

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of April 5, 2022**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated March 2, 2022 ("last Report") was circulated. New matters/proceedings since the last Report are preceded by an asterisk '\*'. Page numbers precede the matter description.

**COVID-19**



1	Remote ALJ Hearings (AD20-12)	Mar 25	FERC issues notice that, beginning Jun 1, 2022, in-person evidentiary hearings will resume at FERC Headquarters; prior notices, updates and associated remote Uniform Hearing Rules, Hearing Guidance for Participants will be <b>rescinded as of Jun 1, 2022</b>
1	Extension of Filing Deadlines (AD20-11)	Mar 18	FERC issues notice that the blanket waiver of FERC regulations requiring FERC filings to be notarized or supported by sworn declarations would not be further extended
		Mar 31	<b>Blanket waiver expires</b>
2	Blanket Waiver of ISO/RTO Tariff In-Person Meeting and Notarization Requirements (EL20-37)	Mar 18	FERC issues an order that the blanket waiver of ISO/RTO Tariff in-person meeting and notarization requirements would be allowed to expire
		Mar 31	<b>Blanket waiver expires</b>

**I. Complaints/Section 206 Proceedings**



* 2	RENEW/ACPA Resource Capacity Accreditation & Operating Reserve Designation Complaint (EL22-42)	Mar 15	RENEW and ACPA file Complaint seeking a FERC order directing ISO-NE to make changes to its rules for capacity accreditation and operating reserve designations, effective no later than FCA18
		Mar 16-Apr 5	ISO-NE, NEPOOL, AEP, Avangrid, Avangrid Renewables, Borrego, Brookfield, Calpine, Constellation, Dominion, ENE, MA AG, LS Power Companies, National Grid, NESCOE, NextEra, NH OCA, North East Offshore, NRDC, NRG, Public Systems, CT DEEP, CT PURA, MA DPU, Repsol, Vistra, APPA, EPSA, National Hydropower Assoc., Public Citizen, SEIA intervene
		Mar 22	ISO-NE requests extension of time, to Apr 14, to answer Complaint
		Mar 28	FERC grants extension of time, to <b>Apr 14, 2022</b> , for answers to Complaint
2	NMISA Complaint Against PTO AC (Reciprocal TOUT Discount) (EL22-31)	Mar 3-7	Brookfield, Eversource, NESCOE, Versant Power intervene
		Mar 7	PTO AC responds to Complaint
		Mar 16	NMISA answers PTO AC Mar 7 response

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



* 8	FCA16 Results Filing (ER22-1417)	Mar 21	ISO-NE files FCA16 results; comment date <b>May 5, 2022</b>
		Mar 22-Apr 5	NEPOOL, Calpine, Constellation, Dominion, NESCOE, MA DPU intervene
		Apr 1	Individual comments/protests filed by four individuals
* 8	Constellation Post-Spin Updates to Mystic COS Agreement (ER22-1192)	Mar 3	Mystic files updated Agreement
		Mar 21-	National Grid, NESCOE, CT DEEP intervene
		Mar 24	ENECOS, MA AG, CT PURA protest filing

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



* 11	MOPR Elimination Filing (ER22-1528)	Mar 31	ISO-NE and NEPOOL jointly file Tariff changes to eliminate the Minimum Offer Price Rule (MOPR) over a two-year period, with MOPR eliminated in full beginning with FCA19; comment deadline <b>Apr 21, 2022</b>
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11	Waiver Request: FCA16 Information Publication Deadline (ISO-NE) (ER22-1060)	Mar 9 Mar 9	ISO-NE publishes FCA16 Information ISO-NE withdraws its waiver request
11	Exigent Circumstances Filing: FCA16 Information Publication Deadline (ISO-NE) (ER22-1053)	Mar 4-8 Mar 8  Apr 1	Brookfield, North East Offshore file doc-less interventions NEPOOL, NEPGA file comments supporting ISO-NE's Exigent Circumstances filing FERC accepts filing, eff. Feb 16, 2022
11	New England's <i>Order 2222</i> Compliance Filing (ER22-983)	Mar 28 Apr 1	NEPOOL files supplemental comments Protests and comments filed by: <a href="#">AEE/PowerOptions/SEIA</a> ; <a href="#">Environmental Organizations</a> ; <a href="#">MA AG</a> ; <a href="#">Votus</a> ; <a href="#">AEMA</a>
12	Waiver Request: Queue Position Modifications (ConnectGen South Wrentham) (ER22-864)	Mar 8 Mar 23	South Wrentham answers ISO-NE's Mar 2 answer FERC denies South Wrentham's waiver request

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



14	<i>Order 676-J</i> Compliance Filing Part I (CSC-Schedule 18-Attachment Z) (ER22-1168)	Mar 23	NEPOOL, CSC intervene
14	<i>Order 676-J</i> Compliance Filing Part I (ISO-NE-Schedule 24) (ER22-1161)	Mar 21-23	NEPOOL, Eversource intervene
14	<i>Order 676-J</i> Compliance Filing Part I (ISO-NE-Schedule 24) (ER22-1150)	Mar 2-23	NEPOOL, Eversource, MA DPU, National Grid intervene
14	TOs <i>Order 676-I</i> Compliance Filing (ER21-2529)	Mar 7	FERC accepts changes, eff. May 1, 2022
15	CSC Schedule 18 <i>Order 676-I</i> Compliance Filing (ER21-2509)	Mar 7	FERC accepts changes, eff. May 1, 2022
15	ISO-NE/NEPOOL <i>Order 676-I</i> Compliance Filing (ER21-941)	Mar 7	FERC accepts changes, eff. May 1, 2022

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



15	FCM Billing Acceleration and RBA Changes (ER22-1167)	Mar 4-21	Calpine, Dominion, Eversource, National Grid, NRG intervene
15	Non-Commercial Capacity Trading FA Changes (ER22-863)	Mar 21	FERC accepts changes, eff. Mar 22, 2022

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



16	Schedule 21-NEP: 3rd Revised RI LSAs (ER22-927)	Mar 31	FERC accepts 3rd revised RI LSAs, eff. Jan 1, 2022
16	Schedule 21-NEP: 2nd Revised Narragansett LSA (ER22-707)	Mar 18	Green Development requests rehearing of <i>2<sup>nd</sup> Rev Narragansett LSA Order</i>
* 16	Schedule 21-VP: 2021 Annual Update Settlement Agreement (ER20-2119-001)	Mar 25	Versant Power files Settlement Agreement to resolve all issues raised by the MPUC following Versant's 2021 Annual Update filing; comment deadline <b>Apr 14, 2022</b> ; reply comments, <b>Apr 25, 2022</b>

#### VII. NEPOOL Agreement/Participants Agreement Amendments



**No Activity to Report**

## VIII. Regional Reports



- |      |  |        |  |
|------|--|--------|--|
| * 18 | Reserve Market Compliance (32nd Semi-Annual Report (ER06-613)) | Apr 1  | ISO-NE submits 32nd semi-annual report                           |
| * 19 | ISO-NE FERC Form 715 (undocketed)                              | Mar 28 | ISO-NE submits 2021 annual report of total MWh of trans. service |

## IX. Membership Filings



- |      |  |        |   |
|------|--|--------|---|
| * 19 | April 2022 Membership Filing (ER22-1531)   | Mar 31 | NEPOOL requests that the FERC accept the memberships of AMP Solar US Holdings, Power Kiosk and Octopus Energy; comment deadline <b>Apr 22, 2022</b>   |
| 19   | February 2022 Membership Filing (ER22-945) | Mar 31 | FERC accepts (i) Sam Mintz's membership in NEPOOL; (ii) the termination of the Participant status of the following 16 Participants: Aminpour, Farhad; Brooks, Richard; King Forest Industries; Kuser, Michael; PNE Energy Supply; Connecticut Jet Power; Devon Power; Middletown Power; Montville Power; Ambit Northeast; Connecticut Gas & Electric; Energy Rewards; Everyday Energy; Massachusetts Gas and Electric; Public Power; and Viridian Energy; and (iii) the name change of Constellation Energy Generation, LLC |

