitigation rules in place for FCA14 and would time its efforts to help ensure that outcome.

### ***Public Power Amendment***

A Public Power representative ~~of Public Power~~ referred the Committee to a proposed motion to amend the CASPR Proposal (referred to in the Committee materials as the Public Power Amendment) and supporting materials that had been circulated and posted with the meeting materials. He summarized those materials, explaining that the Public Power Amendment would amend the proposed definition of "Sponsored Policy Resource" to restore it to the definition previously advocated by ISO at the November 8 Markets Committee meeting, before its November 30, 2017 changes. He explained that Public Power was very concerned with all of the late changes the ISO had made to its earlier CASPR Proposal, but some in the Publicly Owned Entity Sector were willing to support that Proposal if the definition of Sponsored Policy Resource was amended as requested.

A motion to amend the main motion was then duly made and seconded to change the definition of Sponsored Policy Resource to read as follows:

**Sponsored Policy Resource** is a New Capacity Resource that is either: (i) developed pursuant to a requirement of a New England state's law, or at the direction of a New England state electric utility regulatory authority or energy department, or meets the eligibility requirements of a New England States' renewable portfolio standard or similar standard, or alternatively; (ii) designated as a Self-Supplied FCA Resource by a municipal utility (acting individually, or jointly with other municipal utilities, including through a joint action agency) or by a cooperatively owned electric utility.

In discussing the motion to amend and responding to questions, the Public Power representative explained that those he represented were not satisfied with assurance that the ISO would remain open to modifying the definition in the future to accommodate changes in circumstances because such a commitment provided no assurance of whether or when any definitional change would be made. Some representatives spoke in opposition to the motion to amend, arguing that a broader definition might reduce the opportunity for the Sstates to bring into the FCM sponsored resources that were acquired for consumers in their Sstate pursuant to ~~er~~ the requirements of sState law and/or regulation. Continuing, they argued that resources such as storage facilities ~~could an~~ and should be covered under the competitive wholesale markets, and expanding the definition of Sponsored Policy Resource to provide special treatment for such resources would undermine competitive and efficient market operation.

Following discussion, the Committee then considered and failed to approve by a show of hands vote the Public Power ~~Amendment~~ ~~motion to amend the main motion by a show of hands~~ ~~vote~~.

### ***Unamended Main Motion***

Returning to discussion of the unamended main motion, the NESCOE representative asked the ISO to explain the impact of limiting inter-zonal capacity transfers in the Substitution Auction on the ability to meet its Ddesign Objective #2, which was to accommodate the entry of Sponsored Policy Resources into the FCM over time. In response, an ISO representative explained that the ISO worked hard to balance design objectives that were in tension with each other. He explained that the ISO did think Ddesign Objective #2 could be achieved over time, and agreeing to limit inter-zonal transfers would advance Ddesign Objectives #1 and #3, which weare to ensure competitively--based capacity market prices and to make sure that consumers in one state would are not paying ing for the policies of another state.

The ISO was asked what its plans were more broadly given discussions in the IMAPP process for more holistic, “achieve”-style proposals to better integrate policy objectives into the wholesale market. The ISO responded that it intended to hold off for now while waiting on the FERC’s response to the ISO’s CASPR Proposal.

The NESCOE representative read a statement on behalf of the six New England states reflecting their concerns s described below with the ISO’s final CASPR Proposal and the related stakeholder process/efforts in considering CASPR. [*Secretary’s note: the statement as read has been provided to NEPOOL and is posted with the meeting materials.*] In general the statement reviewed the history of the effort from NESCOE’s perspective, expressed disappointment that there was not a consensus proposal, and expressed appreciation for the efforts of NEPOOL members and ISO technical staff. NESCOE explained it was disheartened by the ISO’s late changes to its proposal, which it viewed as being issued with little notice or explanation, particularly in light of the Sstates’ uniform opposition on a stand-alone basis to the amendments accepted in the CASPR Proposal. They were unhappy with that late break in process and explained that effort would be required to restore trust and the willingness of Sstates to work within the stakeholder process. With that background, the NESCOE representative reported that three of the six Sstates continued to support the CASPR Proposal primarily because it could accommodate renewable resources that currently did not qualify for exemption from the Minimum Offer Price Rule under the Renewable Technology Resource (RTR) exemption and/or is not harmful to their consumers. Three states reportedly opposed the ISO’s CASPR Proposal primarily because it eliminated s the RTR exemption after FCA15 without a backstop and it reduced s liquidity in the Substitution Auction by accepting the limits in inter-zonal substitution. In short, those states were not persuaded that CASPR improved on the status quo. The

conclusion of the statement reflected a criticism of the ISO's decision to deviate from its commitment to resource neutrality.

The Chairman followed these comments by thanking the State ~~e~~Officials and NESCOE staff for working hard to try to reach broad consensus on CASPR. He also ~~thanks~~ thanked ISO staff who he remarked ~~were~~ as fully engaged and very instrumental in facilitating more productive discussions with the ~~S~~states throughout ~~this~~ the CASPR process. Many others in comments expressed appreciation for the process and the diligent efforts to find consensus.

Among those indicating their opposition to the CASPR Proposal, the NRG representative advocated again in support of its proposed two-tier pricing construct as a better and more equitable way to approach this problem. NRG, while appreciative of the work of ISO staff and other stakeholders and supportive of the central design elements of CASPR, opposed the CASPR Proposal for other reasons, including that it (i) continued the RTR~~Θ~~ exemption, (ii) ~~suggested~~ sthe possibility of future mitigation, unnecessary in NRG's view, that would make participation on the demand side more difficult, (iii) ~~the failure~~ dof the CASPR Proposal to address the adverse impact that Sponsored Policy Resources ~~would~~ have in the capacity markets in subsequent capacity auctions and on other markets, and (iv) included the possibility that the definition of Sponsored Policy Resource ~~might~~ ay be regularly or routinely updated based on ever-evolving state-sponsored activity.

Also in opposition for Connecticut, ~~the~~ a Connecticut representative expressed substantial concern that the CASPR Proposal would be filed without definitively allowing Connecticut ~~F~~ to qualify large-scale hydro in the Substitution Auction that it may decide to procure through existing or future state law or regulations.

Among other concerns reported to be ~~that were~~ driving opposition, an End User representative suggested the vote be delayed until Congress finalized ~~the~~ tax legislation then

under development, which was viewed as having the possibility to ~~ean~~ substantially impact the industry generally and renewables in particular. A public power representative expressed concern that the Proposal would ~~it~~ not support the addition of smaller resources in the market that would ~~are~~ not otherwise be economic to be built as ~~by~~ merchant- ~~facilities~~ ~~and merchant~~ ~~players~~. A number of members indicated their opposition was based in part on the future elimination of the RTR exemption and the failure of the Proposal to include a back-stop mechanism, which some viewed as important to assuring a future acceptable outcome. A representative of members of the AR Sector explained their opposition was based on ~~because the Proposal because, in~~ their view that the Proposal, ~~it~~ would not provide the type of investor certainty that is ~~was~~ needed to support the addition of clean energy ~~on~~ to the system. Concern was also expressed that the Substitution Auction would be potentially illiquid because of the adoption of limits on inter-zonal transfers.

Those who supported the ~~proposal~~ Proposal also explained the reasons for their support. In general, they viewed the CASPR Proposal as an improvement over status quo and correctly ~~is~~ properly tailored narrowly to address particular concerns in the markets that ~~are~~ were arising or threatened from the future addition of substantial state-sponsored resources ~~to~~ on the grid. The Proposal ~~it~~ was described by one supporter as a reasonable attempt to preserve competitive markets that, in the end, might not survive continued interference. The ~~proposal~~ Proposal was also characterized as a sound means to mitigate harm that would ~~it~~ occur if markets ~~did~~ not accommodate S ~~s~~ state efforts to expand renewable resources on the grid. Many argued that further work would likely be needed, which could ~~an~~ be accomplished with the benefit of evolving facts. Another representative explained that the CASPR Proposal struc ~~uc~~ ikes a reasonable balance in accommodating S ~~s~~ states' initiatives while minimizing the impact on the markets. Many expressed support for how the p ~~P~~ Proposal sought ~~teeks~~ to support reasonable price formation in

FCM and for the late changes that addressed concerns they had with a very broad definition of Sponsored Policy Resources.

Numerous members, referencing many of the same points raised both by those supporting and opposing the CASPR Proposal, explained that they would abstain rather than vote in favor or against the Proposal. They generally saw the Proposal as improving status quo but were disappointed that it did not make specific additional changes that they sought.

On behalf of the ISO, Dr. Chadalavada offered final comments for the ISO. He expressed appreciation for the feedback. He stated that the ISO always seeks to act in good faith and ~~The ISO~~ takes seriously its responsibilities to ensure that the markets work, both in the present ~~now~~ and in the future, and to ensure that, to the extent improvements are warranted, the ISO ~~will~~ worked to make those improvements. He emphasized that, ~~The ISO has~~ demonstrated ~~by the~~ with FCM, the Energy markets and the Ancillary Services markets, the ISO ~~would~~ that they take the necessary time to put ~~those~~ markets in place, they continuously assess ~~market~~ the performance ~~of the markets~~, and based on experiences and lessons learned, they seek to make improvements when and as appropriate. ~~He went on to observe that ISO took from 2005 to 2010 to implement FCM, and the ISO has made numerous and material changes to the market since it was first introduced based on its experiences with the market.~~ Thus, for the ISO, the CASPR Proposal ~~would be~~ is the beginning of a process, and the ISO ~~would~~ continue to evaluate the competing objectives and whether it ~~had~~ achieved the best balance among those objectives. He stated that, with CASPR, the ISO ~~avored~~ was biased towards price formation as the best means for the market to address a very uncertain future. He assured members and the ~~S~~ states that the ISO ~~would~~ make adjustments if ~~the~~ results showed ~~of~~ the CASPR Proposal ~~is that it failed~~ to accommodate the ~~S~~ state policies. His expressed hope was that necessary improvements over time would be much more limited and capable of being identified and implemented quickly. He

committed the ISO to reach out individually to those concerned with the process ~~herethat~~ resulted in the CASPR Proposal, as the ISO highly valued~~s~~ the importance of strong, positive relationships with stakeholders and the ~~S~~states, which he view~~ed~~eds as critical ~~to~~in working through the many challenges the region faces. He committed that the ISO would monitor the effectiveness of this market structure, and encouraged anyone with concerns about the ISO's decisions reflected in its CASPR Proposal to contact the ISO for explanation. He acknowledged that some of the late decisions illustrated the ISO's internal struggles related to ~~within the ISO~~ ~~because of~~ the competing objectives inherent in the CASPR Proposal.

The Committee considered the main motion, which failed to pass with a 57.75% Vote in favor (Generation Sector – 14.82%; Transmission Sector – 15.18%; Supplier Sector – 14.47%; AR Sector – 10.32%; Publicly Owned Entity Sector – 0%; End User Sector – 2.85%; and Provisional Member Group – 0.11%). (See Vote 1 on Attachment 2).

## **LITIGATION REPORT**

Mr. Doot referred the Committee to the December 6 Litigation Report that had been circulated and posted in advance of the meeting. He noted an overall increase in the level of activity at the FERC. He highlighted a complaint filed by Clear River Energy Center seeking changes to Schedule 11 of the OATT and related Tariff provisions that address cost recovery for operating and maintenance associated with large generator interconnection-related network upgrades. He also noted the expected activity in the proposed Grid Resiliency Pricing Rule proceeding (DOE NOPR), as described earlier in the meeting.

## **COMMITTEE REPORTS**

Given the lateness of the hour, there were no committee reports.

## **OTHER BUSINESS**



Mr. Doot reported that the next Participants Committee meeting, ~~which is~~ scheduled to take place on January 5, 2018, ~~and~~ would be held by teleconference. He noted that, as announced, there would be a membership orientation following the meeting and encouraged members, new and old, interested in additional information and insight on membership and stakeholder process issues, to participate.

Mr. Kaslow wished everyone a happy holiday season.

There being no further business, the meeting adjourned at 2:30 p.m.

Respectfully submitted,

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David T. Doot, Secretary

**PARTICIPANTS COMMITTEE MEMBERS AND ALTERNATES  
PARTICIPATING IN  
DECEMBER 8, 2017 MEETING**

PARTICIPANT NAME	SECTOR/ GROUP	MEMBER NAME	ALTERNATE NAME	PROXY
American PowerNet Management	Supplier			Mary Smith
AR Small Load Response (LR) Group Member	AR-LR	Doug Hurley	Brad Swalwell	
AR Small <u>Renewable Generation (RG)</u> Group Member	AR-RG	Erik Abend (tel)		
Ashburnham Municipal Light Plant	Publicly Owned		Brian Thomson	
Associated Industries of Massachusetts	End User			Roger Borghesani
AVANGRID: CMP/UI	Transmission		Alan Trotta	
AVANGRID: Avangrid Renewables	Transmission	Adam Sokolski (tel)		
Belmont Municipal Light Department	Publicly Owned		Dave Cavanaugh	
Block Island Power Company	Supplier	Dave Cavanaugh		
Boylston Municipal Light Department	Publicly Owned		Brian Thomson	
BP Energy Company	Supplier			Nancy Chafetz
Braintree Electric Light Department	Publicly Owned			Dave Cavanaugh
Brookfield Energy Marketing	Supplier	Aleksandar Mitreski (tel)		Michelle Gardner
Bucksport Generation	Generation			Matt Suhr, Rebecca Hunter
Calpine Energy Services, LP	Supplier	John Flumerfelt	Brett Kruse	Bill Fowler
Chester Municipal Light Department	Publicly Owned		Dave Cavanaugh	
Chicopee Municipal Lighting Plant	Publicly Owned			
CLEAResult Consulting, Inc.	AR-DG	Doug Hurley		
Competitive Energy Services, LLC	Supplier			Glenn Poole
Concord Municipal Light Plant	Publicly Owned		Dave Cavanaugh	
Connecticut Municipal Electric Energy Coop. (CMEEC)	Publicly Owned	Brian Forshaw		
Conn. Office of Consumer Counsel	End User		Joe Rosenthal	Dave Thompson
Conservation Law Foundation ( <u>CLF</u> )	End User	David Ismay		
Consolidated Edison Energy, Inc. (ConEd)	Supplier	Jeff Dannels		
CPV Towantic, LLC	Generation	Dan Pierpont		
Cross-Sound Cable Company (CSC)	Supplier		Jose Rotger	
Danvers Electric Division	Publicly Owned		Dave Cavanaugh	
DC Energy, LLC	Supplier	Bruce Bleiweis		
Direct Energy Business, LLC	Supplier	Ron Carrier		Nancy Chafetz
Dominion Energy Generation Marketing, Inc.	Generation	Michael Purdie		
DTE Energy Trading, Inc.	Supplier			Nancy Chafetz
Dynergy Marketing and Trade, LLC	Supplier		Carol Holahan	Bill Fowler
Elektrisola, Inc.	End User		Gus Fromuth	
Emera Maine	Transmission			Calvin Bowie
Emera Energy Services	Transmission	Sandi Hennequin	Mike Cook	Bill Fowler
EnerNOC, Inc.	AR-LR	Sarah Griffiths		Doug Hurley
ENGIE Energy Marketing NA, Inc.	Generation	Joe Dalton		
Entergy Nuclear Power Marketing, LLC	Generation	Ken Dell Orto		Bill Fowler
Environmental Defense Fund	End User	Liz Delaney	N. Jonathan Peress	
Eversource Energy	Transmission	James Daly	Calvin Bowie	Vandan Divatia
Exelon Generation Company	Supplier	Steve Kirk	Bill Fowler	
Fairchild Semiconductor Corporation	End User	Gus Fromuth		
FirstLight Power Resources Management	Generation	Tom Kaslow		
Galt Power, Inc.	Supplier	Nancy Chafetz		
Generation Group Member	Generation	Dennis Duffy	Abby Krich	Bob Stein
Georgetown Municipal Light Department	Publicly Owned		Dave Cavanaugh	
Great River Hydro, LLC	AR-RG			Bill Fowler
Groton Electric Light Department	Publicly Owned		Brian Thomson	
Groveland Electric Light Department	Publicly Owned		Dave Cavanaugh	
H.Q. Energy Services (U.S.) Inc.	Supplier	Louis Guilbault	Bob Stein	Abby Krich

**PARTICIPANTS COMMITTEE MEMBERS AND ALTERNATES  
PARTICIPATING IN  
DECEMBER 8, 2017 MEETING**

PARTICIPANT NAME	SECTOR/ GROUP	MEMBER NAME	ALTERNATE NAME	PROXY
Harvard Dedicated Energy Limited	End User	Mary Smith		Roger Borghesani; Paul Peterson; Doug Hurley
High Liner Foods (USA) Incorporated	End User		William P. Short III	
Hingham Municipal Lighting Plant	Publicly Owned		Dave Cavanaugh	
Holden Municipal Light Department	Publicly Owned		Brian Thomson	
Hull Municipal Lighting Plant	Publicly Owned		Brian Thomson	
Industrial Energy Consumer Group <u>(IECG)</u>	End User	Donald Sipe		
Invenergy Energy Management LLC	Generation	Maggie Pakula (tel)		
Ipswich Municipal Light Department	Publicly Owned		Brian Thomson	
Jericho Power, LLC	AR-RG			Nancy Chafetz
Littleton (MA) Electric Light and Waster Department	Publicly Owned		Dave Cavanaugh	
Long Island Lighting Company (LIPA)	Supplier		William Killgoar	
Maine Power LLC	Provisional Member	Jeff Jones		
Maine Public Advocate Office <u>(ME OPA)</u>	End User			Paul Peterson
Mansfield Municipal Electric Department	Publicly Owned		Brian Thomson	
Marblehead Municipal Light Department	Publicly Owned		Brian Thomson	
Marble River , LLC	Supplier			Abby Krich
Massachusetts Attorney General's Office (MA AG)	End User	Fred Plett	Christina Belew	
Mass Development Finance Agency	Publicly Owned		Dave Cavanaugh	
Mass. Municipal Wholesale Electric Company	Publicly Owned	Brian Thomson		
Mercuria Energy America, Inc.	Supplier			Nancy Chafetz
Merrimac Municipal Light Department	Publicly Owned		Dave Cavanaugh	
Middleborough Gas & Electric Department	Publicly Owned		Brian Thomson	
Middleton Municipal Electric Department	Publicly Owned		Dave Cavanaugh	
National Grid	Transmission	Tim Brennan	Tim Martin	
Natural Resources Defense Council <u>(NRDC)</u>	End User	Bruce Ho		
Nautilus Power, LLC	Generation		Bill Fowler	
New Hampshire Electric Cooperative (NHEC)	Publicly Owned	Steve Kaminski		Brian Forshaw Brian Callnan (tel)
New Hampshire Office of Consumer Advocate <u>(NH OCA)</u>	End User	Paul Peterson		
NextEra Energy Resources, LLC	Generation	Michelle Gardner	Chris Sherman	
NRG Power Marketing LLC	Generation		Pete Fuller	
Pascoag Utility District	Publicly Owned		Dave Cavanaugh	
Paxton Municipal Light Department	Publicly Owned		Brian Thomson	
Peabody Municipal Light Department	Publicly Owned		Brian Thomson	
PowerOptions, Inc.	End User	Cindy Arcate		
Princeton Municipal Light Department	Publicly Owned		Brian Thomson	
PSEG Energy Resources & Trade LLC	Supplier	Joel Gordon		
Reading Municipal Light Department	Publicly Owned			Brian Forshaw
Repsol Energy North America Company	Gas Industry Part.		Nancy Chafetz	
Rowley Municipal Lighting Plant	Publicly Owned		Dave Cavanaugh	
Russell Municipal Light Dept.	Publicly Owned		Brian Thomson	
Saint Anselm College	End User	Gus Fromuth		
Shell Energy North America (US), L.P.	Supplier	Matt Picardi (tel)		
Shipyards Brewing LLC	End User	Gus Fromuth	Stacy Dimou	
Shrewsbury Electric & Cable Operations	Publicly Owned		Brian Thomson	
South Hadley Electric Light Department	Publicly Owned		Brian Thomson	
South Jersey Energy Company	Supplier			Nancy Chafetz
Sterling Municipal Electric Light Department	Publicly Owned		Brian Thomson	
Stored Solar J&WE, LLC	AR			Matt Suhr
Stowe Electric Department	Publicly Owned		Dave Cavanaugh	
Taunton Municipal Lighting Plant	Publicly Owned		Dave Cavanaugh	

**PARTICIPANTS COMMITTEE MEMBERS AND ALTERNATES  
PARTICIPATING IN  
DECEMBER 8, 2017 MEETING**

<b>PARTICIPANT NAME</b>	<b>SECTOR/ GROUP</b>	<b>MEMBER NAME</b>	<b>ALTERNATE NAME</b>	<b>PROXY</b>
Templeton Municipal Lighting Plant	Publicly Owned		Brian Thomson	
Texas Retail, LLC	Supplier	Chris Hendrix		
The Energy Consortium	End User	Roger Borghesani	Mary Smith	Paul Peterson, Fred Plett Doug Hurley
Union of Concerned Scientists	End User		Francis Pullaro	
Utility Services Inc.	End User			Paul Peterson
Vermont Electric Power Company	Transmission			Shana Louiselle (tel)
Vermont Energy Investment Corporation	AR-LR		Doug Hurley	
Vermont Public Power Supply Authority	Publicly Owned			Brian Forshaw
Verso Energy Services LLC	Generation	Glenn Poole		
Wakefield Municipal Gas & Light Department	Publicly Owned		Brian Thomson	
Wallingford DPU Electric Division	Publicly Owned		Dave Cavanaugh	
Wellesley Municipal Light Plant	Publicly Owned		Dave Cavanaugh	
West Boylston Municipal Lighting Plant	Publicly Owned		Brian Thomson	
Westfield Gas & Electric Department	Publicly Owned		Dave Cavanaugh	
Wheelabrator North Andover Inc.	AR-RG	Bill Fowler		
Z-TECH, LLC	End User		Gus Fromuth	

**NEPOOL PARTICIPANTS COMMITTEE  
VOTES TAKEN AT  
DECEMBER 8, 2017 MEETING**

**TOTAL**

Sector/Group	Vote 1
GENERATION	14.82
TRANSMISSION	15.18
SUPPLIER	14.47
ALTERNATIVE RESOURCES	10.32
PUBLICLY OWNED ENTITY	0.00
END USER	2.85
PROVISIONAL MEMBERS	0.11
% IN FAVOR	57.75

**GENERATION SECTOR**

Participant Name	Vote 1
Bucksport Generation	F
CPV Towantic, LLC	A
Dominion Energy Gen. Marketing	F
ENGIE Energy Marketing NA, Inc.	F
Entergy Nuclear Power Marketing	F
FirstLight Power Res. Management	F
Generation Group Member	0.67
Invenergy Energy Management LLC	A
Kleen Energy Systems, LLC	F
Nautilus Power, LLC	F
NextEra Energy Resources, LLC	A
NRG Power Marketing, LLC	O
Verso Energy Services LLC	F
IN FAVOR (F)	8.67
OPPOSED (O)	1.33
TOTAL VOTES	10.00
ABSTENTIONS (A)	3

**TRANSMISSION SECTOR**

Participant Name	Vote 1
AVANGRID (CMP/UI)	S
Central Maine Power	F
United Illuminating	O
Avangrid Renewables	O
Emera	S
Emera Maine	F
Emera Energy Services Subs.	F
Eversource Energy	F
National Grid	F
Vermont Electric Power Co.	A
IN FAVOR (F)	3.55
OPPOSED	0.45
TOTAL VOTES	4.00
ABSTENTIONS (A)	1

**ALTERNATIVE RESOURCES SECTOR**

Participant Name	Vote 1
Renewable Generation Sub-Sector	
Great River Hydro, LLC	F
Jericho Power LLC	O
Stored Solar J&WE	F
Wheelabrator North Andover Inc.	F
Small RG Group Member	A
Distributed Generation Sub-Sector	
CLEARResult Consulting, Inc.	O
Load Response Sub-Sector	
EnerNOC, Inc.	F
VT Energy Investment Corp.	A
Small LR Group Member	S
Energy Federation Inc.	A
Tangent Energy Solutions, Inc.	F
IN FAVOR (F)	4.5
OPPOSED (O)	2.0
TOTAL VOTES	6.5
ABSTENTIONS (A)	2.5

**SUPPLIER SECTOR**

Participant Name	Vote 1
American PowerNet Management, LP	A
Block Island Power Company	A
BP Energy Company	F
Brookfield Energy Marketing Inc.	F
Calpine Energy Services	F
Competitive Energy Services, LLC	F
Consolidated Edison Energy, Inc.	A
Cross-Sound Cable Company	A
DC Energy, LLC	--
Direct Energy Business, LLC	F
DTE Energy Trading, Inc.	A
Dynegy Marketing and Trade, LLC	F
Exelon Generation Company	F
Galt Power, Inc.	F
H.Q. Energy Services (U.S.) Inc.	A
Long Island Power Authority (LIPA)	A
Marble River, LLC	O
Mercuria Energy America, Inc.	A
PSEG Energy Resources & Trade	F
Shell Energy North America	F
South Jersey Energy Companies	F
Texas Retail, LLC	O
IN FAVOR (F)	11
OPPOSED	2
TOTAL VOTES	13
ABSTENTIONS (A)	8

**NEPOOL PARTICIPANTS COMMITTEE  
VOTES TAKEN AT  
DECEMBER 8, 2017 MEETING**

**PUBLICLY OWNED ENTITY SECTOR**

<b>Participant Name</b>	<b>Vote 1</b>
Ashburnham Municipal Light Plant	O
Belmont Municipal Light Dept.	O
Boylston Municipal Light Dept.	O
Braintree Electric Light Dept.	O
Chester Municipal Light Dept.	O
Chicopee Municipal Lighting Plant	O
Concord Municipal Light Plant	O
Conn. Mun. Electric Energy Coop.	O
Danvers Electric Division	O
Georgetown Municipal Light Dept.	O
Groton Electric Light Dept.	O
Groveland Electric Light Dept.	O
Hingham Municipal Lighting Plant	O
Holden Municipal Light Dept.	O
Holyoke Gas & Electric Dept.	O
Hull Municipal Lighting Plant	O
Ipswich Municipal Light Dept.	O
Littleton (MA) Electric Light Dept.	O
Mansfield Municipal Electric Dept.	O
Marblehead Municipal Light Dept.	O
Mass. Development Finance Agency	O
Mass. Municipal Wholesale Electric Co.	O
Merrimac Municipal Light Dept.	O
Middleborough Gas & Elec. Dept.	O
Middleton Municipal Electric Dept.	O
New Hampshire Electric Coop.	O
Pascoag Utility District	O
Paxton Municipal Light Dept.	O
Peabody Municipal Light Plant	O
Princeton Municipal Light Dept.	O
Reading Municipal Light Dept.	O
Rowley Municipal Light Plant	O
Russell Municipal Light Dept.	O
Shrewsbury's Electric & Cable Ops.	O
South Hadley Electric Light Dept.	O
Sterling Mun. Elec. Light Dept.	O
Stowe (VT) Electric Dept.	O
Taunton Municipal Light Plant	O
Templeton Mun. Lighting Plant	O
VT Public Power Supply Authority	O
Wakefield Mun. Gas & Light Dept.	O
Wallingford, Town of	O
Wellesley Municipal Light Plant	O
West Boylston Municipal Lighting Plant	O
Westfield Gas & Electric Light Dept.	O
IN FAVOR (F)	0
OPPOSED	45
TOTAL VOTES	45
ABSTENTIONS (A)	0

**END USER SECTOR**

<b>Participant Name</b>	<b>Vote 1</b>
Associated Industries of MA	A
Conn. Office of Consumer Counsel	O
Conservation Law Foundation	O
Elektrisola, Inc.	O
Environmental Defense Fund	O
Fairchild Semiconductor Corp.	O
Harvard Dedicated Energy Limited	A
High Liner Foods (USA) Inc.	O
Industrial Energy Consumer Group	F
Maine Public Advocate's Office	O
Maine Skiing, Inc.	F
Mass. Attorney General's Office	O
Natural Resources Defense Council	O
NH Office of Consumer Advocate	O
PowerOptions, Inc.	F
Shipyards Brewing Co., LLC	O
St. Anselm	O
The Energy Consortium	A
Union of Concerned Scientists	O
Utility Services, Inc.	O
Z-TECH, LLC	O
IN FAVOR (F)	3
OPPOSED	15
TOTAL VOTES	18
ABSTENTIONS (A)	3

**PROVISIONAL MEMBERS**

<b>Participant Name</b>	<b>Vote 1</b>
Maine Power LLC	F
IN FAVOR (F)	1
OPPOSED	0
TOTAL VOTES	1
ABSTENTIONS (A)	0

**ESTIMATED 2018 NEPOOL BUDGET COMPARED TO  
2017 NEPOOL BUDGET AND 2017 PROJECTED ACTUAL EXPENSES**

<u>Line Items</u>	<u>2018 Proposed Budget</u>	<u>2017 Approved Budget</u>	<u>2017 Current Forecast</u>
NEPOOL Counsel Fees (1)	\$3,850,000	\$3,850,000	\$3,750,000
NEPOOL Counsel Disbursements (1)	\$ 40,000	\$ 45,000	\$ 30,000
Independent Financial Advisor Fees and Disbursements (2)	\$ 40,000	\$ 40,000	\$ 37,000
Committee Meeting Expenses (3)	\$ 700,000	\$ 675,000	\$ 684,000
Generation Information System (4)	\$ 800,000	\$1,100,000	\$1,034,000
Credit Insurance Premium (3)	\$ 400,000	\$ 350,000	\$ 400,000
NEPOOL Audit Management Subcommittee (“NAMS”) Consultant	\$ 0	\$ 0	\$ 0
<b>SUBTOTAL EXPENSES</b>	<b>\$5,830,000</b>	<b>\$6,060,000</b>	<b>\$5,935,000</b>
 <b><u>Revenue</u></b>  			
NEPOOL Membership Fees (3) (5)	(\$1,945,000)	(\$1,900,000)	(\$2,016,000)
Generation Information System (4) (6)	(\$ 800,000)	(\$1,100,000)	(\$1,034,000)
Credit Insurance Premium (3) (7)	<u>(\$ 400,000)</u>	<u>(\$ 350,000)</u>	<u>(\$ 400,000)</u>
<b>TOTAL REVENUE</b>	<b>(\$3,145,000)</b>	<b>(\$3,350,000)</b>	<b>(\$3,450,000)</b>
<b>TOTAL NEPOOL EXPENSES</b>	<b>\$2,685,000</b>	<b>\$2,710,000</b>	<b>\$2,485,000</b>

Notes

- (1) 2018 proposed estimate provided by Day Pitney LLP, NEPOOL counsel.
- (2) 2018 proposed estimate provided by Michael M. Mackles, NEPOOL's Independent Financial Advisor.
- (3) 2018 proposed estimate provided by ISO New England Inc. ("ISO").
- (4) 2018 proposed estimate based on estimate provided by APX during contract negotiations using reduced rates under Amended and Restated Generation Information System ("GIS") Administration Agreement.
- (5) The 2018 proposed estimate is based on the 2017 actual receipts through October 2017, plus a forecast for new members for the remainder of the year. The breakdown for the proposed budget is approximately: 365 members at \$5,000 each, 30 members at \$1,000 each, 20 members at \$500 each, 15 members at \$1,500 each and approximately 30 members of large end users and MPEU's. This estimate takes into account the terminations throughout the year.
- (6) GIS costs, other than those associated with accessing the GIS through the application programming interface ("API") are paid by "GIS Participants" under Allocation of Costs Related to Generation Information System, which was approved by the NEPOOL Participants Committee on June 21, 2002. GIS costs associated with accessing the GIS through the API are paid by the GIS account holders using that API.
- (7) Credit insurance premium is paid by Qualifying Market Participants according to methodology described in Section IX of the ISO Financial Assurance Policy.



## CONSENT AGENDA

From the notice of actions of the *December 19, 2017 Reliability Committee*<sup>1</sup> meeting, dated December 19, 2017, which has been previously circulated:

### **1. Revisions to OP-7 (Annual Review Revisions)**

Support revisions to Operating Procedure No. 7 (Action in an Emergency) (OP-7) reflecting annual review-incorporating revisions, as recommended by the Reliability Committee at its December 19, 2017 meeting, with such further non-material changes as the Chair and Vice-Chair of the Reliability Committee may approve.

The motion to recommend Participants Committee support was approved unanimously.

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<sup>1</sup> Reliability Committee Notices of Actions are posted on the ISO-NE website at: <http://iso-ne.com/committees/reliability/reliability-committee>.

## Summary of ISO New England Board and Committee Meetings

### January 5, 2018 Participants Committee Meeting

Since the last update, the Markets Committee, the System Planning and Reliability Committee, the Audit and Finance Committee, and the Nominating and Governance Committee met on December 21 in Holyoke.

**The Markets Committee** received an update on the Competitive Auctions for Sponsored Policy Resources project and discussed the substance of the concerns raised at the Participants Committee, NEPOOL vote, and other stakeholder perspectives. The Committee also reviewed proposed changes to its committee charter. Finally, the Committee held an executive session to discuss corporate goals for 2018.

**The System Planning and Reliability Committee** was provided with an overview of activities and events that were a major focus during the late summer and fall of 2017, including preparations for Forward Capacity Auction #12, ongoing implementation of Order 1000, the second phase of the 2016 Economic Planning Study – NEPOOL Scenario Analysis, support for the MA DOER review of RFP's for clean energy, and Long-Term Load, Energy Efficiency, and Solar PV Forecasts. In addition, the Committee also previewed activities anticipated to be a major focus for the first quarter of 2018. Next, the Committee received an update on the system operations outlook for Winter 2017-2018, and an update the Regional System Plan projects. The Committee then held an executive session to discuss corporate goals for 2018.

**The Audit and Finance Committee** received a report on cyber security and the company's ongoing work plan. The Committee discussed the continued development of the cyber security team and the GridEx IV exercise in which the Company recently participated. The Committee then met in executive session to review the corporate goals for 2018 and to assess achievement of 2017 corporate goals.

**The Nominating and Governance Committee** received a report on Joint Nominating Committee activities, and received an update on the New England political environment. The Committee also reviewed proposed changes to its committee charter. Next, the Committee discussed the board evaluation process, including potential topics regarding ongoing director education. Finally, the Committee reviewed its calendar for the upcoming year.

## MEMORANDUM

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

**FROM:** Paul Belval, NEPOOL Counsel

**DATE:** December 28, 2017

**RE:** ISO New England Financial Assurance Policy – Monthly Capacity Charge

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The Participants Committee will be asked at its January 5 meeting to support changes to the ISO Financial Assurance Policy (the “FAP”) to revise the FCM Delivery Financial Assurance calculation. More specifically, the monthly capacity charge component of that calculation will be revised to include both positive and negative Monthly Capacity Payments, with positive Monthly Capacity Payments reducing the Market Participant’s financial assurance requirements under the FAP. The proposed changes are Attachment 1 to this memorandum.

Under the FAP, a Lead Market Participant must provide FCM Delivery Financial Assurance for any Capacity Supply Obligation starting at or after June, 1 2018. Currently, only negative Monthly Capacity Payments that have not yet been billed -- the monthly capacity charge or “MCC” in the FCM Delivery Financial Assurance calculation – are included in the calculation, and hence can only increase the required amount of financial assurance. The ISO is proposing to change that formula such that positive Monthly Capacity Payments are also included in the calculation, serving to decrease the Market Participant’s FCM Delivery Financial Assurance. If the reduction is great enough, positive Monthly Capacity Payments could reduce other financial assurance obligations (not including FTR Financial Assurance obligations). The changes included in Attachment 1 also include some clean-up changes to the FAP language.

The Budget and Finance Subcommittee discussed these changes during its October 11 and November 28 teleconferences. No Subcommittee members objected to the proposed changes.

The following form of resolution could be used for Participants Committee action:

RESOLVED, that the Participants Committee supports the changes to the ISO Financial Assurance Policy relating to FCM Delivery Financial Assurance, as circulated to the Committee and discussed at this meeting, together with [any changes agreed to at this meeting and] such further non-substantive changes as the Chief Financial Officer of ISO New England and the Chairman of the Budget & Finance Subcommittee may approve.

**EXHIBIT IA**

**ISO NEW ENGLAND FINANCIAL ASSURANCE POLICY**

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excess financial assurance returned to it. Prior to returning any financial assurance to a Designated FTR Participant, the ISO shall use such financial assurance to satisfy any overdue obligations of that Designated FTR Participant. The ISO shall only return to that Designated FTR Participant the balance of such financial assurance after all such overdue obligations have been satisfied.

## VII. ADDITIONAL PROVISIONS FOR FORWARD CAPACITY MARKETS

Any Lead Market Participant, including any Provisional Member that is a Lead Market Participant, transacting in any Forward Capacity Auctions, reconfiguration auctions or Capacity Supply Obligation Bilaterals for capacity that is otherwise required to provide additional financial assurance under the ISO New England Financial Assurance Policy (each a “Designated FCM Participant”), is required to provide additional financial assurance meeting the requirements of Section X below in the amounts described in this Section VII (such amounts being referred to in the ISO New England Financial Assurance Policy as the “FCM Financial Assurance Requirements”). If the Lead Market Participant for a Resource changes, then the new Lead Market Participant for the Resource shall become the Designated FCM Participant.

### A. FCM Delivery Financial Assurance

A Designated FCM Participant must include FCM Delivery Financial Assurance in the calculation of its FCM Financial Assurance Requirements under the ISO New England Financial Assurance Policy on the first Business Day of each month of a Capacity Commitment Period. If a Designated FCM Participant’s FCM Delivery Financial Assurance is negative, it will be used to reduce the Designated FCM Participant’s Financial Assurance Obligations (excluding FTR Financial Assurance Requirements), but not to less than zero. FCM Delivery Financial Assurance is calculated according to the following formula:

FCM Delivery Financial Assurance =  $MCC + [DFAMW \times PE \times \max[(ABR - CWAP), 0.1] \times SF \times DF] - MCC$

Where:

MCC (monthly capacity charge) equals ~~FCM charges (negative~~ Monthly Capacity Payments) incurred in previous months, but not yet billed/paid. The MCC is estimated from the first business day of the current delivery month until it is replaced by. ~~The~~

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actual settled MCC value ~~when replaces the MCC estimate when the actual~~ settlement is complete.