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



- |      |   |                            |   |
|------|---|----------------------------|---|
| 20   | CIP Standards Dev.: Info Filings on Virtualization & Cloud Computing Services Projects (RD20-2) | Mar 15                     | NERC submits quarterly informational filing, advising of a modified schedule for the revised Standards included in Project 2016-02 (FERC filing scheduled for Jun 2022) |
| 20   | Revised Reliability Standard (CIP-014 Compliance Section) (RD22-3)                              | Mar 15<br>Mar 21<br>Mar 30 | EEI protests NERC's proposed changes<br>NERC answers EEI's protest<br>EEI answers NERC's answer   |
| 20   | Revised Reliability Standards (SOL Changes) (RD22-2)  | Mar 4                      | FERC approves SOL Changes, eff. Jun 1, 2024   |
| * 22 | NPCC Bylaws Changes (RR22-2)  | Mar 11<br>Mar 28<br>Apr 1  | NPCC and NERC file proposed changes to NPCC Bylaws<br>National Grid intervenes<br>Public Citizen protests filing  |
| 23   | Rules of Procedure Changes (Reliability Standards Development Revisions) (RR21-8)               | Mar 18                     | NERC files amended petition for approval; comment deadline <b>April 8, 2022</b>   |

## XI. Misc. - of Regional Interest



- |      |  |                                   |  |
|------|--|-----------------------------------|--|
| * 23 | 203 Application: Pixelle / Spectrum (EC22-49)                          | Apr 1                             | Pixelle requests authorization for the sale of 100% of the interests in Pixelle Holding to Spectrum; comment date <b>Apr 22, 2022</b>  |
| * 23 | CL&P Att. F App. D Depreciation Rate Change (ER22-1548)                | Apr 1                             | CL&P proposes changes to the transmission plant depreciation rate for the Norwalk Harbor-Northport underground transmission line set forth in CL&P's Appendix D to Attachment F of the ISO-NE OATT; comment date <b>Apr 22, 2022</b> |
| * 24 | Maine Power Link Application for Negotiated Rate Authority (ER22-1290) | Mar 10<br><br>Mar 18-22<br>Mar 31 | Maine Power Link submits application for authority to charge negotiated rates associated with transmission capacity rights on its proposed transmission project<br>Public Citizen, MOPA intervene<br>MOPA protests application       |

* 24	TSA: NSTAR/Park City Wind (ER22-1247)	Mar 8 Mar 22 Mar 25	NSTAR and Park City Wind LLC request approval of TSA Mayflower Wind submits comments NSTAR answers Mayflower Wind comments
25	D&E Agreement Cancellation: CL&P/UCONN (ER22-912)	Mar 24	FERC accepts notice of cancellation, eff. Jan 28, 2022
25	D&E Agreement Cancellation: NSTAR/Ocean State (ER22-911)	Mar 24	FERC accepts notice of cancellation, eff. Jan 28, 2022
25	Cost Reimbursement Agreement: Narragansett/BIPCO (ER22-817)	Mar 11	FERC accepts Agreement, eff. Nov 29, 2021
25	IA Termination: CL&P / Sterling Property (ER21-2860)	Mar 24	FERC issues <i>Sterling IA Allegheny Order</i> , modifying the discussion in, but sustaining the results of, the <i>Sterling IA Order</i>
26	Versant Power MPD OATT Order 676-I Compliance Filing (ER21-2498)	Mar 7 Apr 1	FERC conditionally accepts Versant's MPD OATT Order 676-I compliance filing Versant submits filing in response to Mar 7 <i>Versant Order 676-I Compliance Filing Order I</i> ; comment deadline <b>Apr 22, 2022</b>
26	Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)	Mar 31	ER20-2429 (CMP - LNS). Following an extension of time granted by the FERC, CMP submits its further <i>Order 864</i> compliance filing; comment date <b>Apr 21, 2022</b>

## XII. Misc. - Administrative & Rulemaking Proceedings



28	NOI: Dynamic Line Ratings (AD22-5)	Mar 22	TS Conductor submits comments initial comments due <b>Apr 25, 2022</b> ; reply comments, <b>May 25, 2022</b>
29	Joint Federal-State Task Force on Electric Transmission (AD21-15)	Mar 4 Mar 22 Apr 1-4	Transcript of second JFSTF meeting posted in eLibrary FERC issues notice of May 6, 2022 third JFSTF meeting; suggested agenda items due on or before <b>Apr 12, 2022</b> Post-second JFSTF meeting comments filed by: AZ PSC, NJ PBU, NARUC, ND PSC, OH PUC Office of the Federal Energy Advocate, VA SCC, Americans for a Clean Energy Grid, ITC, PJM, and Sunflower Electric
31	Modernizing Electricity Market Design - Energy and Ancillary Service Markets (AD21-10)	Mar 1-7	Reply comments filed by <a href="#">EPRI</a> , <a href="#">NERC and its Regional Entities</a> , <a href="#">Vistra</a>
32	NOI: Industry Assoc'n Dues & Expenses Rate Recovery, Reporting, and Acc'ting Treatment (RM22-5)	Mar 15-24	Reply comments filed by, among others: <a href="#">DTE</a> , <a href="#">MA AG</a> , <a href="#">NECOS</a> , <a href="#">AGA</a> , <a href="#">EEI</a> , <a href="#">INGA</a> , <a href="#">Joint Consumer Advocates</a> , and <a href="#">WIRES</a>
32	NOPR: Internal Network Security Monitoring (RM22-3)	Mar 22-29	Over 20 parties submit comments, including: the IRC, EEI, EPSA, Microsoft, NERC, North American Generator Forum, TAPS
33	NOI: Reactive Power Capability Compensation (RM22-2)	Mar 21-24	Ameren, Clean Energy Coalition, DE Shaw, EDF, EEI, EPSA, Joint Customers, MISO TOs, PJM IMM, PSEG, Vistra, N. Bhushan file reply comments
34	NOI: Removing the DR Opt-Out in ISO/RTO Markets (RM21-14)	Mar 28 Mar 29	MS PSC moves to lodge its pleadings filed in a recent Voltus Complaint proceeding U.S. House Sustainable Energy and Environment Coalition Power Sector Task Force urges the FERC to proceed to a NOPR that would eliminate the demand response Opt-Out

**XIII. FERC Enforcement Proceedings**

* 37	Constellation New Energy (IN22-4)	Mar 29	FERC approves Stipulation and Consent Agreement that resolved OE's investigation into whether Shell violated CAISO tariff and FERC Market Behavior Rules when it did not source electricity for import before offering into both the CAISO day-ahead and real-time markets; CNE must <b>disgorge \$2.3 million</b> , and pay a <b>\$2.4 million civil penalty</b>
* 37	Dynegy Marketing and Trade (IN22-3)	Mar 28	FERC approves Stipulation and Consent Agreement that resolved OE's investigation into whether Dynegy violated PJM arrangements and FERC Market Behavior Rules when it submitted real-time offers that misrepresented certain ramping rates and allowed a capacity market registration to continue above what the unit could produce; Dynegy must <b>disgorge \$119,425</b> , and pay a <b>\$450,000 civil penalty</b>
38	Rover/ETP (CPCN Show Cause Order) (IN19-4)	Mar 8	Virtual prehearing conference held; Chief Judge Cintron extends procedural time standards for this proceeding -- hearings to commence <b>Mar 6, 2023</b> , initial decision deadline <b>Jun 20, 2023</b>
39	Rover and ETP (Tuscarawas River HDD Show Cause Order) (IN17-4)	Mar 21 Mar 25	Respondents answer Rover/ETP CPCN Show Cause Order FERC issues notice that Respondent's Feb 22, 2022 request for rehearing of FERC's Notice of Designation of Commission Staff as Non-Decisional can be deemed denied by operation of law
40	Total Gas & Power North America, Inc. et al. (IN12-17)	Mar 15 Mar 24 Mar 31 Apr 5	Oral argument addressing administrative matters and procedural motions Presiding ALJ issues order confirming Mar 15 bench rulings Respondents request issuance of subpoenas Chief Judge grants subpoena requests; OE withdraws and re-submits pre-filed direct testimony

**XIV. Natural Gas Proceedings**

42	Northern Access Project (CP15-115)	Mar 3	National Fuel answers NY DEC opposition to its request for additional extension of time, until Dec 31, 2024, to complete construction of the Project and enter service
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**XV. State Proceedings & Federal Legislative Proceedings****No Activity to Report****XVI. Federal Courts**