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DFAMW (delivery financial assurance MW) equals the sum of the Capacity Supply Obligations of each resource in the Designated FCM Participant's portfolio for the month, excluding the Capacity Supply Obligation of any resource that has reached the annual stop-loss as described in Section III.13.7.3.2 of Market Rule 1. If the calculated DFAMW is less than zero, then the DFAMW will be set equal to zero.

PE (potential exposure) is a monthly value calculated for the Designated FCM Participant's portfolio as the difference between the Capacity Supply Obligation weighted average Forward Capacity Auction Starting Price and the Capacity Supply Obligation weighted average capacity price for the portfolio, excluding the Capacity Supply Obligation of any resource that has reached the annual stop-loss as described in Section III.13.7.3.2 of Market Rule 1. The Forward Capacity Auction Starting Price shall correspond to that used in the Forward Capacity Auction corresponding to the instant Capacity Commitment Period and the capacity prices shall correspond to those used in the calculation of the Capacity Base Payment for each Capacity Supply Obligation in the delivery month.

In the case of a resource subject to a multi-year Capacity Commitment Period election made in a Forward Capacity Auction prior to the ninth Forward Capacity Auction as described in Sections III.13.1.1.2.2.4 and III.13.1.4.2.2.5 of Market Rule 1, the Forward Capacity Auction Starting Price shall be replaced with the applicable Capacity Clearing Price (indexed for inflation) in the above calculation until the multi-year election period expires.

ABR (average balancing ratio) is the duration-weighted average of all of the system-wide Capacity Balancing Ratios calculated for each system-wide Capacity Scarcity Condition occurring in the relevant group of months in the three Capacity Commitment Periods immediately preceding the instant Capacity Commitment Period. Three separate groups of months shall be used for this purpose: June through September, December through February, and all other months. Until data exists to calculate this number, the temporary ABR for June through September shall equal 0.90; the temporary ABR for December

**1. Transfer of Capacity Supply Obligations in Reconfiguration Auctions**

A Designated FCM Participant that seeks to transfer its Capacity Supply Obligation in a reconfiguration auction must include in the calculation of its FCM Financial Assurance Requirements under the ISO New England Financial Assurance Policy, prior to the close of bidding in that reconfiguration auction, the amounts described in subsections (a) and (b) below.

- (a) ~~For the period including the earliest month that has not yet been billed and each of the eleven months immediately thereafter~~For the 12 month period beginning with the current month, the sum of that Designated FCM Participant's net monthly FCM charges for each month in which the net FCM revenue results in a charge. For purposes of this subsection (a), months in this period in which that Designated FCM Participant's net FCM revenue results in a credit are disregarded (i.e., the net credits from such months are not used to reduce the amount described in this subsection (a)). The amount described in this subsection (a), if any, will increase the Designated FCM Participant's FCM Financial Assurance Requirements.
- (b) For the period including each month that is after the period described in subsection (a) above and that is included in a Capacity Commitment Period for which a Forward Capacity Auction has been conducted, the sum of that Designated FCM Participant's net monthly FCM charges for each month in which the net FCM revenue results in a charge. For this period, the sum of such charges may be offset by net credits from months in which the net FCM revenue results in a credit, but in no case will the amount described in this subsection (b) be less than zero. The amount described in this subsection (b), if any, will increase the Designated FCM Participant's FCM Financial Assurance Requirements.

For purposes of these calculations, the net FCM revenue for a month shall be determined by accounting for all charges and credits, exclusive of any accrued Capacity Performance Payments on positions currently or previously held, related to the purchase or sale of Capacity Supply Obligations in the Forward Capacity Market for the month, including those resulting from the Forward Capacity Auction, any applicable reconfiguration auctions, and any applicable Capacity Supply Obligation Bilaterals. Such charges and credits shall include cleared offers to supply capacity in any applicable reconfiguration auctions or any applicable Capacity Supply Obligation Bilaterals. Upon the completion of

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of JANUARY 3, 2018**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated December 6, 2017 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '\*'. Page numbers precede the matter description.

**I. Complaints/Section 206 Proceedings**

* 2	Calpine/LS Power Delayed Resource Complaint (EL18-53)	Dec 21 Dec 22-Jan 3 Jan 2	Calpine/LS Power file Complaint; response and comments due Jan 4 NEPOOL, ISO-NE, ConEd, Direct, Dominion, EPSA, Eversource, Exelon, National Grid, NESCOE, NextEra, NRG intervene ISO-NE answers (and urges the FERC to deny) the Complaint
2	Clear River Schedule 11 O&M Complaint (EL18-31)	Dec 7 Dec 7-12 Dec 14 Dec 22 Dec 29 Jan 2	NEP, TOs answer Clear River Complaint; NESCOE protests Complaint GMP, MA DPU, MMWEC, NHEC, VPPSA, NEPGA intervene Clear River protests ISO-NE motion for dismissal as a party Clear River answers NEP, TOs', NEPOOL, NESCOE responses ISO-NE answers Clear River's Dec 14 pleading NEPOOL answers Clear River's Dec 22 answer
5	Base ROE Complaint IV (2016) (EL16-64)	Dec 11 Dec 15 Dec 18 Dec 21 Jan 2	Oral argument on CAPS' Dec 1 motion; hearings begin Hearings end Trial Judge Glazer schedules post-hearing oral argument for Feb 22 Participants file joint transcript corrections Judge Glazer approves joint transcript corrections

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

7	ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER18-371)	Dec 7-15 Dec 20	National Grid, NESCOE, Public Citizen, Eversource intervene NEPOOL files comments supporting the ARA Values
8	FCA12 Qualification Informational Filing (ER18-264)	Dec 7 Dec 13 Dec 20	ISO-NE submits answers Efficiency Maine Trust, CPower/Tesla protests CPower answers ISO-NE Dec 7 answer ISO-NE answers CPower Dec 13 answer; Efficiency Maine Trust answers ISO-NE's Dec 7 answer
8	ICR-Related Values and HQICCs – 2021-22 Capacity Commitment Period (ER18-263)	Dec 18	FERC accepts ICR-Related Values and HQICCs, eff. Jan 6
9	Emera MPD OATT Attachment J Revision (ER18-210)	Dec 8 Dec 12 Dec 19	Emera Maine requests FERC stay action on its Maine's tariff filing pending its filing of an Answer to the Nov 22 MCG Protest Emera Maine refiles its Dec 8 request with correct eTariff filing code Emera Maine answers MCG Protest and lifts stay, stating that action on its filing is not needed before Jan 31; new comment date Jan 9
9	Exelon Additional Cost Recovery Compliance Filing (ER17-933)	Dec 18	FERC accepts compliance filing



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


- |      |  |                               |  |
|------|--|-------------------------------|--|
| * 10 | ART Market Rule Changes (ER18-455)   | Dec 15<br>Dec 18-21<br>Dec 20 | ISO-NE and NEPOOL jointly file changes; comment date Jan 5<br>Brookfield, ConEd, Dominion, Exelon, National Grid, NESCOE, NRG intervene<br>ISO-NE submits errata with correct clean tariff sheets for eLibrary |
| 10   | Waiver Request: Dispatchable Resources RTU Req. (McCallum Enterprises) (ER17-1615) | Dec 8                         | McCallum withdraws waiver request  |

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

*No Activity to Report*

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

*No Activity to Report*

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

- |      |   |  |  |
|------|---|--|--|
| * 12 | Schedule 20A-GMP: Brookfield Complaint (EL18-52)    | Dec 18<br>Dec 19<br>Dec 20<br>Dec 21-Jan 3 | Brookfield files Complaint<br>GMP opposes Brookfield request for fast track processing<br>Brookfield answers GMP Dec 19 motion; FERC sets comment date as Jan 8<br>IRH, HQUS, Unitil, Schedule 20A Service Providers intervene |
| 12   | Schedule 21-EM: Stored Solar J&WE LSA (ER18-387)    | Dec 13<br>Jan 3                            | ISO-NE and Emera re-submit Dec 5 filing so that it includes clean version of LSA<br>Emera Maine submits second supplement to Dec filing; comment date Jan 24   |
| 12   | Schedule 22: Clear River LGIA (ER18-349)            | Dec 7<br>Dec 20                            | NESCOE intervenes<br>Clear River protests filing   |
| 13   | Eversource Reorganization Tariff Changes (ER18-132) | Dec 20                                     | FERC accepts changes to Schedules 20A-NSTAR, 20A-ES, 21-NSTAR 21-ES, and the Attach. F & Sched. 1 Implementation Rules, eff. Jan 1   |

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

*No Activity to Report*

**VIII. Regional Reports** 

- |      |  |        |                              |
|------|--|--------|------------------------------|
| * 15 | IMM Quarterly Markets Reports - 2017 Summer (ZZ17-4) | Dec 20 | IMM files Summer 2017 Report |
|------|--|--------|------------------------------|

**IX. Membership Filings** 

- |      |  |        |   |
|------|--|--------|---|
| * 15 | January 2018 Membership Filing (ER18-539)        | Dec 26 | Terminations: Aspurity Energy, Constellation Energy Services, Noble Americas Power & Gas; comment date Jan 16 |
| 16   | Suspension Notice – Plant-E Corp. (not docketed) | Dec 29 | ISO files notice of suspension of Plant-E Corp. from New England Markets                                      |

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

* 16	NOPR: Cyber Security Incident Reporting Reliability Standards (RM18-2)	Dec 21	FERC issues NOPR proposing to direct NERC to develop and file modifications to the CIP Standards to improve the reporting of Cyber Security Incidents; comment date Feb 26
17	NOPR: Revised Reliability Standard: CIP-003-7 (RM17-11)	Dec 22-26	NERC, ELCON, TAPS, Trade Associations file comments urging the FERC to approve the CIP-003-7 Changes; J. Applebaum submits adverse comments
19	Rules of Procedure Changes (Appendix D) (RR18-1)	Dec 8	Dominion intervenes

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

* 19	203 Application: PSNH/HSE Hydro NE (EC18-42)	Dec 28	PSNH and HSE Hydro NE request authorization for HSE Hydro NE to acquire PSNH’s portfolio of hydroelectric generation assets; comment date Jan 18
20	203 Application: PSNH/Granite Shore (EC18-12)	Dec 15 Dec 27	NH PUC requests expedited consideration of application and issuance of an order by Dec 28, 2017 FERC approves Granite Shore’s acquisition of PSNH generation assets
20	203 Application: WMECO /NSTAR Merger (EC17-62)	Jan 3	Eversource files notice that merger was consummated on Dec 31, 2017
* 21	LGIA: Emera Maine/Penobscot Energy Recovery Co (ER18-505)	Dec 21	Emera Maine files fully executed, non-conforming LGIA; comment date Jan 11
* 21	Third Supplement to Lease Agreement: UI/CT DOT (ER18-454)	Dec 14	UI files amendment; comment date Jan 4
* 22	Anbaric’s Ocean Grid Project: Transmission Rights at Negotiated Rates (ER18-435)	Dec 13 Jan 3	Anbaric Development Partners requests FERC authorization to sell transmission rights at negotiated rates on its Ocean Grid Project Bay State Wind LLC intervenes
* 22	IA: NSTAR/Covanta SEMASS (ER18-424)	Dec 11	NSTAR files IA with Covanta to replace an Oct 31, 1985 Power Sale Agreement between the parties which expired on Dec 1 and to recognize that Covanta now uses the New England transmission system to market the output of its 80 MW Rochester, MA facility
22	NEP/HQUS Phase I/II HVDC-TF Service Agreement (ER18-388)	Dec 26	HQUS submits comments supporting filing and requesting that the Service Agreement be accepted as filed
23	IA: PSNH/Pontook (ER17-2449)	Dec 13	FERC accepts IA, eff. Dec 16, 2016 as requested

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

24	NOI: FERC’s Policy for Income Tax Cost Recovery & ROE Policies (PL17-1)	Jan 2	R. Gordon Gooch files motion requesting FERC to compel all pass-through entities to reduce their claims for income tax allowance in rates in response to “Tax Cut and Jobs Act”
24	DOE-Initiated Proposal: Grid Reliability & Resilience Pricing Rule (RM18-1)	Dec 7 Dec 8 Dec 12-26	FERC Chairman McIntyre requests 30-day extension of time for FERC action on NOPR DOE Sec. Perry grants extension to Jan 11, 2018 FRS, Global Energy Institute, Murray Energy, and certain public interest orgs. and individuals file supplemental comments, information and answers

26	NOPR: Fast-Start Pricing in RTO/ISO Markets (RM17-3)	Dec 21	FERC withdraws Dec 2016 <i>Fast-Start Pricing NOPR</i>
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<b>XIII. Natural Gas Proceedings</b>	
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31	New England Pipeline Proceedings • Atlantic Bridge Project (CP16-9)	Dec 13  Dec 21	FERC denies rehearing of Jan 25, 2017 order authorizing Algonquin and Maritimes to construct and operate the Atlantic Bridge Project FERC denies rehearing of notices to proceed, variance approvals, and grant of in-service request
29	Natural Gas-Related Enforcement Actions: BP (IN13-15).	Dec 11  Dec 13 Dec 14	BP moves to reopen the proceeding, and to dismiss, or in the alternative, for reconsideration FERC Staff asks for additional time to respond to BP’s Dec 11 motion FERC grants Staff additional time, to Jan 25, to file its Answer to BP’s Dec 11 motion

<b>XIV. State Proceedings &amp; Federal Legislative Proceedings</b>	
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34	Massachusetts Emissions Allowance Auctions: Stakeholder Input on Auction Design Parameters	Dec 15  Dec 29	MassDEP files final amendments to correct errors for two facilities in the 2018 allowance allocations Amendments published in <i>Massachusetts Register</i>
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<b>XV. Federal Courts</b>	
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35	FCM Resource Retirement Reforms (17-1275)	Dec 28	Constellation appeals FCM Resource Retirement Reforms orders; appearances due Feb 1
36	Demand Curve Changes (17-1110**)	Dec 12	NESCOE, CT PURA and CPV Towantic file Intervenor for Respondent Brief
36	FCA10 Results (16-1408) and FCA9 Results (16-1068)	Dec 14	Court schedules cases for oral argument on Feb 9, 2018

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

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

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

**DATE:** January 3, 2018

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”),<sup>1</sup> state regulatory commissions, and the Federal Courts and legislatures through December 6, 2017. If you have questions, please contact us.

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

On December 21, 2017, Calpine Corporation (“Calpine”) and LS Power Associates (“LS Power”, and together with Calpine, “Complainants”) filed a complaint (“Delayed Resource Complaint”) asking the FERC to adopt an interim change to the Tariff, to be effective for FCA12, “to ensure that a resource that is not reasonably expected to be operational during the 2021-22 Capacity Commitment Period is not permitted to interfere with efficient price formation and artificially suppress prices in FCA 12 by entering a zero dollar offer for its capacity” and to “require ISO-NE to work with its stakeholders to file Tariff modifications in time for [FCA13] addressing the requirements for a Delayed Resource to participate in future FCAs, resume receiving its Lock-In Price, and extend its Lock-In Period.” Complainants also asked for Fast Track Processing and a shortened comment period. Thus far, ISO-NE answered the Delayed Resource Complaint on January 2 (urging the FERC to deny the Complaint) and doc-less interventions have been filed by NEPOOL, ISO-NE, ConEd, Direct, Dominion, EPSA, Eversource, Exelon, National Grid, NESCOE, NextEra, and NRG. Additional protests, comments and must be filed on or before January 4. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Clear River Schedule 11 O&M Complaint (EL18-31)**

On November 17, 2017, Clear River Energy Center LLC (“Clear River”)<sup>2</sup> filed a complaint against ISO-NE, National Grid and the TOs (together, “Respondents”) requesting that the FERC direct ISO-NE to modify Tariff Schedule 11 (and all other Tariff provisions that implement the Operating and Maintenance Cost (“O&M Costs”) recovery provisions of Schedule 11) under which interconnection customers are or could be required to pay O&M Costs associated with the construction of Large Generator Interconnection Agreement (“LGIA”)-required network upgrades, and to direct National Grid to modify its Schedule 21-NEP to conform with the changes made to Schedule 11. Clear River claims that National Grid’s Direct Assignment Facilities Charge to Clear River of all

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

<sup>2</sup> Clear River is an indirect, wholly-owned subsidiary of Invenergy Thermal Development LLC and thereby a Related Person to Generation Sector member Invenergy Energy Management LLC (collectively, “Invenergy”). Clear River is developing a 1,080 MW natural gas generation facility to be located in Burrillville, Rhode Island (the “Clear River Project”). The Project will interconnect to transmission facilities owned by National Grid and operated by ISO-NE. To provide service, National Grid will construct certain new network facilities, upgrade others and relocate an existing 345 kV network facility (collectively, the “NGrid Network Upgrades”) at an estimated cost of about \$60 million.

costs associated with the Network Upgrades that National Grid will build to accommodate interconnection of the Clear River Project is inconsistent with Order 2003 and the charge, as well as the provisions of the ISO-NE Tariff that authorize such a charge, are unjust and unreasonable. Respondents' answer and all interventions or protests were due on or before December 7, 2017.

On November 29, ISO-NE asked the FERC to dismiss ISO-NE as a party to the Clear River Complaint proceeding, explaining that the Tariff provisions at issue are among those which the Participating Transmission Owners ("PTOs"), rather than ISO-NE, have the right to establish and modify under section 205 of the Federal Power Act ("FPA"), and that, with no financial interest in the matter, ISO-NE is not a necessary party. Alternatively, ISO-NE answered the Clear River Complaint (should the FERC decline to dismiss ISO-NE from the proceeding), taking no position on either the merits of Clear River's claims or on "the propriety of any relief Clear River requests". On December 14, Clear River protested ISO-NE's November 29 motion to be dismissed as a party to the Complaint. ISO-NE answered that protest on December 29.

In addition to pleadings addressing ISO-NE's status as a party to the Complaint, NEPOOL filed comments and a protest on December 6 requesting that the FERC deny the Clear River Complaint on its merits or, to the extent the FERC grants any part of the Clear River Complaint, send consideration of any necessary Tariff changes through the NEPOOL process for appropriate stakeholder input before they are filed. On December 7, New England Power and the PTO AC answered the Complaint. NESOCE protested the Complaint. Doc-less interventions were filed by Calpine, CMEEC, CT AG, CT OCC, CPV Towantic, Dominion, Green Mountain Power ("GMP"), MA DPU, MMWEC, MPUC, NESCOE, NextEra, NHEC, NRG, VPPSA, and NEPGA (out-of-time). On December 22, Clear River also protested the responses by NEPOOL, NESCOE and National Grid. NEPOOL answered Clear River's December 22 answer on January 2. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)).

- **NEPGA PER Adjustment Complaint (EL16-120)**

As previously reported, the FERC denied,<sup>3</sup> on November 16, 2017, NEPGA's request for clarification and/or rehearing of the *PER Complaint Order*.<sup>4</sup> In that request, NEPGA had asked for clarification that when the FERC "determines refunds [in this proceeding], it will direct the ISO to refund to capacity suppliers the difference between: (i) the PER Adjustment payments charged to capacity suppliers after the September 30, 2016 refund effective date, and (ii) the PER Adjustment payments that would have been charged to capacity suppliers if the PER Adjustment were calculated using a just and reasonable PER Strike Price." In declining to grant NEPGA's request for clarification and/or rehearing, the FERC stated that, "If in fact refunds are ordered (and we note that the Commission has not yet determined whether it will order refunds), NEPGA's understanding of the Commission's intended methodology is incorrect ... the Commission intended for ISO-NE to use the difference between the former strike price and the LMP for event hours that occurred prior to September 30, 2016, and for ISO-NE to use the new strike price only for event hours that occur after September 30, 2016 ... [t]he Commission's order is clear in that it addresses a change to the calculation of the PER strike price as set forth in section 111.13.7.2.7.1.1.1 and such change is prospective only. The order does not, nor did the Commission intend it to, provide for any change to the Monthly PER values that fall prior to the September 30, 2016 change in the methodology of calculating the strike price. FPA section 206 prevents such an outcome."<sup>5</sup> Any challenges to the FERC's *PER Complaint Order* and *PER Complaint Rehearing Order* must be filed in federal court on or before January 16, 2018.

<sup>3</sup> *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 161 FERC ¶ 61,193 (Nov. 16, 2017) ("*PER Complaint Rehearing Order*").

<sup>4</sup> *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017) ("*PER Complaint Order*"), *reh'g and clarif. denied*, 161 FERC ¶ 61,193 (Nov. 16, 2017).

<sup>5</sup> *PER Complaint Rehearing Order* at PP 11-12.

- **NEPGA PER Adjustment Complaint Settlement Agreement (ER17-2153)**

The PER Settlement remains pending before the FERC. As previously reported, the Settling Parties<sup>6</sup> submitted, filed July 28, 2017,<sup>7</sup> an Offer of Settlement and settlement materials (“PER Settlement”) to resolve the issue set for hearing and settlement judge procedures by the Commission in this proceeding.<sup>8</sup> Under the PER Settlement, the ISO will calculate Adjusted Hourly Strike Price as the sum of the daily Strike Price (as calculated under the existing Tariff) and a newly-defined Hourly PER Adjustment. The Hourly PER Adjustment will be equal to the average over each hour of a newly-defined Five-Minute PER Strike Price Adjustment. The Five-Minute Strike Price Adjustment<sup>9</sup> will be equal to any positive difference between a five-minute Thirty Minute Operating Reserves Clearing Price or Ten-Minute Non-Spinning Reserves Clearing Price that exceeds the maximum allowable reserves clearing prices for those reserves products (i.e., the Reserve Constraint Penalty Factors) in effect before December 2014. The PER Settlement does not resolve the issues of the applicability of the Strike Price methodology to FCA9, which will be subject to comment in response to the PER Settlement Agreement.<sup>10</sup> The term sheet that formed the basis for the PER Settlement was supported by the Participants Committee at the June 27 session of the Summer Meeting. All parties in EL16-120 “are deemed to have intervened in Docket No. ER17-2153-000”.<sup>11</sup>

In comments filed August 16, the ISO neither supported nor objected to the proposed PER strike price methodology and requested that the Commission resolve how the Average Monthly PER will be

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<sup>6</sup> PER “Settling Parties” are: NEPGA, NESCOE, the Retail Energy Supply Association (“RESA”), NEPOOL, Exelon, H.Q. Energy Services (U.S.) (“HQUS”), Eversource, Dominion, Entergy, NRG, and Cogentrix. Intervenors in the proceeding not opposing the Settlement (“Non-Opposing Intervenors”) are: the ISO, PSEG, Consolidated Edison Energy, Inc. (“ConEd”), Verso Corp., GenOn Energy Management LLC, National Grid, NextEra, the New Hampshire Electric Coop. (“NHEC”), and Calpine.

<sup>7</sup> The Settlement was initially filed on July 26 under different eTariff codes and subsequently withdrawn in favor of the July 28 filing. The Docket Number (ER17-2153) remained the same. The withdrawal of the July 26 filing was accepted on August 31.

<sup>8</sup> See *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017), *reh’g requested (“PER Complaint Order”)*. The *PER Complaint Order* (i) granted in part NEPGA’s complaint and (ii) set in part for hearing and settlement judge procedures the question of the appropriate method of calculating the PER Strike Price under Market Rule 1 Section III.13.7.2.7.1.1.1. The FERC found that “for the period at issue in NEPGA’s complaint (September 30, 2016 – May 31, 2018), the PER mechanism has become unjust and unreasonable as a result of the interaction between the PER mechanism and the higher Reserve Constraint Penalty Factors.” Accordingly, the FERC required the ISO to revise the method by which it calculates the PER Strike Price as set forth in Tariff section III.13.7.2.7.1.1.1. But, finding NEPGA’s request that the PER Strike Price be increased by \$250 per MWh “raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures”, the FERC set the question of for hearing and settlement judge procedures under section 206 of the FPA. The FERC established a refund effective date of September 30, 2016 (the date of the complaint). In establishing a September 30, 2016 effective date, the FERC clarified that “any changes to the calculation of the PER Strike Price under ISO-NE Tariff section III.13.7.2.7.1.1.1 would be prospective only from September 30, 2016, as required by FPA section 206, and would not impact the application of any PER Adjustment occurring before September 30, 2016.” On February 15, NEPGA requested clarification of the PER Complaint Order with respect to the PER Adjustment payments charged to NEPGA’s members on capacity invoices issued after the refund effective date. Specifically, NEPGA asked for clarification that when the FERC “determines refunds, it will direct the ISO to refund to capacity suppliers the difference between: (i) the PER Adjustment payments charged to capacity suppliers after the September 30, 2016 refund effective date, and (ii) the PER Adjustment payments that would have been charged to capacity suppliers if the PER Adjustment were calculated using a just and reasonable PER Strike Price.” On Mar. 3, NESCOE and RESA answered NEPGA’s rehearing request. NEPGA answered those answers on Mar. 17. The FERC issued a tolling order on Mar. 16, 2017, affording it additional time to consider NEPGA’s request for rehearing, which remains pending.

<sup>9</sup> Five-Minute PER Strike Price Adjustment will be calculated according to the following formula: Five-Minute PER Strike Price Adjustment = MAX (Thirty Minute Operating Reserves Clearing Price - \$500/MWh, 0) + MAX (Ten Minute Non-Spinning Reserves Clearing Price – Thirty Minute Operating Reserves Clearing Price - \$850/MWh, 0).

<sup>10</sup> In its *PER Complaint Rehearing Order*, the FERC clarified that it “intended for ISO-NE to use the difference between the former strike price and the LMP for event hours that occurred prior to September 30, 2016, and for ISO-NE to use the new strike price only for event hours that occur after September 30, 2016 ... [t]he Commission’s order is clear in that it addresses a change to the calculation of the PER strike price as set forth in section 111.13.7.2.7.1.1.1 and such change is prospective only.”

<sup>11</sup> Prior to Chief Judge Cintron’s order, the following parties filed doc-less interventions in ER17-2153: Calpine, ConEd, Entergy, Eversource, Exelon, HQUS, NEPGA, NESCOE, NRG/GenOn, and RESA.

calculated on and after June 1, 2018. NEPOOL, NEPGA, NESCOE, and Eversource filed comments supporting the PER Settlement. Comments by FERC Trial Staff indicated that it did not oppose the PER Settlement. In reply comments, NESCOE asked the FERC to reject the position advocated by NEPGA that the agreed-upon Adjusted Hourly Strike Price as defined in the Settlement should extend beyond May 31, 2018). NEPGA, NRG, HQUS, Dominion, and Verso jointly asked the FERC to approve the Settlement and order the ISO to make a compliance filing, but decline to address NESCOE's request until some later date. Settlement Judge Young certified the uncontested settlement to the FERC on August 31, which remains pending before the Commission. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

Hearings in this matter were held December 11-15, 2017. Transcripts of the hearings are posted on the FERC's eLibrary. Corrections to the transcripts, jointly filed by the hearing participants, were accepted by Judge Glazer on January 2. At the request of the parties, Judge Glazer scheduled post-hearing briefs' oral argument for February 22. EMCOS, CAPS, TOs and FERC Trial Staff will each be allotted 30 minutes for argument. An initial decision is expected to be issued on or before March 27, 2018.

As previously reported, the FERC, on September 20, 2016, established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint filed by EMCOS on April 29, 2016.<sup>12</sup> The 4th ROE Complaint asked the FERC to reduce the TOs' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. EMCOS identified three main considerations requiring submission of this 4th ROE Complaint: (1) the continuing decline of the market cost of equity capital, which makes TOs' currently authorized ROE "excessive, unjust and unreasonable, and therefore ripe for adjustment under FPA Section 206"; (2) "divergent rulings concerning the persistence of the "anomalous" capital market conditions"; and (3) "the extent to which the Commission's anomalous conditions rationale in Opinion No. 531 is intended to reflect changes in its long-standing reliance on the discounted cash flow ("DCF") methodology, and particularly the DCF midpoint, for determining ROE remains unclear." Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The FERC issued a tolling order on November 21, 2016, affording it additional time to consider the requests for rehearing, which remain pending.

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

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

The TOs' October 5, 2017 motion to dismiss of all four ROE complaints (captioned above) in light of the *Emera Maine*<sup>13</sup> decision remains pending. The October 5 motion alternatively requested that the FERC consolidate the four ROE complaints for decision and use expedited procedures to resolve them. The TOs stated that this motion was motivated in part by *Emera Maine*, but also by what they describe as the "enormous investment uncertainty" resulting from the various litigation proceedings. On October 20,

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<sup>12</sup> *Belmont Mun. Light Dept. et al. v. Central Me. Power Co. et al.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) ("*Base ROE Complaint IV Order*").

<sup>13</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*"). *Emera Maine* vacated the FERC's prior orders in the Base ROE Complaint I proceeding, and remanded the case for further proceedings consistent with its order. The Court agreed with both the TOs (that the FERC did not meet the Section 206 obligation to first find the existing rate unlawful before setting the new rate) and "Customers" (that the 10.57% ROE was not based on reasoned decision-making, and was a departure from past precedent of setting the ROE at the midpoint of the zone of reasonableness).



Complainant-Aligned Parties and EMCOS submitted answers opposing TOs' requests. The TOs' motion and the motions filed in response are pending before the FERC.

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

Settlement discussions in this proceeding are on-going. As previously reported, the FERC instituted this Section 206 proceeding on December 28, 2015, finding that the ISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff "lacks adequate transparency and challenge procedures with regard to the formula rates" for Regional Network Service ("RNS") and Local Network Service ("LNS").<sup>14</sup> The FERC also found that the RNS and LNS rates themselves "appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful" because (i) "the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates" and "could result in an over-recovery of costs" due to the "the timing and synchronization of the RNS and LNS rates".<sup>15</sup> Accordingly, the FERC established hearing and settlement judge procedures to develop just and reasonable formula rate protocols to be included in the ISO-NE Tariff and to examine the justness and reasonableness of the RNS and LNS rates. The FERC encouraged the parties to make every effort to settle this matter before hearing procedures are commenced.<sup>16</sup> Hearings continue to be held in abeyance pending the outcome of settlement judge procedures underway.<sup>17</sup> The FERC-established refund date is January 4, 2016.<sup>18</sup>

**Settlement Judge Procedures.** As previously reported, John P. Dring was designated the Settlement Judge in these proceedings. Five settlement conferences were held in 2016: January 19, March 24, April 28, August 30, and November 18 (telephonically). Four settlement conferences were held in 2017: April 5, May 9, July 7, and November 13, 2017. A tenth settlement conference has been scheduled for January 9, 2018. Judge Dring's most recent status report was issued on December 5, noting that the proceeding is taking longer than expected but that the parties are making progress toward settlement. Accordingly, he recommended that the settlement procedures be continued. The Transmission Committee is being kept apprised, as appropriate, of settlement efforts. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

Judge Sterner's findings and Initial Decision, and pleadings in response thereto, remain pending before the FERC. As previously reported, the FERC, in response to second (EL13-33)<sup>19</sup> and third (EL14-86)<sup>20</sup> complaints regarding the TOs' 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month

<sup>14</sup> *ISO New England Inc. Participating Transmission Owners Admin. Comm. et al.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh'g denied*, 154 FERC ¶ 61,230 (Mar. 22, 2016).

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

<sup>16</sup> *Id.* at P 11.

<sup>17</sup> *Id.*

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

<sup>19</sup> The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOs' 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

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



refund period of December 27, 2012 through March 27, 2014;<sup>21</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>22</sup> and, because of “common issues of law and fact”, consolidated the two proceedings for purposes of hearing and decision, with the FERC finding it “appropriate for the parties to litigate a separate ROE for each refund period.”<sup>23</sup> The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.<sup>24</sup> On July 13, 2015, the TOs appealed those orders to the DC Circuit Court of Appeals (see Section XIV below), and that appeal remains pending.

**Hearings and Trial Judge Initial Decision.** Initial hearings on these matters were completed on July 2, 2015. In mid-December 2015, Judge Sterner reopened the record for the limited purpose of having the DCF calculations re-run in accordance with the FERC’s preferred approach and re-submitted. A limited hearing on that supplemental information was held on February 1, 2016. On March 22, 2016, Judge Sterner issued his 939-paragraph, 371-page Initial Decision, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.<sup>25</sup> The Decision also lowered the ROE ceilings. Judge Sterner’s decision, if upheld by the FERC, would result in refunds totaling as much as \$100 million, largely concentrated in the EL13-33 refund period. Briefs on exceptions were filed by the TOs, Complainant-Aligned Parties (“CAPs”), EMCOS, and FERC Trial Staff on April 21, 2016; briefs opposing exceptions, on May 20, 2016. Judge Sterner’s findings and Initial Decision, and pleadings in response thereto, remain pending, and will be subject to challenge, before the FERC. The *2012/14 ROE Initial Decision* and its findings can be approved or rejected, in whole or in part.

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

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

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER18-371)**

On December 1, 2017, 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 “ARA Values”) for the third Annual Reconfiguration Auction (“ARA”) for the 2018-19 Capability Year to be held March 1, 2018, the second ARA for the 2019-20 Capability Year to be held August 1, 2018, and the first ARA for the 2020-21 Capability Year to be held June 1, 2018. The ARA Values were supported by the Participants Committee at its November 3, 2017 meeting. A January 30, 2018 effective date was requested. Comments on this filing were due December 22, 2017. On December 20, NEPOOL filed comments supporting the ARA Values. Interventions were filed by Dominion, Eversource, National Grid, NESCOE, NRG, and Public Citizen. This

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

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

<sup>23</sup> *Id.* at P 27 (for the refund period covered by EL13-33 (i.e., Dec. 27, 2012 through Mar. 27, 2014), the ROE for that particular 15-month refund period should be based on the last six months of that period; the refund period in EL14-86 and for the prospective period, on the most recent financial data in the record).

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

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

matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **FCA12 Qualification Informational Filing (ER18-264)**

On November 7, 2017, ISO-NE submitted its informational filing (the “FCA12 Informational Filing”) for qualification in FCA12. 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. FCA12 is scheduled to begin February 5, 2018. The Informational Filing contained ISO-NE’s determinations that the same three Capacity Zones that were modelled for FCA11 will be modelled for FCA12 -- 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 35,007 MW of existing capacity in FCA12 competing with 5,605 MW of new capacity under a Net ICR of 33,725 MW (ICR minus HQICCs). The ISO reported also that there were a total of 2,309 MW of Static, Export, and Administrative Export De-list bids. A summary of the De-list bids accepted and those rejected for reliability purposes was included in a privileged Attachment E.

Comments on the FCA12 Informational Filing were due November 22, 2017. There were two protests filed, one by Efficiency Maine Trust and the other jointly by Enerwise Global Technologies, Inc., d/b/a CPower and Tesla, Inc. (together, “CPower”). Efficiency Maine seeks modification of the determinations made for three of its energy efficiency (“EE”) resources that it believes were unjustly decreased. Efficiency Maine also requests that FERC direct ISO-NE to continue to work cooperatively with Efficiency Maine to address the methodology issue that gave rise to the dispute and to correct that methodology in time for FCA13 so that it otherwise accounts for EE resource not accounted for in the FCA12 filing. For their part, CPower challenges ISO-NE’s denial of CPower’s Renewable Technology Resources (“RTR”) status request for certain of its already qualified new On-Peak Demand Resources utilizing renewable technologies (i.e., solar and fuel cells/solar projects), including Tesla’s renewable distributed resources. CPower asserts that ISO-NE has inconsistently interpreted Tariff Section III.13.1.1.1.7 to require a new On-Peak Demand Resource to demonstrate both that it currently *qualifies* under a state renewable or alternative energy portfolio standard (“RPS”) and is currently *receiving* an out-of-market revenue source supported by such a program or a similar mechanism. CPower asks the FERC to direct ISO-NE to review RTR status for the New On-Peak Demand Resources consistent with the reality that new renewable resources are eligible to receive an out-of-market revenue source supported by an RPS program and, as a New Resource, will have a future in-service date given the anticipated Capacity Delivery Period. Doc-less interventions were filed by NEPOOL, Dominion, Eversource, NRG, and NESCOE.

Since the last Report, on December 7, ISO-NE answered the CPower and Efficiency Maine protests. CPower answered the December 7 ISO-NE answer on December 13; Efficiency Maine Trust answered the ISO-NE December 7 answer on December 20. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **ICR-Related Values and HQICCs – 2021-22 Capacity Commitment Period (ER18-263)**

On December 18, 2017, the FERC accepted the ICR, LSR for SENE, MCL for NNE, HQICCs, and Marginal Reliability Impact (“MRI”) Demand Curves (collectively, the “2021-22 ICR-Related Values”) for the 2021-22 Capacity Commitment Year. The 2021-22 ICR-Related Values were accepted effective as of January 6, 2018, as requested. Unless the December 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

As previously reported, Emera filed changes on November 1 to Attachment J of the MPD OATT to permit adjustments to formula rate inputs (historical load, revenue, sales data) to reflect “known and measurable” anticipated changes, subject to a true-up. Emera stated that, absent an ability to adjust its formula rate calculations to account for material losses of load, like that of Houlton Water Company expected to occur early next year, Emera Maine will suffer a significant under-recovery in its transmission revenue requirement. A protest was filed by the Maine Customer Group (“MCG”),<sup>26</sup> which identified a number of reasons why the asserted that the changes should be rejected, with the principal objection being the fact that “Emera already has a true-up mechanism in place under the MPD OATT to accommodate loss of Houlton load”. On December 8, Emera Maine requested that the FERC stay action on its November 1 tariff filing pending Emera Maine’s filing of an Answer to the MCG protest.<sup>27</sup>

On December 19, Emera Maine submitted its answer to the MCG protest and lifted the stay on the filing. In so doing, Emera Maine stated that action on the filing is not needed before January 31, 2018. Any further comments on this matter are due on or before January 9. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Exelon Additional Cost Recovery Compliance Filing (ER17-933)**

As previously reported, the FERC granted Exelon Generation Company’s (“Exelon’s”) request for additional fuel cost recovery for all mitigated days from October through November 2016, including the October 1, 3, and 4, 2016, operating days, in an amount totaling \$1,554,854, as calculated by the Internal Market Monitor (“IMM”) (slightly more than identified in the initial filing,<sup>28</sup> *plus* reasonable regulatory costs incurred in connection with the filing (subject to an Exelon compliance filing detailing the actual regulatory costs).<sup>29</sup> On November 20, Exelon submitted that compliance filing, detailing \$97,188.90 in actual regulatory costs incurred and to be recovered in connection with its request for additional fuel cost recovery for Mystic Units 8 & 9. The additional costs have been billed to Market Participants and the FERC accepted the compliance filing on December 18, 2017. Unless the December 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

Rehearing remains pending of the FERC’s October 6, 2017 order rejecting the TOs’ June 5, 2017 filing in this proceeding.<sup>30</sup> As previously reported, the June 5 filing was designed to reinstate TOs’ transmission rates to those in place prior to the FERC’s orders later vacated by the DC Circuit’s *Emera Maine*<sup>31</sup> decision. In its *Order Rejecting Filing*, the FERC required the TOs to continue collecting their ROEs currently on file, subject to a future FERC order.<sup>32</sup> The FERC explained that it will “order such refunds or surcharges as necessary to replace the rates set in the now-vacated order with the rates that the Commission ultimately determines to be just and reasonable in its order on remand” so as to “put the parties in the position that they would have been in but for [its] error.” For the time being, so as not to “significantly complicate the process of putting into effect whatever ROEs the Commission establishes on remand” or create

<sup>26</sup> MCG consists of consists of: Maine’s Office of the Public Advocate (“MOPA”), Houlton Water Company (“Houlton”), Van Buren Light and Power District (“Van Buren”), and Eastern Maine Electric Cooperative, Inc. (“EMEC”).