44	NTE CT Petition for Review of Killingly CSO Termination Orders (22-1027)	Mar 28	NTE CT files Docketing Statement, Statement of Issues, the underlying decisions from which the appeal arises, a proposed briefing schedule, any a request that oral argument be set for or before October 2022
		Mar 30	Court grants ISO-NE and NEPGA interventions
		Apr 4	Court sets briefing schedule, with final briefs due <b>Aug 17, 2022</b>
45	CSC Request for Regulatory Asset Recovery of Previously-Incurred CIP IROL Costs (21-1275)	Mar 18	FERC files first status report
45	Mystic ROE (21-1198) (consol.)	Mar 10	MMWEC and NHEC file a notice of intent to participate in support of FERC in case nos. 21-1198, 22-1008, and 22-1026 and in support of Petitioners in the remaining consolidated cases, and file a statement of issues
		Mar 17	CT Parties move to intervene
		Mar 31	Parties file a proposed briefing format and schedule

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46	ISO-NE Implementation of <i>Order 1000</i> Exemptions for Immediate Need Reliability Projects (20-1422)	Mar 22	Court denies LS Power petition for review
46	Mystic 8/9 COS Agreement (20-1343 et al.)(consolidated)	Mar 24	Parties propose format for <b>May 5, 2022</b> oral argument before Judges Srinivasan, Henderson, Rao
48	<i>Order 872</i> (20-72788,* et al.) (consol.) (9th Cir.)	Mar 8	Oral argument held before Judges Nguyen, Miller and Bumatay

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

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

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

**DATE:** April 6, 2022

**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 April 5, 2022. If you have questions, please contact us.

**COVID-19**

- **Remote ALJ Hearings (Rescinded June 1, 2022) (AD20-12)**

Beginning June 1, 2022, in-person evidentiary hearings will resume at FERC Headquarters. Prior notices,<sup>2</sup> updates and associated remote [Uniform Hearing Rules](#), [Hearing Guidance for Participants](#), described in previous Reports, will be rescinded as of June 1, 2022. Notwithstanding the rescission, parties would be expected to abide by the latest updates of these documents if any portion of a hearing must be conducted remotely (e.g., an in-person hearing where a witness or attorney appears remotely), and the OALJ's [Electronic Hearing Rules](#) remain in effect. The March 25 notice applies only for the evidentiary portion of matters set for hearing under Subpart E of the Commission's Rules of Practice and Procedure, and not to prehearing conferences and oral arguments, and not to matters set for settlement judge procedures. Reporting on this proceeding is now concluded.

- **Extension of Filing Deadlines (Expired Apr 1, 2022) (AD20-11)**

The blanket waiver of FERC regulations that require that filings with the FERC be notarized or supported by sworn declarations was not further extended<sup>3</sup> and expired on March 31, 2022.<sup>4</sup> Beginning April 1, 2022, the FERC expects that entities will comply in the ordinary course with requirements in the FERC's regulations that filings be notarized or supported by sworn declarations. Specific requests for waivers may still be requested and granted on a case-by case basis. Reporting on this proceeding is now concluded.

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<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> *Chief Administrative Law Judge's Notices to the Public*, Docket No. AD20-12 (Apr. 23, 2020) (Remote Hearings Notice); (June 4, 2020) (updating Notice of Remote Hearings to include participant guidance). Subsequent updates issued July 13, 2020, Sep. 23, 2020, and May 18, 2021.

<sup>3</sup> The blanket waiver was first extended in May, 2020 and extended three additional times, with the last (Dec. 8, 2021) extension expiring on Mar. 31, 2022. See *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (May 8, 2020) ("First Extension"); *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Jan. 25, 2021) ("Second Extension"); *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (July 26, 2021) ("Third Extension"); *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Dec. 8, 2021) ("Fourth Extension").

<sup>4</sup> Supplemental Notice, *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Mar. 18, 2022).



- **Blanket Waiver of ISO/RTO Tariff In-Person Meeting and Notarization Requirements (Expired Apr 1, 2022) (EL20-37)**

On March 18, 2022, the FERC issued an order allowing the blanket waivers of ISO/RTO Tariff *in-person* meeting and notarization requirements<sup>5</sup> to expire on March 31, 2022.<sup>6</sup> Beginning April 1, 2022, entities must comply in the ordinary course with requirements in OATTs to hold in-person meetings and/or to obtain or provide notarized documents. Should special circumstances warrant, specific requests for waivers may still be requested and will be subsequently addressed by the FERC.<sup>7</sup> Reporting on this proceeding is now concluded.

## I. Complaints/Section 206 Proceedings

- **RENEW/ACPA Resource Capacity Accreditation & Operating Reserve Designation Complaint (EL22-42)**

On March 15, 2022, RENEW Northeast, Inc. (“RENEW”) and the American Clean Power Association (“ACPA”) filed a FPA section 206 Complaint against ISO-NE seeking a FERC order directing ISO-NE to make changes to its rules for capacity accreditation and operating reserve designations, effective no later than FCA18 with respect to capacity accreditation and promptly with respect to operating reserve designations. RENEW/ACPA asserted that the changes are needed to address undue preferences granted under ISO-NE’s rules and procedures to gas-fired generation resources that have neither dual-fuel capability nor dedicated, firm natural gas supply arrangements (“Gas-Only Resources”). Complainants assert that the undue preferences arise in the context of capacity accreditation through an assumption of 100% fuel availability for Gas-Only Resources, and in the context of operating reserves, through the absence of any pre-dispatch requirements to confirm fuel availability. ISO-NE’s response and comments, following a request for extension granted by the FERC on March 28, are due on or before **April 14, 2022**. ISO-NE, NEPOOL, AEP, Avangrid, Avangrid Renewables, Borrego, Brookfield, Calpine, Constellation, Dominion, ENE, MA AG, LS Power Companies, National Grid, NESCOE, NextEra, NH OCA, North East Offshore, NRDC, NRG, Public Systems, CT DEEP, MA DPU, Repsol, Vistra, APPA, EPSA, National Hydropower Assoc., Public Citizen, and SEIA have thus far submitted doc-less interventions. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

- **NMISA Complaint Against PTO AC (Reciprocal TOUT Discount) (EL22-31)**

On February 14, 2022, the Northern Maine Intendent System Administrator (“NMISA”) filed a complaint against the PTO AC (who for these purposes hold exclusive Section 205 rights) for failure to consider and implement a reciprocal discount to the Through and Out (“TOUT”) charges applied to transactions between the New England and Northern Maine regions (“TOUT Discount”), one which would be identical in substance to the reciprocity between New England and New York. The PTO AC response and comments on this Complaint were due on or before March 7, 2022. In its March 7 response, the PTO AC offered the following explanations as to why it is not in a position to advocate for the TOUT Discount: (i) differences between NYISO and NMISA, including the absence of an interconnection between New England and NMISA; (ii) the TOUT rate is how the TOs recover their costs for point-to-point transactions with neighboring utility systems and other systems not electrically connected, and NMISA is similarly situated to HQ and NBSO, which are also subject to a TOUT Rate; (iii) TOUT Rate does not apply to transactions sinking in New England; and (iv) NMISA’s proposal would increase customer rates in New England. On March 16, NMISA answered the PTO AC’s response. NEPOOL, Brookfield, Calpine, Eversource, National Grid, NESCOE, and Versant Power submitted doc-less interventions. This matter is pending before the

<sup>5</sup> See *Temporary Action to Facilitate Social Distancing*, 171 FERC ¶ 61,004 (Apr. 2, 2020) (waiving notarization requirements through Sep. 1, 2020, contained in any tariff, rate schedule, service agreement, or contract subject to the FERC’s jurisdiction under the Federal Power Act (“FPA”), the Natural Gas Act (“NGA”), or the Interstate Commerce Act); 172 FERC ¶ 61,151 (Aug. 20, 2020) (extending the waivers through Jan. 29, 2021); 174 FERC ¶ 61,047 (Jan. 25, 2021) (extending the waivers through July 31, 2021); 176 FERC ¶ 61,044 (July 26, 2021) (extending the waivers through Jan. 1, 2022); *Temporary Action to Facilitate Social Distancing*, 177 FERC ¶ 61,174 (Dec. 8, 2021) (extending the waivers through Mar. 31, 2022).