<sup>27</sup> On December 12, Emera Maine re-filed its request with the correct eFiling filing code.

<sup>28</sup> *Exelon Generation Co., LLC*, 160 FERC ¶ 61,076 (Sep. 20, 2017) (“*Exelon Cost Recovery Order*”).

<sup>29</sup> *Id.* at P 30.

<sup>30</sup> *ISO New England Inc. et al.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) (“*Order Rejecting Filing*”), *reh’g requested*.

<sup>31</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (“*Emera Maine*”).

<sup>32</sup> *Order Rejecting Filing* at P 1.

“unnecessary and detrimental variability in rates,” the FERC has temporarily left in place the ROEs set in *Opinion 531-A*, pending an order on remand.<sup>33</sup> On November 6, the TOs requested rehearing of the *Order Rejecting Filing*. On December 4, the FERC issued a tolling order providing it additional time to consider the TOs’ request for rehearing of the *Order Rejecting Filing*, which remains pending. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

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

On December 15, 2017, ISO-NE and NEPOOL jointly filed changes to establish a new capacity market bilateral transaction -- an Annual Reconfiguration Transaction (“ART”) and to make other changes to the FCM rules (“CSO Transfer Improvements”).<sup>34</sup> ISO-NE and NEPOOL requested that the CSO Transfer Improvements become effective in two stages, with most of the rule changes becoming effective on March 1, 2018 and the remainder becoming effective on June 1, 2018. The CSO Transfer Improvements were supported by the Participants Committee at the November 3 meeting (Agenda Item #7). Comments on this filing are due on or before January 5, 2018. Thus far, doc-less interventions have been filed by Brookfield, ConEd, Dominion, Exelon, National Grid, NESCOE, and NRG. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

Enerwise Global Technologies Inc. d/b/a CPower Corp. (“CPower”) October 30, 2017 request for a one-time waiver of Tariff Sections III.13.6.1.5.4.1(c) and III.13.6.1.5.4.5 remains pending. The waiver request would allow ISO-NE to use July 26 Real-Time Demand Response (“RTDR”) resource audit results as CPower’s July 2017 Demand Reduction Value, rather than Jul 19 results which, because of a “communications software anomaly”, produced “zero” reduction performance results. CPower explained that the communication software anomaly could be traced to an earlier July 12 outage at CPower’s leased data center, following which CPower’s Remote Terminal Unit (“RTU”) communications service was not fully and properly restored, preventing a July 19, 2017 dispatch signal sent as part of an audit to not be received, ultimately producing “zero” reduction performance. Following full restoration of the RTU service, a subsequent audit was requested and performed on July 26. The requested waiver would permit the July 26 Audit results to replace the zero July 19 Audit results as the Demand Reduction Value (and mitigate the financial impacts of the July 19 results). Comments on CPower’s waiver request were due on or before November 20. ISO-NE submitted comments opposing the waiver request (suggesting the request is not limited in scope, there is no concrete problem to be remedied and the likelihood that the waiver would result in unfavorable treatment to similarly-situated participants). NEPOOL submitted a doc-less intervention. As noted, this matter remains pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On December 8, McCallum Enterprises (“McCallum”) withdrew its May 9 request for a waiver of a portion of Market Rule Section 1.11.3, ending this proceeding. As previously reported, the requested waiver would have excused McCallum from the requirement under Section 1.11.3 to install a remote terminal unit (“RTU”) and the necessary circuitry to make its 7 MW the Derby Hydroelectric Project in Shelton electronically dispatchable. Based on information disclosed in this proceeding and further investigation and efforts, however, ISO-NE ultimately determined that the Derby facility was improperly registered as a non-intermittent generator, and that, if properly registered as an intermittent generator, the Facility would not be subject to the Resource Dispatchability rules from which McCallum sought a partial waiver. With the change registration complete, and

<sup>33</sup> *Id.* at P 36.

<sup>34</sup> On December 20, ISO-NE submitted an errata filing to correct the clean Tariff sheets to be posted in eLibrary.

the waiver no longer necessary, McCallum withdrew its request. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

Rehearing remains pending of the FERC's October 6 order accepting updated FCM Cost of New Entry ("CONE"), Net CONE and Offer Review Trigger Price ("ORTP") values filed by ISO-NE in January.<sup>35</sup> In accepting the changes, the FERC disagreed with the challenges to ISO-NE's choice of reference technology (gas-fired simple cycle combustion-turbine) and on-shore wind capacity factor (32%). The changes were accepted effective as of March 15, 2017, as requested. On November 6, NEPGA requested rehearing of the *CONE/ORTP Updates Order*. On December 4, the FERC issued a tolling order providing it additional time to consider NEPGA's request for rehearing of the *CONE/ORTP Updates Order*, which remains pending. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

Still pending before the FERC is ISO-NE's compliance filing in response to the FERC's August 8, 2016 remand order.<sup>36</sup> In the *2013/14 Winter Reliability Program Remand Order*, the FERC directed ISO-NE to request from Program participants the basis for their bids, including the process used to formulate the bids, and to file with the FERC a compilation of that information, an IMM analysis of that information, and the ISO's recommendation as to the reasonableness of the bids, so that the FERC can further consider the question of whether the Bid Results were just and reasonable.<sup>37</sup> ISO-NE submitted its compliance filing on January 23, 2017, reporting the IMM's conclusion that "the auction was not structurally competitive and a 'small proportion' of the total cost of the program may be the result of the exercise of market power" but that the "vast majority of supply was offered at prices that appear reasonable and that, for a number of reasons, it is difficult to assess the impact of market power on cost." Based on the IMM and additional analysis, the ISO recommended that "there is insufficient demonstration of market power to warrant modification of program." In February 13 comments, both TransCanada and the MA AG protested 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 again pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

*No Activity to Report*

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

*No Activity to Report*

<sup>35</sup> *ISO New England Inc.*, 161 FERC ¶ 61, 035 (Oct. 6, 2017) ("*CONE/ORTP Updates Order*"), *reh'g requested*.

<sup>36</sup> *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("*2013/14 Winter Reliability Program Remand Order*"). As previously reported, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable), and directing the FERC to either offer a reasoned justification for the order in ER13-2266 or revise its disposition to ensure that the Program rates are just and reasonable. *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

<sup>37</sup> *2013/14 Winter Reliability Program Remand Order* at P 17.



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

- **Schedule 20A-GMP Brookfield Complaint (EL18-52)**

On December 18, Brookfield Energy Marketing LP (“Brookfield”) filed a complaint (“Brookfield Complaint”) requesting that the FERC confirm the validity of its 10-year Phase I/II transmission service request (“TSR”) and require Green Mountain Power (“GMP”), the Schedule 20A Service Provider, to allocate 46 MW of Available Transfer Capability (“ATC”) at issue in accordance with the procedures set forth in Schedule 20A. Brookfield claims that GMP rejected the TSR because the TSR sought service for a duration in excess of the one-year offering GMP posted on OASIS and because GMP claims that its contractual rights to market the ATC at issue are limited to the one-year time period that was posted. Brookfield requested expedited consideration of the Complaint and a FERC order by December 31, 2017, pursuant to the FERC’s Fast Track procedures. On December 19, GMP opposed Brookfield request for Fast Track processing, which Brookfield answered on December 20. On December 20, the FERC issued a notice of the Complaint, which set the comment date at January 8, 2017. Doc-less interventions have thus far been submitted by the Interconnection Rights Holders Management Committee (“IRH”), HQUS, Unitil, and the Schedule 20A Service Providers.<sup>38</sup> If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

On December 5, Emera Maine and ISO-NE filed a Local Service Agreement (“LSA”) by and among Emera Maine, Stored Solar J&WE, and ISO-NE for Local Non-Firm Point-to-Point Transmission Service under Schedule 21-EM of the ISO-NE OATT (the “Stored Solar LSA”). The LSA extends the same discounted service rate to Stored Solar that was offered to its predecessors, Indeck Maine and Covanta Maine. A January 1, 2016 effective date (the date Stored Solar acquired the Jonesboro facility) was requested. Emera Maine and ISO-NE resubmitted the filing on December 13 to include a clean version of the Stored Solar LSA that was inadvertently not included in the December 5 filing. Comments on the LSA were due on or before December 26, 2017; comments on the first supplement were due January 3. No comments were filed on either of those filings. On January 3, ISO-NE and Emera Maine submitted a second supplement. The second supplement made addition corrections to the filing and included an elaboration by Emera Maine on why time value of money refunds are not appropriate under the circumstances presented by this matter. Comments on the second supplement will be due on or before January 24. If there are any questions on these matters, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 22: Clear River LGIA (ER18-349)**

On November 29, ISO-NE and New England Power Company (“NEP” or “National Grid”) filed an unexecuted Large Generator Interconnection Agreement (“LGIA”) by and among ISO-NE, NEP and Clear River to govern the interconnection of Clear River’s proposed new Large Generating Facility to be located in Burrillville, Rhode Island (the “Clear River Project”). ISO-NE reports that the Clear River LGIA is being filed unexecuted because Clear River disagrees with various aspects of the Clear River LGIA, including Clear River’s challenges regarding cost responsibility for upgrades and the post-FCA restudy. (See also Clear River Schedule 11 O&M Complaint, EL18-31, Section I above). A November 30, 2017 effective date was requested (to coincide with the date on which interconnection activities under the LGIA are expected to commence). Comments on the LGIA were due on or before December 20, 2017.

Clear River filed the only comments, a protest, on December 20. In its protest, Clear River asked that the FERC:

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<sup>38</sup> “Schedule 20A Service Providers” are self-described as “those public utility transmission providers who hold the rights to the transmission capacity over the [HQ Interconnection] and who make those rights available on an open-access basis to transmission customers under Schedule 20A of the ISO-NE OATT” and “a subset of the IRH.”

(1) direct ISO-NE to revise the LGIA's milestone date by which the notice to proceed ("NTP") must be issued and security posted; (2) direct [National Grid] to permit Clear River to exercise its option to build certain transmission owner interconnection facilities identified in the LGIA; (3) direct ISO-NE to reevaluate whether the upgrades identified in the LGIA and predicated on Clear River's initially planned 2019 commercial operation date ("COD") will still be necessary in light of Clear River having informed ISO-NE that due to unforeseeable permitting delays, Clear River had to extend the planned COD to 2021; (4) confirm that Clear River should be responsible for paying only for those facilities necessary to interconnect the Project and not for any oversized and therefore unnecessary equipment; (5) direct ISO-NE and [National Grid] to demonstrate that they considered whether there were more cost-effective upgrade options to address the impacts of interconnecting the Clear River Project; and (6) order that the LGIA be modified to state that [National Grid]'s ability to directly assign network upgrade-related O&M Costs to Clear River is subject to the [FERC]'s determination regarding the complaint filed by Clear River in Docket No. EL18-31-000 on November 17, 2017.

Doc-less interventions were filed by NEPOOL, NESCOE and Dominion. This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **Schedule 21-NEP: National Grid/Graite Reliable Power RFA (ER18-346)**

On November 29, 2017, New England Power filed a Related Facilities Agreement ("RFA") with Granite Reliable Power, LLC ("Granite Reliable Power") to address costs associated with upgrades to NEP's equipment at the Moore Generating Station and modifications to NEP's protection system in connection with the Dummer, New Hampshire interconnection of Granite Reliable Power's 99 MW wind generation facility. A November 1, 2017 effective date was requested. Comments on this filing were due on or before December 20, 2017; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On December 20, the FERC accepted tariff revisions filed by Eversource on October 23, 2017 to the following portions of Section II of the ISO Tariff to reflect the new references to NSTAR Electric (East) and NSTAR Electric (West), which will be used to refer to the transmission services and rates previously provided separately by NSTAR Electric and WMECO, that will continue to be provided as if NSTAR Electric and WMECO were separate legal entities, until such future time as a filing can be made to allow for one set of books and records and to adjust rates as may be necessary: Schedules 21-NSTAR and 21-ES, Schedules 20A-NSTAR and 20A-ES, and the Attachment F and Schedule 1 Implementation Rules. The changes were accepted effective as of January 1, 2018. Unless the December 20 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

On June 2, 2016, the FERC accepted, but established hearing and settlement judge procedures for,<sup>39</sup> March 31 filings by Emera Maine in which Emera Maine sought authorization to recover certain merger-related costs viewed by the FERC's Office of Enforcement's Division of Audits and Accounting ("DAA") to be subject to the conditions of the orders authorizing Emera Maine's acquisition of, and ultimate merger with,

<sup>39</sup> *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) ("*June 2 Order*").

Maine Public Service (“Merger Conditions”). As previously reported, the Merger Conditions imposed a hold harmless requirement, and required a compliance filing demonstrating fulfillment of that requirement, should Emera Maine seek to recover transaction-related costs through any transmission rate. Following its recent audit of Emera Maine, DAA found that Emera Maine “inappropriately included the costs of four merger-related capital initiatives in its formula rate recovery mechanisms” and “did not properly record certain merger-related expenses incurred to consummate the merger transaction to appropriate non-operating expense accounts as required by [FERC] regulations [and] inappropriately included costs of merger-related activities through its formula rate recovery mechanisms” without first making a compliance filing as required by the merger orders.

In the *June 2 Order*, the FERC found that the Compliance Filings raise issues of material fact that could not be resolved based on the record, and are more appropriately addressed in the hearing and settlement judge procedures.<sup>40</sup> The FERC reiterated several points with respect to transaction-related cost recovery explained in prior FERC orders and provided guidance on other transaction-related cost recovery points.<sup>41</sup> The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures.<sup>42</sup> The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.<sup>43</sup>

**Settlement Judge Procedures.** ALJ John Dring is the settlement judge for these proceedings. There have been five settlement conferences: three in 2016 -- June 29, October 25, and December 1; and two in 2017 -- September 6 and November 9, 2017. In his most recent November 21 status report, Judge Dring found that the parties are making progress toward settlement, and recommended that settlement procedures (which are on-going) be continued.

**Hearing Procedures?** On October 11, Emera Maine requested that the Chief Judge establish an expedited hearing under specific terms and conditions set forth in Exhibit A to its October 11 motion (“Expedited Hearing”). The October 11 motion also asked that the answer period to its request be shortened to five days and that an order ruling on the motion be issued no later than October 18, 2017. On October 13, the Maine Customer Group, MPUC, ReEnergy Biomass Operations LLC, and FERC Trial Staff (collectively, “Intervenors and FERC Trial Staff”), filed an answer opposing the October 11 motion’s request for a shortened answer period. On October 13, Chief Judge Cintron issued an order (“October 13 Order”) which denied the request to shorten the answer period and identified additional questions that all participants in the proceeding were permitted the opportunity to address in their answers to the October 11 motion. Responses to the October 13 Order were filed by Emera Maine, Maine PUC/OPA, Maine Customer Group, and FERC Trial Staff (“October 26 Responses”). On November 13, Emera Maine responded to the October 26 Responses. The October 11 motion, October 26 Responses and Emera Maine’s answer to the October 26 Responses are pending before Chief Judge Cintron.

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

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<sup>40</sup> *Id.* at P 24.

<sup>41</sup> *Id.* at PP 25-26.

<sup>42</sup> *Id.* at P 27.

<sup>43</sup> *Id.* at P 21; Ordering Paragraph (B).



## VII. NEPOOL Agreement/Participants Agreement Amendments

*No Activity to Report*

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

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A<sup>44</sup> and 531-B<sup>45</sup>* also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

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

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

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

- **IMM Quarterly Markets Reports - Summer 2017 (ZZ17-4)**

On December 20, the IMM filed with the FERC its report for the Summer quarter of 2017 of "market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data," as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC, but the Summer 2017 will be discussed with the Markets Committee at its January 9 meeting.

## IX. Membership Filings

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

On December 26, NEPOOL requested that the FERC accept the termination of the Participant status of Aspurity Energy (Supplier Sector), Constellation Energy Services [Related Person to Exelon Generation Company (Supplier Sector) and Noble Americas Power & Gas [Related Person to Mercuria Energy America (Supplier Sector)]]. Comments on the December Membership filing are due on or before January 16.

- **December 2017 Membership Filing (ER18-353)**

On November 30, NEPOOL requested that the FERC accept (i) the memberships of Fusion Solar Center (Related Person to Deepwater Wind Rhode Island (AR Sector) and Josco Energy MA (Supplier Sector); and (ii) the name change of Supplier Sector member Summer Energy Northeast (f/k/a REP Energy). This matter is pending before the FERC.

<sup>44</sup> *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

<sup>45</sup> *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

- **Suspension Notices (not docketed)**

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

<i><b>Date of Suspension/ FERC Notice</b></i>	<i><b>Participant Name</b></i>	<i><b>Date Reinstated</b></i>
Dec 27/29	Plant-E Corp.	Dec 29

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

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

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

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

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

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

On December 21, 2017 the FERC issued a NOPR proposing to direct NERC to develop and submit modifications to the Critical Infrastructure Protection ("CIP") Reliability Standards to improve the reporting of Cyber Security Incidents, including incidents that might facilitate subsequent efforts to harm the reliable operation of the bulk electric system (e.g. (incidents that compromise, or attempt to compromise, a responsible entity's Electronic Security Perimeter ("ESP") or associated Electronic Access Control or Monitoring Systems ("EACMS"))).<sup>46</sup> The mandatory reporting requirements are intended to improve awareness of existing and future cyber security threats and potential vulnerabilities. The reports would continue to go to the Electricity Information Sharing and Analysis Center ("E-ISAC"), but reports would also go to the Industrial Control Systems Cyber Emergency Response Team ("ICS-CERT"), with an annual, public, and anonymized summary of the reports. Comments on the *Cyber Security Incident Reporting NOPR* are due on or before February 26, 2018.<sup>47</sup>

<sup>46</sup> *Cyber Security Incident Reporting Reliability Standards*, 161 FERC ¶ 61,291 (Dec. 21, 2017) ("*Cyber Security Incident Reporting NOPR*").