<sup>6</sup> *Temporary Action to Facilitate Social Distancing*, 178 FERC ¶ 61,190 (Mar. 18, 2022).

<sup>7</sup> Id at P 3.



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

- **206 Investigation: ISO-NE Tariff Schedule 25 and Section I.3.10 (EL21-94)**

As previously reported, the FERC instituted on September 7, 2021 a proceeding under FPA Section 206 to consider whether Schedule 25 and Tariff section I.3.10 may be unjust and unreasonable.<sup>8</sup> This proceeding arises out of issues raised in the NECEC Transmission LLC (“NECEC”)/Avangrid Complaint Against NextEra/Seabrook (related to the interconnection of the New England Clean Energy Connect transmission project (“NECEC Project”)) summarized below (EL21-6). Specifically, the FERC identified a concern that “Schedule 25’s definition of Affected Party and Tariff section I.3.10 may be unjust and unreasonable to the extent they may allow generating facilities and their components to be identified as facilities on which adverse impacts must be remedied before an elective transmission upgrade can interconnect to the ISO-NE transmission system, even though generators are not subject to the [FERC]’s open access transmission principles,” and could result in upgrades identified on an Affected Party’s system without any obligation for the Affected Party to construct the identified upgrades.<sup>9</sup>

Accordingly, the FERC directed ISO-NE to: (1) show cause as to why Schedule 25 and Tariff section I.3.10 remain just and reasonable or (2) explain what changes to Schedule 25 and/or Tariff section I.3.10 it believes would remedy the identified concerns if the FERC were to determine that Schedule 25 and/or Tariff section I.3.10 has become unjust and unreasonable and proceeds to establish a replacement rate. On September 8, 2021, the FERC issued a notice of the proceeding and of the refund effective date, which will be October 13, 2020 (the date the NECEC/Avangrid Complaint Against NextEra/Seabrook was filed). Those interested in participating in this proceeding were required to intervene on or before October 5, 2021.<sup>10</sup> NEPOOL, NESCOE, Brookfield, Calpine, Dominion, Eversource, HQ US, LS Power, MA AG, MMWEC, National Grid, NECEC Transmission, NEPGA, NextEra, NRG, CT DEEP, MA DOER, Pixelle Androscoggin (out-of-time), Vistra (out-of-time), American Clean Power Association (“ACPA”), EPSA, RENEW Northeast, Inc. (“RENEW”), and Public Citizen intervened.

**ISO-NE Answer.** On November 8, 2021, ISO-NE submitted its answer explaining why Schedule 25 and Tariff section I.3.10 remain just and reasonable. ISO-NE called for the FERC to “assist Affected Parties and Interconnection Customers in resolving any disputes pertaining to upgrades on Affected Systems—such as the dispute between NECEC Transmission and NextEra Energy Seabrook, LLC in Docket No. EL21-6—as quickly as possible.” Interested parties had until January 7, 2022 to address whether ISO-NE’s existing Tariff remains just and reasonable and if not, what changes to ISO-NE’s Tariff should be implemented as a replacement rate.

**Comments.** Comments were filed by the January 7, 2022 deadline by [NEPOOL](#), [NECEC/Avangrid](#), [NEPGA](#), [NextEra](#). On January 20 [NextEra](#) answered the NECEC/Avangrid comments. On January 28, [NECEC](#) answered NextEra’s January 20 answer and [ISO-NE](#) answered NECEC’s Jan 7 comments.

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)).

- **NECEC/Avangrid Complaint Against NextEra/Seabrook (EL21-6)**

As previously reported, NECEC and Avangrid Inc. (together, “Avangrid”) filed a complaint (the “Complaint”) on October 13, 2020 requesting FERC action “to stop NextEra from unlawfully interfering with the interconnection of the NECEC Project and seeking, among other things, an initial, expedited order that would

<sup>8</sup> *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 (Sep. 7, 2021) (“Sep 7 Order”).

<sup>9</sup> *Id.* at P 20.

<sup>10</sup> The Notice was published in the *Fed. Reg.* on Sep. 14, 2021 (Vol. 86, No. 175) p. 51,140.

grant certain relief<sup>11</sup> and direct NextEra to immediately commence engineering, design, planning and procurement activities that are necessary for NextEra to construct the generator owned transmission upgrades during Seabrook Station's Planned 2021 Outage. NextEra submitted an answer to the October 13 Complaint (requesting the FERC dismiss or deny the Complaint) and National Grid filed comments. Doc-less interventions were filed by Dominion, Eversource, Calpine, Exelon, HQ US, MA AG, MMWEC National Grid, NESCOE, NRG, and Public Citizen. Avangrid answered NextEra's answer and NextEra answered Avangrid's November 17 answer ("supplemental answer"), repeating its request that the FERC dismiss or deny the Complaint. Avangrid also answered the supplemental answer.

Avangrid amended the Complaint on March 26, 2021 to reflect that aspects of the relief originally requested in the Complaint are no longer feasible within the timeline previously sought. Avangrid continues to seek expeditious FERC action, requesting in its March 26 filing a FERC order on or before May 7, 2021 (which did not occur). On April 15, 2021, NextEra answered the amended Complaint. On April 20, 2021, Avangrid answered NextEra's April 15 answer. On May 6, 2021, ISO-NE submitted a letter to express importance of prompt resolution of these matters. On May 17, Avangrid submitted a letter supporting ISO-NE's May 6, 2021 letter.

**Additional Briefing.** On September 7, 2021, the FERC issued an order establishing additional briefing in this proceeding and instituted a broader Section 206 proceeding (*see* EL21-94 above).<sup>12</sup> Initial briefs<sup>13</sup> were due on or before October 7, 2021, and were filed by [ISO-NE](#), [Avangrid](#), [NextEra](#), [MA AG](#), [NEPGA/EPSC](#), [MA DOER](#). Reply briefs were due on or before October 22, 2021, and were filed by [Avangrid](#), [NextEra](#), [ISO-NE](#). Avangrid answered NextEra's November 4 answer, NextEra moved to lodge a letter from a Branch Chief of the Nuclear Regulatory Commission ("NRC"), including an Inspection Report for Seabrook Station for the time period from July 1, 2021 through September 30, 2021 (together, the "NRC Seabrook Report"), to directly refute a central claim of Avangrid (that Seabrook should have already replaced the Generation Breaker at issue in this proceeding), and Avangrid opposed that motion to lodge (asserting that the NRC Seabrook Report is outside the scope of these proceedings and will not assist the FERC in its decision making). With briefing complete, this matter is again 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)).

- **NextEra Energy Seabrook Declaratory Order Petition re: NECEC Elective Upgrade Costs Dispute (EL21-3)**

In a related matter, initiated a week earlier than the Avangrid Complaint, NextEra Energy Seabrook, LLC ("Seabrook") filed a Petition for a Declaratory Order ("Petition") "by which it seeks to understand the scope of its FERC-jurisdictional regulatory obligations with respect to the project ("NECEC Elective Upgrade"), and to resolve its dispute with NECEC". Specifically, Seabrook asked the FERC to declare that: (1) Seabrook is not required to

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<sup>11</sup> Directing NextEra to comply with the ISO-NE OATT, to comply with open access requirements, and to cease and desist unlawful interference with the NECEC Project; and to have the FERC temporarily revoke NextEra's blanket waiver under Part 358 of the FERC's regulations and to initiate an investigation and require NextEra to preserve and provide documents related to the interconnection of the NECEC Project.

<sup>12</sup> *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 (Sep. 7, 2021).