<sup>47</sup> The *Cyber Security Incident Reporting NOPR* was published in the Fed. Reg. on Dec. 28, 2017 (Vol. 82, No. 248) pp. 61,499-61,505.

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

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

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

On September 20, 2017, the FERC issued a NOPR proposing to approve Emergency Preparedness and Operations (“EOP”) Reliability Standards EOP-004-4 (Event Reporting), EOP-005-3 (System Restoration from Blackstart Resources), EOP-006-3 (System Restoration Coordination), and EOP-008-2 (Loss of Control Center Functionality) (together, the “EOP Changes”).<sup>48</sup> In addition, the FERC proposed to approve the associated VRFs, VSLs, implementation plans, effective dates, and retirements of the currently-effective versions of the Standards immediately prior to the effective dates of the new Standards. The EOP Changes are designed to incorporate several recommendations resulting from a periodic review of the Standards, changes to eliminate inaccurate or duplicate reporting of events identified in the Department of Energy’s (“DOE”) Electric Emergency Incident and Disturbance Report (OE-417) and Attachment 1 to EOP-004, and to improve the Standards by enhancing the requirements for emergency operations, including the communication and coordination amongst reporting entities. Comments on the *EOP NOPR* were due on or before November 27, 2017<sup>49</sup> and were filed by NERC, EEI, and Magnum CAES. The *EOP NOPR* is pending before the FERC.

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

On October 19, 2017 the FERC issued a NOPR proposing to approve changes to Reliability Standard CIP-003 (Cyber Security - Security Management Controls), its associated implementation plan, VRFs, VSLs, and revised NERC Glossary definitions of “Removable Media” and “Transient Cyber Asset”, and the retirement of the currently-effective version of CIP-003 and the NERC Glossary definitions of “Low Impact External Routable Connectivity” and “Low Impact BES Cyber System Electronic Access Point” (“CIP-003 Changes”).<sup>50</sup> The CIP-003 Changes (i) clarify the electronic access control requirements applicable to low impact BES Cyber Systems; (ii) add requirements related to the protection of transient electronic devices used for low impact BES Cyber Systems (e.g., thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems); and (iii) require Responsible Entities to have a documented cyber security policy related to declaring and responding to CIP Exceptional Circumstances for low impact BES Cyber Systems. In addition, the FERC proposes to direct NERC to develop certain modifications to the NERC Reliability Standards to provide clear, objective criteria for electronic access controls for low impact BES Cyber Systems; and address the need to mitigate the risk of malicious code that could result from third-party transient electronic devices. The proposed implementation plan provides that the CIP-003-Changes become effective on the first day of the first calendar quarter that is 18 calendar months after the effective date of the FERC’s order approving the CIP-003

<sup>48</sup> *Emergency Preparedness and Ops. Rel. Standards*, 160 FERC ¶ 61,072 (Sep. 20, 2017) (“*EOP NOPR*”).

<sup>49</sup> The *EOP NOPR* was published in the Fed. Reg. on Sep. 26, 2017 (Vol. 82, No. 185) pp. 44,746-44,750.

<sup>50</sup> *Rev. Critical Infrastructure Protection Rel. Standard CIP-003-7 – Cyber Security – Security Management Controls*, 161 FERC ¶ 61,047 (Oct. 19, 2017) (“*CIP-003-7 NOPR*”).

Changes. Comments on the *CIP-003-7 NOPR* were due on or before December 26, 2017,<sup>51</sup> and were filed by NERC, ELCON, TAPS, and Trade Associations<sup>52</sup> (each urging the FERC to approve the CIP-003 Changes without directives or conditions) and by an individual, Jonathan Applebaum, who submitted comments limited to, and contesting the sufficiency of, the proposed electronic access controls requirement. This matter is pending before the FERC.

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

On November 16, 2017 the FERC issued a NOPR proposing to (i) two new Reliability Standards -- PRC-027-1 (Coordination of Protection Systems for Performance During Faults) and PER-006-1 (Specific Training for Personnel), (ii) associated Glossary definitions, (iii) an implementation plan, (iv) VRFs and VSLs, and (v) the retirement of PRC-001-1.1(ii) (together, the "Protection System Changes"). In addition, the FERC proposes to direct NERC to develop certain modifications to PRC-027-1. NERC stated that the purpose of the Protection System Changes is to: (1) maintain the coordination of Protection Systems installed to detect and isolate Faults on Bulk Electric System ("BES") Elements, such that those Protection Systems operate in the intended sequence during Faults; and (2) require registered entities to provide training to their relevant personnel on Protection Systems and Remedial Action Schemes ("RAS") to help ensure that the BES is reliably operated. NERC requested that the new Standards and definitions become effective on the first day of the first calendar quarter that is 24 months following the effective date of the FERC's order approving the Standards. Comments on the *Protection System Changes NOPR* are due on or before January 22, 2018.<sup>53</sup>

- **NOPR: Revised Reliability Standard: MOD-001-2 (RM14-7)**

The *ATC NOPR* remains pending before the FERC. As previously reported, the FERC's June 19, 2014, NOPR<sup>54</sup> proposed to approve changes to MOD-001-2 (Modeling, Data, and Analysis - Available Transmission System Capability) to replace, consolidate and improve upon the Existing MOD Standards in addressing the reliability issues associated with determinations of Available Transfer Capability ("ATC") and Available Flowgate Capability ("AFC"). MOD-001-2 will replace the six Existing MOD Standards<sup>55</sup> to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2's effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC sought comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also sought further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this NOPR were due August 25, 2014,<sup>56</sup> and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, NAESB supplemented its comments with a report on its efforts to develop WEQ Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as

<sup>51</sup> The *CIP-007-3 NOPR* was published in the Fed. Reg. on Oct. 26, 2017 (Vol. 82, No. 206) pp. 49,541-49,549.

<sup>52</sup> "Trade Associations" are the American Public Power Association ("APPA"), Edison Electric Institute ("EII") and the National Rural Electric Cooperative Association ("NRECA").

<sup>53</sup> The *Protection System Changes NOPR* was published in the Fed. Reg. on Nov. 22, 2017 (Vol. 82, No. 224) pp. 55,535-55,541.

<sup>54</sup> *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) ("*ATC NOPR*").

<sup>55</sup> The 6 existing MOD Standards to be replaced by MOD-001-2 are: MOD-001-1, MOD-004-1, MOD-008-1, MOD-028-2, MOD-029-1a and MOD-030-2.

<sup>56</sup> The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the *ATC NOPR* remains pending before the FERC.

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

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

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

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

## XI. Misc. - of Regional Interest

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

On December 28, 2017, PSNH and HSE Hydro NE AC, LLC (“HSE Hydro NE”)<sup>57</sup> requested authorization for a proposed transaction pursuant to which HSE Hydro NE will acquire PSNH’s portfolio of hydroelectric generation assets (the “PSNH Hydro Transaction”).<sup>58</sup> Applicants requested an order authorizing the PSNH Hydro Transaction on or before February 23, 2018. Comments on the application are due on or before January 18, 2018.

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

On November 22, Dynegy and Vistra Energy Corp. (“Vistra”) requested authorization for a proposed transaction pursuant to which Dynegy will merge with and into Vistra, with Vistra being the surviving corporation (the “Vistra Transaction”). Applicants requested an order authorizing the Vistra Transaction on or before March 15, 2018. Comments on the application are due on or before January 22, 2018.

<sup>57</sup> HSE Hydro NE is a Related Person to Generation Sector Group Seat members Nautilus Hydro and Pawtucket Power.

<sup>58</sup> PSNH’s hydroelectric generation portfolio (61.8 MW) includes the following facilities: Smith (15.78 MW); Amoskeag (17.5 MW); Garvins Falls/Hooksett (7.09 MW); Ayers Island (8.94 MW); Eastman Falls (6.1 MW); Jackman (3.54 MW); Gorham (1.68 MW); Canaan (1.17 MW).

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

On December 27, the FERC authorized the acquisition by Granite Shore Power LLC (“Granite Shore”)<sup>59</sup> of a portfolio of PSNH generation assets<sup>60</sup> (the “Granite Shore Transaction”).<sup>61</sup> Among other conditions, the order required notice within 10 days of the consummation of the transaction, which is expected to occur before the end of 2017. Subject to that notice, this proceeding will be concluded.

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

On September 15, Calpine Corporation (“Calpine”) requested authorization for a proposed transaction pursuant to which it will become an indirect, wholly-controlled subsidiary of ECP Control Co, LLC (“ECP”) (the “Calpine/ECP Transaction”). Applicants requested an order authorizing the Calpine/ECP Transaction on or before January 15, 2018. Comments on the application were due on or before November 14, 2017. A protest was filed by Public Citizen, which asserted that, because the application failed to include Dynegy’s merchant generation assets in the market power analysis (in which it believes Capital Partners has a significant financial interest), the application was incomplete. Calpine answered the Public Citizen protest, refuting its assertions and arguments. Public Citizen answered Calpine’s answer, again asserting that the application be considered incomplete until ECP fully divests all Dynegy ownership or redoes the Competitive Analysis Screen to include ECP’s ownership of Dynegy. This matter is pending before the FERC.

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

On October 31, the FERC approved certain conversions of GenOn notes into common equity of, and corporate structure changes that will result in, a “reorganized GenOn”.<sup>62</sup> Reorganized GenOn will emerge as a result of a plan of reorganization to be confirmed by the United States Bankruptcy Court for the Southern District of Texas in connection with GenOn’s Chapter 11 restructuring (the “Restructuring”). As a result of the Restructuring, Reorganized GenOn will likely not be a subsidiary of, and GenOn Energy Management will thus likely no longer be a Related Person to, NRG. Among other conditions, the order required notice within 10 days of the consummation of the transaction. Subject to that notice, this proceeding will be concluded.

- **203 Application: Green Mountain Power/ENEL Hydros (EC17-76)**

On May 9, the FERC authorized GMP’s acquisition of the following small hydroelectric generation facilities (each a QF, collectively 8.39 MW of total generating capacity) from subsidiaries of Enel Green Power North America, Inc.: Hoague-Sprague, Kelley’s Falls, Lower Valley, Glen, Rollinsford, South Berwick, Somersworth, and Woodsville.<sup>63</sup> Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

- **203 Application: WMECO /NSTAR Merger (EC17-62)**

On March 2, 2017, the FERC authorized Eversource’s internal reorganization under which Western Massachusetts Electric Company (“WMECO”) will merge with and into NSTAR Electric Company (“NSTAR”), with NSTAR as the surviving entity.<sup>64</sup> Applicants committed to hold harmless transmission and wholesale customers from transaction-related costs for five years to the extent that such costs exceed savings related to the merger. On September 22, 2017, Eversource submitted an informational filing notifying the FERC that, while there will be

<sup>59</sup> Granite Shore is a Related Person to Supplier Sector members Castleton Commodities Merchant Trading LP, Rensselaer Generating LLC, and Roseton Generating LLC.

<sup>60</sup> PSNH’s generation portfolio (1,130 MW) includes the following facilities: Merrimack, Schiller, Newington, White Lake, and Lost Nation.

<sup>61</sup> *Pub. Service Co. of New Hampshire, Granite Shore Power LLC*, 161 FERC ¶ 62,231 (Dec. 27, 2017).

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

<sup>63</sup> *Green Mountain Power Corp.*, 159 FERC ¶ 62,144 (May 9, 2017).

<sup>64</sup> *NSTAR Elec. Co. and W. Mass. Elec. Co.*, 158 FERC ¶ 62,155 (Mar. 2, 2017) (“NSTAR/WMECO Merger Order”).

no rate changes filed to accomplish the merger, NSTAR will temporarily keep separate books and records for transmission service and ratemaking purposes, and will continue to provide transmission service and charge customers rates as if the transmission assets were owned by legally separate entities, until it makes an application with the FERC to consolidate rates. Until that time, NSTAR Electric will use “NSTAR Electric (East)” and “NSTAR Electric (West)” to refer to the transmission services and rates previously provided separately by NSTAR Electric and WMECO, respectively. On January 3, Eversource filed a notice reporting that the merger occurred on December 31, 2017. Reporting on this matter is thus concluded.

- **MOPR-Related Proceedings (PJM, NYISO) (EL16-49; EL13-62)**

In two proceedings which, unless narrowly limited solely to the unique facts of the directly applicable markets (PJM in EL16-49; NYISO in EL13-62), could impact the New England market through FERC jurisdictional or other determinations, NEPOOL filed limited comments requesting that any Commission action or decision be limited narrowly to the facts and circumstances as presented in the applicable market. NEPOOL urged that any changes that may be ordered by the Commission in the proceedings not circumscribe the results of NEPOOL’s stakeholder process or predetermine the outcome of that process through dicta or a ruling concerning different markets with different history and different rules. NEPOOL’s comments were filed on January 24 in the NYISO proceeding; January 30 in the PJM proceeding, and are pending before the FERC. Since the last Report, EPSA filed motions to lodge information in each proceeding. In the PJM proceeding, EPSA moved to lodge a July 14, 2017 Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed challenges to the zero emissions credits (“ZECs”) legislation enacted by the State of Illinois. In the NYISO proceeding, in a substantively similar motion, EPSA moved to lodge a Memorandum and Order of the New York District Court dismissing challenges to the ZECs program implemented by the NYPSC. In each case, EPSA reiterated its position that unless addressed, the ZEC programs will adversely impact the respective markets. Answers to the EPSA motions to lodge were filed by Exelon and the NYPSC in the NYISO Proceeding and by Exelon, First Energy, the Load Group, NRECA, Talen Companies, and the Illinois Commerce Commission in the PJM Proceeding. These proceedings remain pending before the FERC. If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

On December 21, 2017, Emera Maine filed a fully executed, non-conforming LGIA with Penobscot Energy Recovery Company (“Penobscot”). The LGIA would establish the interconnection of Penobscot’s solid 25 MW waste-fired generating facility (Line 247) as a direct assignment facility (possible because its radial in nature and serves a single customer) and thereby support Penobscot’s access to New England Market upon expiration of its long-time PPA with Emera Maine (through a resulting lower monthly charge). A March 1, 2018 effective date was requested. Comments on this filing are due on or before January 11, 2018. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Third Supplement to Lease Agreement: UI/CT DOT (ER18-454)**

On December 14, 2017, UI filed an amendment to the Lease Agreement between it and the Connecticut Department of Transportation (“CT DOT”), providing for the recovery by UI of costs UI has incurred and will incur in connection with certain Direct Assignment Facilities (“DAF”) necessary to facilitate the purchase by Metro-North Commuter Railroad Company (“Metro-North”) of additional electric energy to power new commuter rail cars that Metro-North plans to deploy on its New Haven Line. A December 15, 2017 effective date was requested. Comments on this filing are due on or before January 4, 2018. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).



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

On December 13, 2017, Anbaric Development Partners (“Anbaric”) requested FERC authorization to sell transmission rights at negotiated rates on its “Ocean Grid Project”, an integrated offshore transmission system that includes two 1,000 to 1,200 megawatt (“MW”) High-Voltage Direct Current (“HVDC”) transmission lines, each approximately 40 to 60 miles in length, with a total integrated system capacity of up to 2,400 MW, connecting Massachusetts off-shore wind generation to the transmission system in the Southeastern Massachusetts Load Zone (“SEMA”). Anbaric anticipates that the first phase of the Project (1,200 MW) will be in service by December 2021 and the second phase in service by 2024. Anbaric requested an order on its application on or before February 12, 2018. Comments on this filing were due on January 3, 2018; none were filed. A doc-less intervention was filed by Bay State Wind LLC. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **IA: NSTAR/Covanta SEMASS (ER18-424)**

On December 11, 2017, NSTAR filed a two-party IA between itself and Covanta SEMASS (“Covanta”) to replace an October 31, 1985 Power Sale Agreement between the parties which expired on December 1, 2017 and to recognize that Covanta now uses the New England transmission system to market the output of its 80 MW Rochester, MA facility. Comments on this filing were due on or before January 2, 2018; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On December 5, NEP filed a new Phase I/II HVDC-TF Service Agreement with HQUS to allow the continuation without interruption of service provided pursuant to an existing agreement between NEP and HQUS that conforms to the pro forma Phase I/II HVDC-TF Service Agreement set forth in Attachment A of Schedule 20A–Common to the ISO-NE OATT. The Agreement is being filed as “non-conforming” as it was unclear whether the FERC would deem conforming the provisions included in the Agreement that accommodate HQUS’ exercise of its right of first refusal to extend its transmission customer service rights beyond the five-year term of its currently effective Service Agreement with NEP pursuant to Schedule 20A (while taking into account the fact that NEP currently only has contractual rights allowing it to sell service over the Phase I/II HVDC-TF through October 31, 2020). A January 1, 2018 effective date was requested. Comments, if any, on this filing were due on or before December 26 and were filed by HQUS, which supported the filing and requested that the Service Agreement be accepted as filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement Cancellation: NSTAR/Essential Power Newington (ER18-330)**

On November 27, NSTAR filed a notice of cancellation of the Design and Engineering Agreement (“D&E Agreement”) between NSTAR and Essential Power Newington (designated as service agreement IA-NSTAR-34). The D&E Agreement set forth the terms and conditions under which NSTAR undertook certain design and engineering activities on its transmission system<sup>65</sup> in connection with Essential Power Newington’s FCA11 New Capacity Qualification Determination Notification. With the work completed, the D&E Agreement is now terminated. A November 27, 2017 effective date was requested. Comments, if any, on this filing were due on or before December 18; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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<sup>65</sup> Specifically, NSTAR has agreed to make changes to the Zone 2 timer on both primary (P1) and backup (P2) relays at its Mystic Substation that are associated with NSTAR Line 423-515.



- **IA: CL&P/Woods Hill Solar (ER18-316)**

On November 20, 2017, Eversource, on behalf of CL&P, filed a two-party IA between CL&P and Woods Hill Solar to govern the interconnection of a 20 MW photovoltaic (“PV”) generating facility to be located in Pomfret, CT. A November 30, 2017 effective date was requested. Comments on this filing were due on or before December 11, 2017; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On December 7, the FERC accepted the D&E Agreement between The United Illuminating Company (“UI”) and Eversource for the planned Pootatuck Substation Ring Bus Expansion. The “Ring Bus Expansion” (relocation of the existing line structure and reconfiguration of the Pootatuck Substation into a four-breaker “ring” bus expansion ) is designed to address conditions created under certain contingencies in which UI transmission loads could be subject to overloads or voltage collapse conditions. The D&E Agreement was accepted effective as of October 20, 2017, as requested. Unless the December 7 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On December 13, the FERC accepted the two-party IA between PSNH and Pontook for the continued provision of interconnection service to Pontook’s existing 3-unit, 9.6 MW hydro-electric facility located on the Androscoggin River in Dummer, New Hampshire. As previously reported, the facility has been connected to PSNH distribution system since 1986, Pontook makes use of PSNH’s distribution system and the New England transmission system to market the output of the facility, and the IA replaces a 1985 Agreement whose initial 3-year term has expired. Because there was no modification to the facility or to the interconnection facilities, a three-way IA between PSNH, Pontook and ISO-NE under Schedule 23 of the ISO-NE OATT was not required. The IA was accepted effective as of December 16, 2016, as requested. Unless the December 13 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

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

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

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

The FERC’s audit of ISO-NE docketed in this proceeding is on-going. As previously reported, the FERC informed ISO-NE on November 24, 2015 that it would evaluate ISO-NE’s compliance with: (1) the transmission provider obligations described in the Tariff, (2) *Order 1000* as it relates to transmission planning and expansion, and interregional coordination, (3) accounting requirements of the Uniform System of Accounts under 18 C.F.R. Part 101, (4) financial reporting requirements under 18 C.F.R. Part 141; and (5)

record retention requirements under 18 CFR Part 125. The FERC indicated that the audit will cover the July 10, 2013 period through the present.