<sup>13</sup> The FERC requested additional briefing from the Parties, as well as from ISO-NE, on the following issues: (i) whether or not Seabrook's breaker is properly identified as a part of Seabrook's generating facility; (ii) if Seabrook's breaker is part of Seabrook's generating facility, under what authority, if any, Seabrook may be subject to the upgrade obligations imposed on Affected Parties under the ISO-NE Tariff; (iii) if Seabrook's breaker is part of Seabrook's generating facility, what obligations, if any, Seabrook has under its LGIA with respect to replacement of the breaker and whether or not ISO New England Operating Documents and Applicable Reliability Standards impose an obligation to replace the breaker. If Seabrook's breaker is appropriately classified as a system protection facility, what obligations Seabrook has to replace the breaker. If the Seabrook LGIA obligates Seabrook to act, a description of the scope of Seabrook's obligation under the LGIA; (iv) whether there exists any solution for the interconnection of the NECEC Project that may be implemented without the replacement of Seabrook's breaker; and (v) If replacement of Seabrook's breaker is necessary for the interconnection of the NECEC Project, whether there exists any interim solution for the interconnection of the NECEC Project that would allow energization of the NECEC Project prior to the replacement of Seabrook's breaker.

incur a financial loss to upgrade, for NECEC's sole benefit, a 24.5 kV generator circuit breaker and ancillary equipment ("Generation Breaker") at Seabrook Station; (2) "Good Utility Practice" for replacement of the nuclear plant Generation Breaker is defined in terms of the practices of the nuclear power industry, such that Seabrook's proposed definition of that term is appropriate for use in a facilities agreement with NECEC; and (3) Seabrook will not be liable for consequential damages for the service it provides to NECEC under a facilities agreement (collectively, the "Requested Declarations"). Alternatively, Seabrook asked that the FERC declare that nothing in ISO-NE's Tariff requires Seabrook to enter into an agreement to replace the Generation Breaker, and therefore, Seabrook and the Joint Owners are entitled to bargain for appropriate terms and conditions to recover their costs, to define Good Utility Practice, and to limit liability associated with providing the service ("Alternative Declaration").

Comments on Seabrook's Petition were filed by Eversource, MMWEC and NEPGA. Avangrid and NECEC Transmission ("Avangrid") protested the Declaratory Order Petition. Doc-less interventions were filed by Avangrid, Dominion, Eversource, Calpine, Exelon, HQ US, National Grid, NESCOE, NRG, and Public Citizen. NextEra answered Avangrid's protest and Avangrid answered NextEra's answer. On May 6, 2021, ISO-NE submitted a letter in this proceeding, as well as in EL21-6, to express importance of prompt resolution of these matters. NextEra moved to lodge both an August 29, 2021 filing containing an executed Engineering and Procurement Agreement ("E&P Agreement") between Seabrook and NECEC Transmission, LLC ("NECEC") that was filed with the FERC on August 19, 2021 and the NRC Seabrook Report. Avangrid answered that motion, asserting that the NRC Seabrook Report was outside the scope of the proceeding and the motion to lodge should be denied. This matter remains 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)).

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

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

- **Base ROE Complaint I (EL11-66).** In the first Base ROE Complaint proceeding, the FERC concluded that the TOs' ROE had become unjust and unreasonable,<sup>14</sup> set the TOs' Base ROE at 10.57% (reduced from 11.14%), capped the TOs' total ROE (Base ROE *plus* transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion 531-A*).<sup>15</sup> However, the FERC's orders were challenged, and in *Emera Maine*,<sup>16</sup> the U.S. Court of Appeals for the D.C. Circuit ("DC Circuit") vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in *Opinion 531* are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.

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<sup>14</sup> The TOs' 11.14% pre-existing Base ROE was established in *Opinion 489*. *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008), *order granting clarif.*, 124 FERC ¶ 61,136 (2008), *aff'd sub nom.*, *Conn. Dep't of Pub. Util. Control v. FERC*, 593 F.3d 30 (D.C. Cir. 2010) ("*Opinion 489*").

<sup>15</sup> *Coakley Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), *order on paper hearing*, 149 FERC ¶ 61,032 (2014) ("*Opinion 531-A*"), *order on reh'g*, 150 FERC ¶ 61,165 (2015) ("*Opinion 531-B*").

<sup>16</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).

- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)<sup>17</sup> and third (EL14-86)<sup>18</sup> ROE complaint proceedings were consolidated for purposes of hearing and decision, though the parties were permitted to litigate a separate ROE for each refund period. After hearings were completed, ALJ Sterner issued a 939-paragraph, 371-page *Initial Decision*, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.<sup>19</sup> The *Initial Decision* also lowered the ROE ceilings. Parties to these proceedings filed briefs on exception to the FERC, which has not yet issued an opinion on the ALJ's *Initial Decision*.
- **Base ROE Complaint IV (EL16-64).** The fourth and final ROE proceeding<sup>20</sup> also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.<sup>21</sup> The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under section 206 of the FPA.<sup>22</sup> Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

**October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in Emera Maine and Directing Briefs.** On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.<sup>23</sup> The FERC indicated its intention that the methodology be its policy going forward, including in the four currently pending New England proceedings (*see, however, Opinion 569-A*<sup>24</sup> (EL14-12; EL15-45) in

<sup>17</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% ROE, and seeks a reduction of the Base ROE to 8.7%.

<sup>18</sup> The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General, together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the "2014 ROE Complainants"), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

<sup>19</sup> *Environment Northeast v. Bangor Hydro-Elec. Co. and Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) ("2012/14 ROE Initial Decision").

<sup>20</sup> The 4th ROE Complaint asked the FERC to reduce the TOS' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15, 2017. The September 26, 2016 order was challenged on rehearing, but rehearing of that order was denied on January 16, 2018. *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) ("Base ROE Complaint IV Order"), *reh'g denied*, 162 FERC ¶ 61,035 (Jan. 18, 2018) (together, the "Base ROE Complaint IV Orders"). The *Base ROE Complaint IV Orders*, as described in Section XVI below, have been appealed to, and are pending before, the DC Circuit.

<sup>21</sup> *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("Base ROE Complaint IV Initial Decision").

<sup>22</sup> *Id.* at P 2.; Finding of Fact (B).

<sup>23</sup> *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) ("Order Directing Briefs" or "Coakley").

<sup>24</sup> *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020) ("Opinion 569-A"). The refinements to the FERC's ROE methodology included: (i) the use of the Risk Premium model instead of only relying on the DCF model and CAPM under both prongs of FPA Section 206; (ii) adjusting the relative weighting of long- and short-term growth rates, increasing the weight for the short-term growth rate to 80% and reducing to 20% the weight given to the long-term growth rate in the two-step DCF model; (iii) modifying the high-end outlier test to treat any proxy company as high-end outlier if its cost of equity estimated under the model in question is more than 200% of the median result of all the potential proxy group members in that model before any high- or low-end outlier test is applied, subject to a natural break analysis. This is a shift from the 150% threshold applied in

Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.<sup>25</sup>

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

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

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.<sup>26</sup> The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers<sup>27</sup> for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively. On January 11, initial briefs were filed by EMCOS, Complainant-Aligned Parties, TOs, EEI, Louisiana PSC, Southern California Edison, and AEP. As part of their initial briefs, each of the Louisiana PSC, SEC and AEP also moved to intervene out-of-time. Those interventions were opposed by the TOs on January 24, 2019. The Louisiana PSC answered the TOs’ January 24 motion on February 12. Reply briefs were due March 8, 2019 and were submitted by the TOs, Complainant-Aligned Parties, EMCOS, and FERC Trial Staff.

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*Opinion 569*; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

<sup>25</sup> *Id.* at P 19.

<sup>26</sup> *Id.* at P 59.

<sup>27</sup> For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

**TOs Request to Re-Open Record and file Supplemental Paper Hearing Brief.** On December 26, 2019, the TOs filed a Supplemental Brief that addresses the consequences of the November 21 *MISO ROE Order*<sup>28</sup> and requested that the FERC re-open the record to permit that additional testimony on the impacts of the *MISO ROE Order*'s changes. On January 21, 2020, EMCOS and CAPs opposed the TOs' request and brief.

These matters remain pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)).

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

- **FCA16 Results Filing (ER22-1417)**

On March 21, 2022, ISO-NE filed the results of the sixteenth FCA ("FCA16") held February 7, 2022 for the June 1, 2025-May 31, 2026 Capacity Commitment Period ("CCP"). ISO-NE reported the following highlights:

- ♦ FCA16 Capacity Zones were the Southeastern New England ("SENE") Capacity Zone (the Northeastern Massachusetts ("NEMA")/Boston, Southeastern Massachusetts, and Rhode Island Load Zones), the Northern New England ("NNE") Capacity Zone (the Maine, New Hampshire and Vermont Load Zones), the Maine Capacity Zone (the Maine Load Zone) and the Rest-of-Pool ("ROP") Capacity Zone (the Connecticut and Western/Central Massachusetts Load Zones). SENE was modeled as an import-constrained zone; NNE, as an export-constrained Capacity Zone. The Maine Load Zone was modeled as a separate nested export-constrained Capacity Zone within NNE.
- ♦ FCA16 commenced with a starting price of \$12.40/kW-mo. and concluded for all Capacity Zones after four rounds.
- ♦ Capacity Clearing Prices were as follows (prices expressed per kw-mo.): SENE - \$2.639; NNE and Maine - \$2.531; ROP - \$2.591; imports over the NY AC Ties (837 MW) and the Phase I/II HQ Excess external interface (465 MW) - \$2.591; imports over Highgate (58 MW) and New Brunswick (144 MW) - \$2.531.
- ♦ There were no active demand bids for the substitution auction and, accordingly, the substitution auction was not conducted.
- ♦ No resources cleared as Conditional Qualified New Generating Capacity Resources.
- ♦ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource.
- ♦ No De-List Bids were rejected for reliability reasons.