## XII. Misc. - Administrative & Rulemaking Proceedings

- **State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM (AD17-11)**

As previously reported, the FERC held a 2-day technical conference (on May 1-2) to foster further discussion regarding the development of regional solutions in the Eastern RTOs/ISOs that reconcile the competitive market framework with the increasing interest by states to support particular resources or resource attributes. FERC staff sought to “discuss long-term expectations regarding the relative roles of wholesale markets and state policies in the Eastern RTOs/ISOs in shaping the quantity and composition of resources needed to cost-effectively meet future reliability and operational needs”. A more detailed summary of the technical conference was circulated with the last Report. Pre-conference comments from the conference’s speakers, panelists and other interested parties are available in the FERC’s eLibrary and through the tech conference’s calendar entry. Those interested were invited to submit post-conference comments on or before June 22. Comments were received from over 80 parties, and were briefly summarized at the Summer Meeting. Reply comments, not exceeding 10 pages, were filed by over 30 parties. This matter remains pending before the FERC.

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

On December 15, 2016, the FERC issued a notice of inquiry (“NOI”) seeking comments regarding how to address any double recovery resulting from the FERC’s current income tax allowance and ROE policies.<sup>66</sup> The NOI followed the D.C. Circuit’s *United Airlines*<sup>67</sup> 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”.<sup>68</sup> Comments and reply comments were submitted by over 25 and 18 parties, respectively. Since the last Report, on January 2, 2018, R. Gordon Gooch filed a motion requesting that the FERC compel all pass-through entities to reduce their claims for income tax allowance in rates, lowering rates as necessary to make their rates “just and reasonable” in response to the passage and signature into law of the “Tax Cut and Jobs Act” (Public Law No. 115-97). This matter remains pending before the FERC.

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

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

On October 2, the FERC issued a notice inviting initial comments on the DOE proposal to be submitted by October 23, with reply comments due November 7. On October 4, the Director of the Office of Energy Policy and Innovation issued a list of questions to be addressed (to assist FERC Staff in its understanding of the

<sup>66</sup> *Inquiry Regarding the FERC’s Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2017).

<sup>67</sup> *United Airlines Inc., et al. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (“*United Airlines*”).

<sup>68</sup> *Id.* at 137.

implications of the proposed rule) related to the need for reform, eligibility, implementation, rates, and other. A number of requests to extend the proposed deadlines were filed, but denied.

More than 450 comments were submitted by October 23 in response to the DOE NOPR. Those filings raise and discuss an exceptionally broad spectrum of process, legal, and substantive arguments. NEPOOL's comments made the following three requests of FERC in considering its response to the DOE NOPR: (1) if FERC is inclined to issue a rule in response to the DOE NOPR, FERC should provide adequate time and process for meaningful stakeholder consideration and input on a FERC proposed rule before finalizing that rule; (2) if FERC concludes that changes to organized markets are needed, FERC should not mandate a single solution, but instead should allow sufficient flexibility, both procedurally and substantively, for each region with an organized market to address the concerns raised in the DOE NOPR with reference to the specific and unique circumstances of that region; and (3) FERC should ensure that there is adequate time for compliance with any final rule that might apply to New England so that New England can follow its FERC-approved stakeholder process in designing and finalizing any such compliance. A summary of the initial comments filed was circulated under separate cover and can be found with the posted materials for the November 3 meeting. Reply comments were due November 7 and were filed by over 100 parties, including ISO-NE. On November 20, NEPOOL filed a brief response to arguments made in certain reply comments, requesting that the FERC (i) reject any arguments that a one-size-fits-all solution should be implemented, without following applicable stakeholder processes, in response to the DOE NOPR, and (ii) respect regional differences and priorities, and to provide flexibility, both procedurally and substantively, for each region to satisfy its unique needs using its stakeholder processes in a time frame that allows for full and informed consideration of the market changes and is compatible with its priorities.

On December 7, FERC Chairman McIntyre requested a 30-day extension of time for FERC action on the DOE NOPR. On December 8, DOE Secretary Perry granted that extension, to January 11, 2018. Since the last Report, supplemental comments, information and answers were filed by Foundation for Resilient Societies ("FRS"), Global Energy Institute, Murray Energy, and certain public interest organizations and individuals. This matter is pending FERC action.

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

As previously reported, the FERC issued a NOPR<sup>69</sup> on December 15, 2016 proposing reforms designed to improve certainty,<sup>70</sup> promote more informed interconnection,<sup>71</sup> and enhance interconnection

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<sup>69</sup> *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016) ("*LGIP/LGIA Reforms NOPR*"). The *LGIP/LGIA Reforms NOPR* was published in the *Fed. Reg.* on Jan. 13, 2017 (Vol. 82, No. 9 pp. 4,464-4,501).

<sup>70</sup> To accomplish this goal, the FERC proposes to: (1) revise the *pro forma* LGIP to require transmission providers that conduct cluster studies to move toward a scheduled, periodic restudy process; (2) remove from the *pro forma* LGIA the limitation that interconnection customers may only exercise the option to build transmission provider's interconnection facilities and standalone network upgrades if the transmission owner cannot meet the dates proposed by the interconnection customer; (3) modify the *pro forma* LGIA to require mutual agreement between the transmission owner and interconnection customer for the transmission owner to opt to initially self-fund the costs of the construction of network upgrades; and (4) require that the RTO/ISO establish dispute resolution procedures for interconnection disputes. The Commission also seeks comment on the extent to which a cap on the network upgrade costs for which interconnection customers are responsible can mitigate the potential for serial restudies without inappropriately shifting cost responsibility. *Id.* at P 6.

<sup>71</sup> The FERC proposes to: (1) require transmission providers to outline and make public a method for determining contingent facilities in their LGIPs and LGIAs based upon guiding principles in the Proposed Rule; (2) require transmission providers to list in their LGIPs and on their OASIS sites the specific study processes and assumptions for forming the networking models used for interconnection studies; (3) require congestion and curtailment information to be posted in one location on each transmission provider's OASIS site; (4) revise the definition of "Generating Facility" in the *pro forma* LGIP and LGIA to explicitly include electric storage resources; and (5) create a system of reporting requirements for aggregate interconnection study performance. The FERC also seeks comment on proposals or additional steps that the Commission could take to improve the resolution of issues that arise when affected systems are impacted by a proposed interconnection. *Id.* at P 7.

processes.<sup>72</sup> Based, in part, on input received in response to AWEA's petition for changes to the *pro forma* LGIP/LGIA, and the FERC's May 13, 2016 technical conference to explore generator interconnection issues (as reported previously under Docket Nos. RM16-12; RM15-21), the FERC identified proposed reforms which it states could remedy potential shortcomings in the existing interconnection processes. The FERC also sought comment on whether any of its proposed reforms should be applied to the *pro forma* SGIP/SGIA.<sup>73</sup> 60 sets of comments on and answer to the *LGIP/LGIA Reforms NOPR* were submitted, including comments by: NEPOOL (approved at the April 7 Participants Committee meeting), ISO-NE, Avangrid, EDF Renewable, EDP Renewables, Eversource, Exelon, Invenergy, National Grid, NextEra, APPA/LPPC/NRECA, AWEA, EEI, ELCON, ESA, and Public Interest Organizations. This matter is pending before the FERC.

- **NOPR: Fast-Start Pricing in RTO/ISO Markets (RM17-3)**

On December 21, 2017, the FERC withdrew<sup>74</sup> its December 2016 *Fast-Start Pricing NOPR*.<sup>75</sup> The FERC stated that, following "further consideration and after review of the comments received in response to the [*Fast-Start Pricing NOPR*], it was "persuaded by comments that ... argued for regional flexibility."<sup>76</sup> However, the FERC, which "continue[s] to believe that improved fast-start pricing practices have the potential to achieve the goals outlined in the NOPR," decided to pursue the goals of the NOPR through section 206 actions involving NYISO, PJM, and SPP.<sup>77</sup> (Many of the proposed requirements in the Fast-Start NOPR were already implemented in New England on March 1, 2017, pursuant to changes jointly filed by ISO-NE and NEPOOL, and accepted, in 2015, in Docket No. ER15-2716).

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

On January 19, 2017, the FERC issued a NOPR proposing to require each RTO and ISO that currently allocates the costs of Real-Time uplift due to deviations to do so only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.<sup>78</sup> In addition, the FERC proposed to revise its regulations to enhance transparency by requiring that each RTO/ISO post uplift costs paid (dollars) and operator-initiated commitments (MWs) on its website; and define in its tariff its transmission constraint penalty factors, as well as the circumstances under which those penalty factors can set LMPs, and any procedure for changing those factors. Comments and reply comments on the *Uplift/Transparency NOPR* were filed by over 40 parties, including: ISO-NE, Brookfield, Calpine, DC Energy, Direct, Exelon, Potomac Economics, Saracen, EEI, APPA/NRECA, Appian Way Energy Partners, AWEA, ELCON, EPSA, Financial Marketers Coalition, and the IRC. This matter is pending before the FERC.

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<sup>72</sup> The FERC proposes to: (1) allow interconnection customers to limit their requested level of interconnection service below their generating facility capacity; (2) require transmission providers to allow for provisional agreements so that interconnection customers can operate on a limited basis prior to completion of the full interconnection process; (3) require transmission providers to create a process for interconnection customers to utilize surplus interconnection service at existing interconnection points; (4) require transmission providers to set forth a separate procedure to allow transmission providers to assess and, if necessary, study an interconnection customer's technology changes (e.g., incorporation of a newer turbine model) without a change to the interconnection customer's queue position; and (5) require transmission providers to evaluate their methods for modeling electric storage resources for interconnection studies and report to the Commission why and how their existing practices are or are not sufficient. *Id.* at P 8.

<sup>73</sup> *Id.* at P 11.

<sup>74</sup> *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 161 FERC ¶ 61,293 (Dec. 21, 2017) ("*Order Withdrawing NOPR*").

<sup>75</sup> *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 157 FERC ¶ 61,213 (Dec. 15, 2016) ("*Fast-Start Pricing NOPR*").

<sup>76</sup> *Order Withdrawing NOPR* at P 4.

<sup>77</sup> *Id.*

<sup>78</sup> *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 158 FERC ¶ 61,047 (Jan. 19, 2017) ("*Uplift/Transparency NOPR*").

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

The FERC's *Storage NOPR* remains pending. As previously reported, on November 23, 2016, the FERC issued the *Storage NOPR* proposing to require each RTO and ISO to revise its tariff "to (1) establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, accommodates their participation in the organized wholesale electric markets and (2) define distributed energy resource aggregators as a type of market participant that can participate in the organized wholesale electric markets under the participation model that best accommodates the physical and operational characteristics of its distributed energy resource aggregation."<sup>79</sup> Comments on the *Storage NOPR* were filed by over 100 parties, including: NEPOOL, ISO-NE, APPA/ NRECA, Avangrid, AWEA, Brookfield, CT DEEP, CT PURA, Dominion, DTE, EEI, ELCON, EPSA, EPRI, ESA, Exelon, FirstLight, Genbright, Harvard Environmental Policy Initiative, IPKeys, MA DPU, MIT, MMWEC, NARUC, NERC, NESCOE, NextEra, NRG, SEIA, UCS. Since the last Report, supplemental comments were filed by the Advanced Energy Management Alliance. In addition, on September 22, a number of US Senators<sup>80</sup> requested that this rulemaking proceed towards completion as quickly as possible. Chairman Chatterjee responded to each on October 5, noting that the comments received are being reviewed and relaying his personal commitment to address the issues raised in the NOPR as the rulemaking proceeds forward. This matter remains pending before the FERC.

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

The FERC's *Data Collection NOPR* remains pending. As previously reported, the FERC issued a July 21, 2016 NOPR, which superseded both its *Connected Entity NOPR* (RM15-23) and *Ownership NOPR* (RM16-3), proposing to collect certain data for analytics and surveillance purposes from market-based rate ("MBR") sellers and entities trading virtual products or holding FTRs and to change certain aspects of the substance and format of information submitted for MBR purposes.<sup>81</sup> The *Data Collection NOPR* presents substantial revisions from what the FERC proposed in the *Connected Entity NOPR*, and responds to the comments and concerns submitted by NEPOOL in that proceeding. Among other things, the changes proposed in the *Data NOPR* include: (i) a different set of filers; (ii) a reworked and substantially narrowed definition of Connected Entity; and (iii) a different submission process. With respect to the MBR program, the proposals include: (i) adopting certain changes to reduce and clarify the scope of ownership information that MBR sellers must provide; (ii) reducing the information required in asset appendices; and (iii) collecting currently-required MBR information and certain new information in a consolidated and streamlined manner. The FERC also proposes to eliminate MBR sellers' corporate organizational chart submission requirement adopted in *Order 816*. Comments on the *Data Collection NOPR* were due on or before September 19, 2016<sup>82</sup> and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

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

Rehearing of *Order 833*<sup>83</sup> remains pending. As previously reported, *Order 833* amended FERC regulations to implement provisions of the Fixing America's Surface Transportation ("FAST") Act that pertain to the designation, protection and sharing of Critical Electric Infrastructure Information ("CEII") and amend other

<sup>79</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) ("*Storage NOPR*").

<sup>80</sup> Senators Whitehouse (RI), Booker (NJ), Markey (MA), Wyden (OR), Warren (MA), and Sanders (VT).

<sup>81</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

<sup>82</sup> The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

<sup>83</sup> *Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information; Availability of Certain North American Electric Reliability Corporation Databases to the Commission*, Order No. 833, 157 FERC ¶ 61,123 (Nov. 17, 2016) ("*Order 833*").

regulations that pertain to CEII. The amended procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures. *Order 833* became effective February 21, 2017.<sup>84</sup> On December 19, 2016, EEI requested rehearing of *Order 833*. The FERC issued a tolling order on January 17, 2017 affording it additional time to consider the EEI request for rehearing, which remains pending.

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

The *Primary Frequency Response NOPR*<sup>85</sup> remains pending. The *Primary Frequency Response NOPR*, issued on November 17, 2016, proposes to require all newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install and enable primary frequency response capability as a condition of interconnection. To implement these requirements, the Commission proposes to revise the *pro forma* LGIA and the *pro forma* SGIA. The *Primary Frequency Response NOPR* follows the FERC's *Frequency Response NOI*<sup>86</sup> from early 2016. Comments on the *Primary Frequency Response NOPR* were filed by over 30 parties, including AWEA, EEI, ELCON, EPSA, ESA, First Solar, the IRC, NRECA, and UCS. Supplemental comments were filed by ELCON. On August 18, 2017, the FERC issued a request for supplemental comments related to whether and when electric storage resources should be required to provide primary frequency response, and the costs associated with primary frequency response capabilities for small generating facilities.<sup>87</sup> Supplemental comments were filed by over 20 parties, including the AES Companies, NERC, Western Interconnection Advisory Body, Magnum CAES, NRECA, Arizona Public Service, Tri-State Generation, and North American Generator Forum, Independent Transmission Company ("ITC"), the IRC, NYTOs, SoCal Edison, San Diego Gas & Electric, and the Energy Storage Association ("ESA").

### XIII. Natural Gas Proceedings

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

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

On March 31, 2016, the FERC conditionally accepted Algonquin tariff modifications and request for waiver that provided an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies ("EDCs") that are participating in state-regulated electric reliability programs.<sup>88</sup> As previously reported, Algonquin stated that the modifications were consistent with the FERC's current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies ("LDCs") from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC's initiatives related to gas-electric coordination. On May 9, 2016, the FERC held a technical conference to examine "concerns raised regarding the basis and need for the waiver." Initial comments were due May 31. Almost two dozen sets of initial comments were filed, raising numerous issues both in support and in opposition to the Algonquin proposal. Reply comments were due June 10, 2016 and were filed by Algonquin Gas Transmission, Sequent Energy Management, L.P. and

<sup>84</sup> *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

<sup>85</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016) ("*Primary Frequency Response NOPR*").

<sup>86</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOI*").

<sup>87</sup> Notice of the Request for Supplemental Comments was published in the *Fed. Reg.* on Aug. 24, 2017 (Vol. 82, No. 163) pp. 40,081-40,085.

<sup>88</sup> *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG.

On August 31, 2016, the FERC issued an order in which it rejected Algonquin's request for a waiver that would have exempted gas-fired generators from capacity release bidding requirements but accepted Algonquin's proposal to exempt from bidding an EDC's capacity release to an asset manager who is required to use the released capacity to carry out the EDC's obligations under the state-regulated electric reliability program.<sup>89</sup> The FERC explained that its capacity release regulations seek to balance the interests of the releasing shipper in releasing capacity to a replacement shipper of its choosing while still ensuring that allocative efficiency is enhanced by ensuring the capacity is used for its highest valued use.<sup>90</sup> Algonquin's proposal, whereby any gas-fired generator to whom EDCs release capacity would be a pre-arranged replacement shipper, failed to meet the standard of "improving the competitive structure of the natural gas industry" as formulated by the FERC in granting bidding exemptions for state-regulated retail access programs.<sup>91</sup> Furthermore, the FERC found that exemption proponents had not shown why such a broad exemption was necessary in order for EDCs to have a sufficient ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.<sup>92</sup> On September 30, 2016, ConEd and Orange & Rockland Utilities, Inc. ("O&R") requested clarification of the *Algonquin Order Following Technical Conference*, asking the FERC to clarify certain aspects of its approval exempting from bidding an EDC's capacity release to an asset manager. Algonquin Gas Transmission, National Grid Electric Distribution Companies, and Sequent Energy Management and Tenaska Marketing Ventures filed answers to the requests for clarification on October 17. Those requests are pending before the FERC.

On September 23, 2016, Algonquin submitted a compliance filing in response to the requirements of the *Algonquin Order Following Technical Conference*. Comments on that compliance were due on or before October 5, 2016; none were filed. The compliance filing remains pending before the FERC.

- **Natural Gas-Related Enforcement Actions**

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

**BP (IN13-15).** On July 11, 2016, the FERC issued *Opinion 549*<sup>93</sup> affirming Judge Cintron's August 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, "BP") violated Section 1c.1 of the Commission's regulations ("Anti-Manipulation Rule") and section 4A of the Natural Gas Act ("NGA").<sup>94</sup> Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP's Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel ("HSC") trading point in order to benefit correspondingly long position at the Henry Hub trading point. The FERC agreed, finding that the "record shows that BP's trading practices during the Investigative Period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions."<sup>95</sup> Accordingly, the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in "unjust profits it

<sup>89</sup> *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

<sup>90</sup> *Id.* at P 27.