ISO-NE asked the FERC to accept the FCA16 rates and results, effective July 19, 2022. Comments on this filing are due on or before **May 5, 2022**. Thus far, individual comments, largely protesting the continued selection of Merrimack Station in New Hampshire, have been submitted by four individuals. NEPOOL, Calpine, Constellation, Dominion, and NESCOE have filed doc-less interventions. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction (ER22-1192)**

On March 3, 2022, Constellation Mystic Power, LLC ("Mystic") filed changes to its Amended and Restated Cost-of-Service Agreement ("COS Agreement") to reflect Mystic's current upstream ownership.<sup>29</sup> A June 1, 2022

<sup>28</sup> *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (Nov. 21, 2019) ("*MISO ROE Order*"), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154 (May 21, 2020).

<sup>29</sup> Following the Feb. 1, 2022 consummation of the FERC-approved "spin" transaction, Mystic's ultimate upstream owner changed from Exelon Corporation ("Exelon Corp.") to a newly-created holding company, Constellation Energy Corporation ("Constellation Corp.").



effective date was requested. Comments on Mystic's filing were due on or before March 24, 2022. Protests and comments were filed by ENECOS, CT PURA, and the MA AG, each protesting Mystic's proposed use of Constellation's capital structure to determine the cost of capital under the COS Agreement's formula rates, a structure the use of which had been rejected in earlier litigation over the COS Agreement. Doc-less interventions were filed by National Grid, NESCOE, CT DEEP. This matter is pending before the FERC. If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **CSC Request for Regulatory Asset Recovery of Previously-Incurred CIP IROL Costs (ER21-2334)**

As previously reported, the FERC denied the request by Cross-Sound Cable Company LLC ("CSC") for authorization to establish a regulatory asset that would include all CIP-IROL Costs<sup>30</sup> that CSC prudently incurred between January 1, 2016 and May 31, 2021 (\$1.324 million) and recover those costs under Schedule 17 (from all ISO-NE transmission customers) over a five-year period (beginning on the date the FERC makes this rate treatment and related cost recovery effective).<sup>31</sup> Relying on its *Schedule 17 Orders*,<sup>32</sup> which found that Schedule 17 permits recovery only of CIP-IROL costs incurred on or after the effective date of a FPA section 205 filing made by an IROL-Critical Facility owner to recover such costs, and recovery of CIP-IROL costs incurred prior to the effective date of any relevant, individual FPA section 205 filing would violate the rule against retroactive ratemaking, the FERC found that permitting the recovery here proposed by CSC would violate the filed rate doctrine.<sup>33</sup> The FERC rejected the alternative bases for FERC approval proposed by CSC.<sup>34</sup>

**CSC Request for Rehearing.** CSC requested rehearing of the *CSC CIP-IROL Costs Order*. On November 1, 2021, the FERC issued a "Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration".<sup>35</sup> The Notice confirmed that the 60-day period during which a petition for review of the *CSC CIP-IROL Costs Order* could be filed with an appropriate federal court was triggered when the FERC did not act on CSC's request for rehearing of the *CSC CIP-IROL Costs Order*. The Notice also indicated that the FERC would address, as is its right, the rehearing requests in a future order, and may modify or set aside its orders, in whole or in part, "in such manner as it shall deem proper." On February 24, 2022, the FERC issued that order, modifying the discussion in, but sustaining the results of, the *CSC CIP-IROL Costs Order*.<sup>36</sup> On March 28, 2022, CSC requested rehearing of the *CSC CIP-IROL Costs Allegheny Order*. CSC's March 28 request for rehearing of the *Allegheny Order* is pending, with FERC action required on or before April 27, 2022, or the March 28 request for rehearing will be deemed denied by operation of law.

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Mystic continues to be an indirect wholly-owned subsidiary of Constellation Energy Generation, LLC, f/k/a Exelon Generation Company, LLC ("Constellation"). Constellation, in turn, is a direct, wholly-owned subsidiary of Constellation Corp.

<sup>30</sup> Interconnection Reliability Operating Limits ("IROL") Critical Infrastructure Protection ("CIP") costs under Schedule 17 of the ISO-NE Tariff.

<sup>31</sup> *Cross-Sound Cable Co., LLC*, 176 FERC ¶ 61,073 (Aug. 31, 2021) ("*CSC CIP-IROL Costs Order*").

<sup>32</sup> *ISO New England Inc.*, 171 FERC ¶ 61,160 ("*Schedule 17 Order*"), order on reh'g, 172 FERC ¶ 61,251 (2020) ("*Schedule 17 Rehearing Order*") (collectively, "*Schedule 17 Orders*"), appeal pending sub nom., *Cogentrix Energy Power Mgmt., LLC v. FERC*, D.C. Cir. No. 20-1389 (filed Oct. 14, 2020) (see Section XVI).

<sup>33</sup> *CSC CIP-IROL Costs Order* at P 33.

<sup>34</sup> *Id.* at PP 33-37. As previously reported, CSC proposed three alternative bases upon which the FERC could grant its request to use a regulatory asset for CIP IROL cost recovery and rate treatment: (i) FPA section 219 and Order 679 (incentive rate framework); FPA section 205 (in furtherance of the FERC's expressed policy of ensuring reliability of the BES in response to cybersecurity threats); or (iii) FPA section 309 (FERC's remedial authority). In the *August 31 Order*, the FERC rejected each of these in turn.

<sup>35</sup> *Cross-Sound Cable Co., LLC*, 177 FERC ¶ 62,064 (Nov. 1, 2021) (Notice of Denial By Operation of Law of Rehearings of *CSC CIP-IROL Costs Order*).

<sup>36</sup> *Cross-Sound Cable Co., LLC*, 178 FERC ¶ 61,134 (Feb. 24, 2022) ("*CSC CIP-IROL Costs Allegheny Order*").



As previously reported, CSC has appealed the FERC's earlier orders in this proceeding to the DC Circuit (see Section XVI below, where reporting on this matter will continue). That proceeding is being held in abeyance pending FERC action (or inaction) on the appeal of the *CSC CIP-IROL Costs Allegheny Order*. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

As previously reported, each of the *July 17 Orders*<sup>37</sup> and the *Mystic ROE Orders*,<sup>38</sup> which addressed in part or in whole the Cost-of-Service Agreement ("COS Agreement")<sup>39</sup> among Constellation Mystic Power ("Mystic"), Constellation Energy Generation, LLC<sup>40</sup> ("Constellation") and ISO-NE, have been appealed to, and consolidated before, the DC Circuit (see Section XVI below).

**Revised ROE (Sixth) Compliance Filing (-014).** Still pending is Mystic's December 20, 2021 filing in response to the requirements of the *Mystic ROE Allegheny Order*. The sixth compliance filing revised (i) the Cost of Common Equity figures from 9.33% to 9.19%, for both Mystic 8&9 and Everett Marine Terminal ("Everett"), and (ii) the stated Annual Fixed Revenue Requirements for both the 2022/23 and 2023/24 Capacity Commitment Periods. Comments on the sixth compliance filing were due on or before January 10, 2022; none were filed. The Sixth Compliance Filing is pending before the FERC.

**First CapEx Info. Filing.** On September 15, 2021, Mystic submitted, as required by orders in this proceeding and Sections I.B.1.i. and II.6. of Schedule 3A of the COS Agreement ("Protocols"), its informational filing to provide support for the capital expenditures and related costs that Mystic projects will be collected as an expense between June 1, 2022 to December 31, 2022 ("First CapEx Projects Info. Filing"). Formal challenges to the September 15 filing were submitted by the Eastern New England Customer-Owned Systems ("ENECOS") and NESCOE. Comments on the formal challenges were due on or before November 17, 2021, and Mystic responded on November 17 asserting that the challenges should be rejected without further procedures. ENECOS and NESCOE replied to Mystic's November 17, 2021 reply on December 2 and December 6, 2021, respectively. The formal challenges remain pending before the FERC.

If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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<sup>37</sup> The "July 17 Orders" are the *July 2018 Rehearing Order*, *Dec 2018 Rehearing Order* and the *July 17 Compliance Order*. *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (July 13, 2018) ("*July 2018 Order*"), *clarif. granted in part and denied in part, reh'g denied*, 172 FERC ¶ 61,043 (July 17, 2020) ("*July 2018 Rehearing Order*"); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (Dec. 20, 2018) ("*Dec 2018 Order*"), *set aside in part, clarification granted in part and clarification denied in part*, 172 FERC ¶ 61,044 (July 17, 2020) ("*Dec 2018 Rehearing Order*"); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,045 (July 17, 2020) ("*July 17 Compliance Order*") (order on compliance and directing further compliance).

<sup>38</sup> *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) ("*Mystic ROE Order*") (setting the base ROE for the Mystic COS Agreement at 9.33%); *Constellation Mystic Power, LLC*, 177 FERC ¶ 61,106 (Nov. 18, 2021) ("*Mystic ROE First Allegheny Order*") (re-setting Mystic's ROE to 9.19%); *Constellation Mystic Power, LLC*, 177 FERC ¶ 61,106 (Nov. 18, 2021) ("*Mystic ROE Second Allegheny Order*", and together with the *Mystic ROE Order* and the *Mystic ROE Allegheny Order*, the "*Mystic ROE Orders*") (modifying the discussion in, but sustaining the results of, the *Mystic ROE First Allegheny Order*).

<sup>39</sup> The COS Agreement, submitted on May 16, 2018, is between Mystic, Exelon Generation Company, LLC ("ExGen") and ISO-NE. The COS Agreement is to provide cost-of-service compensation to Mystic for continued operation of Mystic 8 & 9, which ISO-NE has requested be retained to ensure fuel security for the New England region, for the period of June 1, 2022 to May 31, 2024. The COS Agreement provides for recovery of Mystic's fixed and variable costs of operating Mystic 8 & 9 over the 2-year term of the Agreement, which is based on the pro forma cost-of-service agreement contained in Appendix I to Market Rule 1, modified and updated to address Mystic's unique circumstances, including the value placed on continued sourcing of fuel from the Distrigas liquefied natural gas ("LNG") facility.

<sup>40</sup> On Feb. 1, 2022, Exelon Generation Company, LLC was renamed and is now known as Constellation Energy Generation, LLC.

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

- **MOPR Elimination Filing (ER22-1528)**

On March 31, 2022, ISO-NE and NEPOOL jointly filed Tariff changes to eliminate over a two-year period New England's current FCM Minimum Offer Price Rule ("MOPR"). The proposal eliminates MOPR in full beginning with FCA19 and replaces it with a reformed buyer-side market power mitigation review construct ("Reformed Mitigation Construct"). Until then (FCA17 and FCA18), the changes establish a "Transition Mechanism" which permits a substantial quantity of state-sponsored policy resources to enter the market without buyer-side market power mitigation review. Two effective dates were requested -- May 30, 2022 for the Transition Mechanism revisions and March 1, 2024 for the Reformed Mitigation Construct revisions. The MOPR Elimination Changes were supported by the Participants Committee at its February 3 meeting. Comments on the MOPR Elimination Changes are due on or before April 21, 2022. Thus far, doc-less interventions have been filed by Calpine, Constellation, MA AG, NESCOE, NRDC/Sustainable FERC Project, RENEW, CT DEEP, MA DPU, ACPA, and the National Hydropower Association. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Waiver Request: FCA16 Information Publication Deadline (ISO-NE) (Withdrawn) (ER22-1060)**

On March 9, 2022, ISO-NE withdrew its request for a waiver of FCA16 provisions of the Tariff that require ISO-NE to publish information related to an FCA no later than 15 days after the FCA (or in the case of FCA16, February 22, 2022) ("FCA16 Info Publication Waiver Request").<sup>41</sup> In light of the DC Circuit order lifting the stay on the *Killingly CSO Termination Order* (see Section XIV below), ISO-NE finalized and published the results of FCA16 on March 9, 2022. With the results published, ISO withdrew its FCA16 Info Publication Waiver Request. Comments on ISO-NE's request to withdraw the FCA16 Info Publication Waiver Request were due on or before March 24, 2022; none were filed. In the absence of any objection, the filing will be deemed withdrawn, and reporting on this proceeding has concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dttdoot@daypitney.com](mailto:dttdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Exigent Circumstances Filing: FCA16 Information Publication Deadline (ISO-NE) (ER22-1053)**

On April 1, 2022, the FERC accepted ISO-NE's February 15, 2022 Exigent Circumstances filing<sup>42</sup> that proposed a modification to Section III.13 of the Tariff that, for FCA17, makes the dates, date ranges, and/or deadlines currently established or prescribed in the Tariff or ISO-NE operating documents ("FCA17 Schedule Dates") inapplicable for FCA17. In light of delays in finalizing the FCA16 Results, ISO-NE will, as permitted under the Exigent Circumstances changes, adjust the FCA17 Schedule Dates and publish the revised FCA17 Schedule Dates. The Exigent Circumstances Filing was supported by NEPOOL and NEPGA. The Tariff changes were accepted effective as of February 16, 2022, as requested. In accepting the changes, the FERC recognized "the unique circumstances in which ISO-NE was required to act ... and ... ISO-NE's commitment to work with stakeholders to address FCA18 deadlines because ... those deadlines do not create exigent circumstances."<sup>43</sup> Unless the *FCA17 Exigent Circumstances Order* is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dttdoot@daypitney.com](mailto:dttdoot@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **New England's Order 2222 Compliance Filing (ER22-983)**

On February 2, 2022, ISO-NE, NEPOOL and the PTO AC ("Filing Parties") submitted Tariff revisions ("Order 2222 Changes") in response to the requirements of Order 2222. The Filing Parties stated that the Order 2222 Changes create a pathway for Distributed Energy Resource Aggregations ("DERAs") to participate in the New

<sup>41</sup> Specifically, ISO-NE asked for a temporary waiver of the requirements in Sections III.13.1.8(a), (b), (c), and (d), and III.13.8.1(c) of the Tariff, until ISO-NE publishes the results of FCA16.

<sup>42</sup> *ISO New England Inc.*, 179 FERC ¶ 61,003 (Apr. 1, 2022) ("FCA17 Exigent Circumstances Order").

<sup>43</sup> *Id.* at P 9.

England Markets by: creating new, and modifying existing, market participation models for DERA use; establishing eligibility requirements for DERA participation (including size, location, information and data requirements); setting bidding parameters for DERAs; requiring metering and telemetry arrangements for DERAs and individual Distributed Energy Resources (“DERs”); and providing for coordination with distribution utilities and relevant electric retail regulatory authorities (“RERRAs”) for DERA/DER registration, operations, and dispute resolution purposes.

Comments, following an extension of time granted by the FERC in response to a request by Advanced Energy Management Alliance (“AEMA”), were due on or before **April 1, 2022**. NEPOOL filed supplemental comments on March 28. Protests and comments were filed by: [AEE/PowerOptions/SEIA](#); [Environmental Organizations](#);<sup>44</sup> [MA AG](#); [Voltus](#); and [AEMA](#). Doc-less interventions were filed by: Avangrid (CMP/UI), Calpine, Constellation, ENE, Enerwise, Eversource, FirstLight, MA AG, National Grid, NESCOE, NRG, MA DPU, APPA, and EEI. This matter is 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)); Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

- **Waiver Request: Queue Position Modifications (ConnectGen South Wrentham) (ER22-864)**

On March 25, 2022, the FERC denied<sup>45</sup> ConnectGen South Wrentham LLC’s (“South Wrentham”) petition for a one-time, limited waiver<sup>46</sup> of the requirements outlined in Schedule 22 section 4.4 of the Tariff (Queue Position Modifications). The FERC found that the circumstances did not satisfy the FERC’s criteria for granting a waiver of Tariff provisions. Specifically, the FERC found that South Wrentham had neither demonstrated that its waiver request was limited in scope or that the waiver would not result in undesirable consequences, including harm to third parties.<sup>47</sup> Unless the *South Wrentham 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)).