<sup>91</sup> *Id.* at P 34.

<sup>92</sup> *Id.* at P 35

<sup>93</sup> *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

<sup>94</sup> *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

<sup>95</sup> *BP Penalties Order* at P 3.

received as a result of its manipulation of the Houston Ship Channel Gas Daily index.” The \$20.16 million civil penalty was at the top of the FERC’s Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP’s violation of a FERC order within 5 years of the scheme. BP’s penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP’s request for rehearing of the order establishing a hearing in this proceeding.<sup>96</sup> BP was directed to pay the civil penalty and disgorgement amount within 60 days of the *BP Penalties Order*. On August 10, 2016 BP requested rehearing of the *BP Penalties Order*. On September 8, the FERC issued a tolling order, affording it additional time to consider BP’s request for rehearing of the *BP Penalties Order*, which remains pending.

On September 7, 2016, BP submitted a motion for modification of the *BP Penalties Order’s* disgorgement directive because it cannot comply with the disgorgement directive as ordered. BP explained that the entity to which disgorgement was to be directed, the Texas Low Income Home Energy Assistance Program (“LIHEAP”), is not set up to receive or disburse amounts received from any person other than the Texas Legislature. In response, on September 12, the FERC stayed the disgorgement directive (until an order on BP’s pending request for rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.<sup>97</sup>

Since the last Report, 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.

***Total Gas & Power North America, Inc. et al. (IN12-17)***. On April 28, 2016, the FERC issued a show cause order<sup>98</sup> in which it directed Total Gas & Power North America, Inc. (“TGPNA”) and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen (“Tran”) and Aaron Hall (collectively, “Respondents”) to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC’s Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.<sup>99</sup>

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

<sup>96</sup> *BP America Inc. et al.*, 147 FERC ¶ 61,130 (May 15, 2014) (“*BP Hearing Order*”), *reh’g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

<sup>97</sup> *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) (“*Order Staying BP Disgorgement*”).

<sup>98</sup> *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

<sup>99</sup> The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE’s case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission’s Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company’s related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.



2016. Respondents answered OE's September 23 answer on January 17, 2017, and OE Staff responded to that answer on January 27, 2017. This matter remains pending before the FERC.

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

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

Recall that Notices of Alleged Violations ("NoVs") are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff's conclusions regarding the subject's conduct.<sup>100</sup> NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **New England Pipeline Proceedings**

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

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

- ▶ 132,700 Dth/d of firm transportation to new and existing delivery points on the Algonquin system and 106,276 Dth/d of firm transportation service from Beverly, MA to various existing delivery points on the Maritimes & Northeast system.
- ▶ 6.3 miles of replacement pipeline along Algonquin in NY and CT; new 7,700-horsepower compressor station in Weymouth, MA; more horsepower at existing compressor stations in CT and NY.
- ▶ Seven firm shippers: Heritage Gas Limited, Maine Natural Gas Company, NSTAR Gas Company d/b/a Eversource Energy, Exelon Generation Company, LLC (as assignee and asset manager of Summit Natural Gas of Maine), Irving Oil Terminal Operations, Inc., New England NG Supply Limited, and Norwich Public Utilities.
- ▶ Certificate of public convenience and necessity granted Jan. 25, 2017.<sup>101</sup>
- ▶ Certain facilities,<sup>102</sup> providing 40,000 out of the project's total capacity of 132,705 dekatherms per day of incremental firm transportation service, placed into service on November 1, 2017.<sup>103</sup> Remaining Project capacity will be available when the remaining Project facilities are placed into service following Director of OEP authorization.

<sup>100</sup> See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh'g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

<sup>101</sup> Order Issuing Certificate and Authorizing Abandonment, *Algonquin Gas Transmission LLC and Maritimes & Northeast Pipeline, LLC*, 158 FERC ¶ 61,061 (Jan. 25, 2017), *order denying stay*, 160 FERC ¶ 61,015 (2017), *reh'g denied*, 161 FERC ¶ 61,255 (Dec. 13, 2017) ("*Atlantic Bridge Project Order*").

<sup>102</sup> The following facilities placed into service: Southeast Discharge Take-up and Relay (Fairfield County, CT); Modified Oxford Compressor Station (New Haven County, CT); Modified Chaplin Compressor Station (Windham County, CT); Modified Danbury (CT) Meter Station; and Modified Stony Point Compressor Station (Rockland County, NY).

<sup>103</sup> *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Oct. 27, 2017).

- ▶ Authorization to proceed with construction of additional Project segments requested on Oct. 31, 2017. Detailed information regarding construction activities can be found in the weekly construction reports filed in this docket.
- **Constitution Pipeline (CP13-499) and Wright Interconnection Project (CP13-502)**
  - ▶ Constitution Pipeline Company and Iroquois Gas Transmission (Wright Interconnection) concurrently filed for Section 7(c) certificates on June 13, 2013.
  - ▶ 650,000 Dth/d of firm capacity from Susquehanna County, PA (Marcellus Shale) through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
  - ▶ New 122-mile interstate pipeline.
  - ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
  - ▶ Final EIS completed on Oct 24, 2014.
  - ▶ Certificates of public convenience and necessity granted Dec 2, 2014.
    - By letter order issued July 26, 2016, the Director of the Division of Pipeline Certificates (Director) granted Constitution's requested two-year extension of time to construct the project.
    - Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays (see below).
  - ▶ On April 22, 2016, New York State Department of Environmental Conservation (NY DEC) denied Constitution's application for a Section 401 permit under the Clean Water Act.
    - On August 18, 2017, the 2nd Circuit denied Constitution's petition for review of the NY DEC decision, concluding that (1) the court lacked jurisdiction over the Constitution's claims to the extent that they challenged the timeliness of the decision; and (2) the NY DEC acted within its statutory authority in denying the certification, and its denial was not arbitrary or capricious.
  - ▶ On May 16, 2016, the New York Attorney General filed a complaint against Constitution at the FERC (CP13-499) seeking a stay of the December 2014 order granting the original certificates, as well as alleging violations of the order, the Natural Gas Act, and the Commission's own regulations due to acts and omissions associated with clear-cutting and other construction-related activities on the pipeline right of way in New York.
    - In July 2016, the FERC rejected the NY AG's filing as procedurally deficient, and declined to stay of the Certificate Order
  - ▶ Tree felling and site preparation continues, but the long-term status of the pipeline is currently unknown. Constitution will submit its monitoring reports monthly rather than weekly until activities resume in 2018.

- **Non-New England Pipeline Proceedings**

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

- **Southeast Market Pipelines Project (CP14-554, CP15-16, CP15-17)**
  - ▶ Florida Southeast Connection, LLC, Transcontinental Gas Pipe Line Company, LLC and Sabal Trail Transmission, LLC (Sabal Trail) filed for a Section 7(c) certificates in Sept. – Nov. 2014.
  - ▶ The three separate but connected natural gas transmission pipeline projects project total approximately 685.5 miles of natural gas transmission pipeline and provide transportation service for up to approximately 1.1 billion cubic feet per day of natural gas to markets in Florida and the southeast United States .

- ▶ Certificates of public convenience and necessity were granted Feb. 2, 2016.<sup>104</sup>
  - Project construction began in August 2016, and in June and July 2017, Commission Staff authorized the pipelines to commence service on completed facilities.
- ▶ On August 22, 2017, the DC Circuit vacated and remanded the FERC’s certificate order, holding that the FERC’s environmental review of the project failed to adequately consider the downstream effects of greenhouse gas emissions resulting from increased power generation.<sup>105</sup>
  - The DC Circuit held that FERC must either quantify and consider the project’s downstream carbon emissions or explain in more detail why it cannot do so. According to the court, quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see how FERC could engage in “informed decision making” with respect to the greenhouse-gas effects of this project, or how “informed public comment” could be possible.
  - This opinion could have significant consequences for future pipeline proceedings at FERC.
- ▶ On September 27, 2017, the FERC issued a Draft Supplemental EIS, estimating the pipeline would potentially increase the Florida GHG emission inventory between 3.7 and 9.7 percent.
  - In the supplemental EIS, the FERC stated that it “could not find a suitable method to attribute discrete environmental effects to GHG emissions.”
- **Millennium Pipeline Valley Lateral Project (CP16-17)**
  - ▶ On July 21, 2017, Millennium Pipeline Company, L.L.C. (Millennium) filed a Request for Notice to Proceed with Construction of its Valley Lateral Project in Orange County, New York.
    - The Valley Lateral Pipeline will connect the existing Millennium Pipeline to the 680 MW CPV Valley Energy Center.
  - ▶ To receive a notice to proceed, Millennium was required to demonstrate that it had obtained all federally-required environmental permits and authorizations, including authorizations under the Clean Water Act (CWA). Millennium stated that the New York State Department of Environmental Conservation (New York DEC) had waived its authority to issue a water quality certification under Section 401 of the CWA by failing to act before the statutorily-imposed deadline.
    - In August 2017, the NY DEC denied the water quality certification to the Valley Lateral Project, citing the D.C. Circuit’s recent ruling in *Sierra Club v. FERC* and the FERC’s “lack of a complete environmental review.”
  - ▶ By Letter Order issued on September 15, 2017, the FERC agreed with Millennium, finding that the New York DEC had waived its authority to issue or deny a water quality certification. Because the NY DEC had received Millennium’s Section 401 certification in November 2015, but did not rule on it until August 2017, FERC ruled that NY DEC, as the certifying agency, had therefore failed to act within the statutory timeframe and had

<sup>104</sup> *Fla. Southeast Connection, LLC*, 154 FERC ¶ 61,080, 61 (Feb. 2, 2016) (order issuing certificate).

<sup>105</sup> *Sierra Club v. FERC*, 2017 U.S. App. LEXIS 15911 (D.C. Cir. Aug. 22, 2017).

waived its certification authority.<sup>106</sup> The FERC's order effectively nullifies the NY DEC's August 2017 rejection of the water quality certification.

- The NY DEC, on October 13, 2017, filed a Request for Rehearing and Stay of the FERC's September 15, 2017, Order. On November 15, the FERC denied the requests for rehearing, stay, and rescission.<sup>107</sup>
  - ▶ Millennium sought, and on October 3, 2017, the FERC granted, a one year extension of time to complete construction of the Valley Lateral Project and make it available for service by November 2018.
  - ▶ On October 27, 2017, the FERC issued a Notice to Proceed, granting Millennium's request to begin construction of the Valley Lateral.
    - The NY DEC, on October 30, 2017, filed a Request for Stay of the Notice to Proceed. The *November 15 Order* also denied the October 30 request for stay.<sup>108</sup>
- **Northern Access Project (CP15-115)**
  - ▶ On Feb. 3, 2017, the FERC issued an order authorizing National Fuel Gas Supply Corporation and Empire Pipeline, Inc. to construct and operate pipeline, compression, and ancillary facilities in McKean County, Pennsylvania, and Allegany, Cattaraugus, Erie, and Niagara Counties, New York (Northern Access Project)
  - ▶ In March 2017, Allegheny Defense Project and Sierra Club (collectively Allegheny) filed a request for rehearing of the FERC's order and on August 31, 2017, FERC issued an Order Denying Stay
    - Consistent with its previous authorization, FERC found no evidence of irreparable harm in letting the project go forward.
  - ▶ Despite the FERC's Order, the project remains halted pending the outcome of National Fuel's fight with the NY DEC's April denial of a Clean Water Act permit.
    - NY DEC found National Fuel's application for a water quality certification, as well as for stream and wetlands disturbance permits, failed to comply with water regulations aimed at protecting wetlands and wildlife and that the pipeline failed to explore construction alternatives.

#### XIV. State Proceedings & Federal Legislative Proceedings

- **Massachusetts Emissions Allowance Auctions: Stakeholder Input on Auction Design Parameters**

In an action that could have implications for the New England Markets, the Massachusetts (MA) Department of Environmental Protection ("MassDEP") issued on August 11, 2017 final regulations to ensure that MA will meet the 2020 statewide greenhouse gas ("GHG") emissions limits mandated by MA's 2008 Global Warming Solutions Act ("GWSA"). Section 7.74<sup>109</sup> of those regulations reduces carbon dioxide ("CO<sub>2</sub>") emissions from MA-based power plants by imposing an annually declining aggregate emissions cap on MA's 21 large fossil

<sup>106</sup> *Millennium Pipeline Co., L.L.C.*, 160 FERC ¶ 61,065 (Sept. 15, 2017), *reh'g denied*, 161 FERC ¶ 61,186 (Nov. 15, 2017).

<sup>107</sup> *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,186 (Nov. 15, 2017) ("*November 15 Order*").

<sup>108</sup> On Oct. 30, 2017, NY DEC also petitioned the United States Court of Appeals for the Second Circuit for a temporary stay of the FERC's Notice to Proceed until the FERC acts on NY DEC's request for rehearing of the Declaratory Order. *In re New York State Department of Environmental Conservation v. FERC*, 2d Cir. No. 17-3503, Petitioner's Emergency Petition for a Writ of Prohibition (Oct. 30, 2017) (Emergency Petition). NY DEC also requested the court to stay the effectiveness of the Notice to Proceed on an interim basis while the court considers the merits of its petition. *Id.* at 34. On Nov. 2, 2017, the court granted an administrative stay pending consideration of the petition by the next available three-judge panel. *In re New York State Dep't of Env'tl. Conservation v. FERC*, 2d Cir. No. 17-3503 (Nov. 2, 2017). NY DEC's Emergency Petition is pending at the court.

<sup>109</sup> Additional information about 310 CMR 7.74 (Reducing CO<sub>2</sub> Emissions from Electricity Generating Facilities) is available at: <http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/ghg/electricity-generatoremissions-limits.html>.

fuel-fired generators. Operators of those facilities will have to offset their CO<sub>2</sub> production with allowances (a limited authorization to emit one metric ton of CO<sub>2</sub> in a calendar year). Allowances will be allocated directly in 2018 based on historical generation. Beginning with compliance year 2019, Section 7.74 requires auctioning of the emissions allowances that facilities must use to comply with the regulation. Allowances may be traded between facilities and a limited quantity may be banked from year to year.

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

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

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

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

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

## XV. Federal Courts

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

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

**Underlying FERC Proceedings: ER16-551<sup>110</sup>**

**Petitioner: Constellation**

On December 28, 2017, Constellation (“Petitioner”) petitioned the DC Circuit Court of Appeals for review of the FERC’s FCM Resource Retirement Reforms orders. Among other submissions, Constellation must file by February 1, 2018 a docketing statement, statement of issues, and any procedural motions. Dispositive motions must be filed by February 16. Appearances by others in this case must be filed by February 1.

<sup>110</sup> *ISO New England Inc.*, 155 FERC ¶ 61,029 (Apr. 12, 2016) (“*Resource Retirement Reforms Order*”), *reh’g and clarif. denied*, 161 FERC ¶ 61,115 (Oct. 30, 2017).

- **Demand Curve Changes (17-1110\*\*)**  
**Underlying FERC Proceedings: ER14-1639<sup>111</sup>**  
**Petitioners: NextEra, NRG, PSEG**

On April 3, 2017, NextEra, NRG and PSEG (“Petitioners”) again petitioned the DC Circuit Court of Appeals for review of the FERC’s Demand Curve orders, which, as previously reported, had been remanded back to the FERC at the FERC’s request following the first appeal by Petitioners. Petitioners’ statement of issues and other initial procedural submissions, as well as the FERC’s initial submissions, were filed May 8. The Clerk granted on June 2 the interventions filed by NEPOOL, NESCOE, CT PURA, and CPV. Petitioner’s Brief was filed on September 8, and corrected on September 18 (for compliance with the Court’s rules on acronyms and abbreviations). Respondent FERC’s Brief was filed on November 21, 2017. On November 28, NRDC and CLF jointly moved for leave to participate as amici curiae and filed an amicus curiae brief in support of the FERC On December 5, the Court granted NRDC/CLF leave to participate as amici curiae and the Clerk lodged the Nov 28 amicus curiae brief. Intervenor’s Respondent Brief was filed by NESCOE, CT PURA and CPV Towantic on December 12, 2017. Petitioner’s Reply Brief is to be filed on January 11, 2018; Deferred Appendix, January 25; and Final Briefs, February 1, 2018.

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**  
**Underlying FERC Proceedings: ER16-1041<sup>112</sup> ER15-1137<sup>113</sup>**  
**Petitioners: UWUA Local 464 and Robert Clark**

UWUA Local 464 and Robert Clark (“Petitioners”) filed petitions for review of the FERC’s orders on the FCA10 and FCA9 Results Filings, consolidated by the Court on January 31, 2017. With Final Briefs submitted on June 26, 2017, all briefing is complete. On December 14, the court scheduled these cases for oral argument on February 9, 2018. The composition of the argument panel will be identified on or about January 8, 2018.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**  
**Underlying FERC Proceeding: ER14-1050,<sup>114</sup> EL14-52;115 EL15-25<sup>116</sup>**  
**Petitioner: NEPGA**

As previously reported, NEPGA filed, on January 19, 2016, a petition for review of the FERC’s orders on NEPGA’s first PER Complaint. On February 24, 2016, the Court granted NEPGA’s motion to consolidate this proceeding with 16-1024. Briefing was completed on November 28, 2016. Oral argument was held October 27, 2017 before Judges Griffith, Sentelle and Randolph. This matter is now pending before the Court.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>117</sup>**  
**Appellants: New England Transmission Owners**

As previously reported, the TOs filed a petition for review of the FERC’s orders in the 2012 and 2014 ROE complaint proceedings on July 13, 2015. On August 14, 2015, the TOs filed an unopposed motion to hold this

<sup>111</sup> 147 FERC ¶ 61,173 (May 30, 2014) (*Demand Curve Order*); 150 FERC ¶ 61,065 (Jan. 30, 2015) (*Demand Curve Clarification Order*); 155 FERC ¶ 61,023 (Apr. 8, 2016) (*Demand Curve Remand Order*); 158 FERC ¶ 61,138 (Feb. 3, 2017) (*Demand Curve Remand Rehearing Order*).

<sup>112</sup> 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).

<sup>113</sup> 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

<sup>114</sup> 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

<sup>115</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

<sup>116</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

<sup>117</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

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 ninth such report filed, was filed on November 13, 2017. In that report, the parties again indicated, ultimately, that the proceedings upon which the TOs based their request for abeyance of this appeal remain ongoing. This case continues to be held in abeyance.

- **FCM Pricing Rules Complaints (15-1071\*\*, 16-1042) (consol.)**

**Underlying FERC Proceeding: EL14-7,<sup>118</sup> EL15-23<sup>119</sup>**

**Petitioners: NEPGA, Exelon**

On March 31, 2015, NEPGA filed a petition for review of the FERC's orders on NEPGA's FCM Administrative Pricing Rules Complaint. Following briefing, oral argument was held October 6, 2017 before Judges Srinivasan, Wilkins and Sentelle. This matter is now pending before the Court.

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<sup>118</sup> 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

<sup>119</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

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