- **CSO Termination: Killingly Energy Center (ER22-355)**

As previously reported, the FERC accepted ISO-NE’s November 21, 2021 filing<sup>48</sup> to involuntarily terminate the CSO held by NTE Connecticut LLC (“NTE CT”) as Project Sponsor for Resource No. 38633, the Killingly Energy Center on January 3, 2022.<sup>49</sup> In accepting the filing, the FERC found that the relevant condition for termination set forth in Tariff section III.13.3.4A was met,<sup>50</sup> and ISO-NE had fulfilled the requirement to consult with NTE CT before termination.<sup>51</sup> The CSO termination was accepted effective January 4, 2022. In response, NTE CT not only requested rehearing of the *Killingly CSO Termination Order*, but also filed a motion for stay of that *Order*, in each

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<sup>44</sup> Environmental Organizations are Acadia Center, Conservation Law Foundation (“CLF”), Environmental Defense Fund (“EDF”), Massachusetts Climate Action Network, Natural Resources Defense Council (“NRDC”), Sierra Club, and the Sustainable FERC Project.

<sup>45</sup> *ConnectGen South Wrentham LLC*, 178 FERC ¶ 61,226 (Mar. 25, 2022) (“*South Wrentham Order*”).

<sup>46</sup> Specifically, South Wrentham requested an extension of the FCA resource clearing window under Schedule 22, Section 4.4, to allow South Wrentham to seek qualification for, and bid into, FCA17 with its existing queue position (QP877). Absent the requested waiver, South Wrentham will be required to file a new Capacity Network Resource (“CNR”)–only Interconnection Service application and be assigned a new queue position for purposes of participating in FCA 17. South Wrentham asserted that it has not had a meaningful opportunity to meet the Schedule 22, section 4.4 requirement to clear in an FCA under its current CNR Interconnection Service request given the “extensive, 420+ day delay in the completion of feasibility and system impact studies”.

<sup>47</sup> *Id.* at PP 23-25.

<sup>48</sup> Comments on this filing were due Dec. 3, 2021, following a request by NTE CT for a one-week extension of time to respond to ISO-NE’s filing (which the FERC granted on Dec. 3). NTE CT protested ISO-NE’s filing on Dec. 3, 2021. ISO-NE answered NTE CT’s protest on Dec. 20, 2021 and NTE CT answered ISO-NE’s answer on Dec. 28, 2021. Doc-less interventions were filed by Calpine, Connecticut Light & Power (“CL&P”), Emera Energy Services, NEPGA, NESCOE, National Grid, CT AG, CT DEEP, EPSA, Gemma Power Systems, North Atlantic States Regional Council of Carpenters, Public Citizen, Sierra Club, Yankee Gas, CT OCC, and Mitsubishi Power Americas, Inc.

<sup>49</sup> *ISO New England Inc.*, 178 FERC ¶ 61,001 (Jan. 3, 2022), *reh’g requested* (“*Killingly CSO Termination Order*”).

<sup>50</sup> *Id.* at P 25.

<sup>51</sup> *Id.* at P 27.

case hoping to preserve Killingly's ability to participate in FCA16 on February 7, 2022. When the FERC didn't act on the motion for stay on the expedited basis requested by NTE CT, NTE CT also petitioned the DC Circuit for a stay of the *Killingly CSO Termination Order*.

On January 28, 2022, the FERC denied<sup>52</sup> NTE CT's January 11, 2022 motion for stay. In denying NTE CT's motion for stay, the FERC found that NTE CT was unable to demonstrate that it will suffer irreparable harm absent a stay, and found further that issuing the stay would substantially harm other Market Participants and was not in the public interest.<sup>53</sup> However, as more fully explained in Section XIV below, on February 4, 2022, the DC Circuit granted a stay of the *Killingly CSO Termination Order* and Killingly was able to participate in FCA16.

On February 11, 2022, the FERC issued a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration".<sup>54</sup> The Notice confirmed that the 60-day period during which a petition for review of the *Killingly CSO Termination Order* could be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of *Killingly CSO Termination Order*. The Notice also indicated that the FERC would address, as was its right, NTE CT's rehearing request in a future order, and might modify or set aside its orders, in whole or in part, "in such manner as it shall deem proper." Before addressing NTE CT's rehearing request, the FERC issued a February 11 notice that it was considering the release of information designated as confidential by ISO-NE and NTE CT in their submissions. On February 15, both ISO-NE and NTE CT confirmed that they had no objection to release of information.

On February 23, 2022, the FERC issued an "Allegheny Order"<sup>55</sup> addressing NTE's request for rehearing.<sup>56</sup> In the *Killingly CSO Termination Allegheny Order*, the FERC modified the discussion in the *Killingly CSO Termination Order* and continued to reach the same result. Specifically, the FERC concluded that "after [NTE CT] repeatedly delayed its milestones, ISO-NE has sufficiently demonstrated that [NTE CT] will not meet its May 31, 2024 critical path milestone for commercial operation of the Killingly project (or the next-day June 1, 2024 deadline), as required by the ISO-NE Tariff." The FERC also directed ISO-NE and NTE CT to re-file public versions of their confidential submissions on or before February 28, 2022. On February 24, 2022, ISO-NE and NTE CT filed un-redacted versions of their filings submitted in this proceeding, which the FERC curiously noticed for public comment on or before March 21, 2022; no comments were filed. As summarized in Section XVI below, NTE CT petitioned the DC Circuit on February 23 for review of the *Killingly CSO Termination* and *Killingly CSO Termination Allegheny Orders*.

With the FERC proceedings concluded for now, reporting will continue in Section XVI below. If you have any questions concerning these matters, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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<sup>52</sup> *ISO New England Inc.*, 178 FERC ¶ 61,063 (Jan. 28, 2022) ("Order Denying Stay").

<sup>53</sup> *Id.* at PP 12-19.

<sup>54</sup> *ISO New England Inc.*, 178 FERC ¶ 62,082 (Feb. 11, 2022) ("*Killingly CSO Termination Order Notice of Denial of Rehearing by Operation of Law*").

<sup>55</sup> An "Allegheny Order" is a merits rehearing order issued on or after the 31st day after receipt of a rehearing request, reflecting the FERC's authority to "modify or set aside, in whole or in part," its order until it files the record on appeal with a reviewing federal court. An Allegheny Order will use "modifying the discussion" if the FERC is providing a further explanation, but is not changing the outcome, of the underlying order; or "set aside" if the FERC is changing the outcome of the underlying order. Aggrieved parties have 60 days after a deemed denial to file a review petition, even if FERC has announced its intention to issue a further merits order.

<sup>56</sup> *ISO New England Inc.*, 178 FERC ¶ 61,130 (Feb. 23, 2022) ("*Killingly CSO Termination Allegheny Order*").

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

- **Order 676-J Compliance Filing Part I (CSC-Schedule 18-Attachment Z) (ER22-1168)**

On March 2, 2022, in response to the requirements of *Order 676-J*,<sup>57</sup> ISO-NE and Cross-Sound Cable Company (“CSC”) filed revisions to ISO-NE Tariff Schedule 18 Attachment Z to incorporate the new cybersecurity and PFV standards contained in the North American Energy Standards Board (“NAESB”) Wholesale Electric Quadrant (“WEQ”) Version 003.3 Standards (“Schedule 18 Order 676-J Part I Changes”).<sup>58</sup> An effective date as of the date of the FERC order accepting these changes was requested. Comments on this filing were due on or before March 23, 2022; none were filed. Doc-less interventions were filed by CSC and NEPOOL. 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)).

- **Order 676-J Compliance Filing Part I (TOs-Schedule 20/21-Common) (ER22-1161)**

Also on March 2, 2022, in response to the requirements of *Order 676-J*, the PTO AC, ISO-NE, and the Schedule 20A Service Providers (“S20SPs”) (collectively, the “TOs”) filed revisions to ISO-NE Tariff Schedules 20A-Common and 21-Common to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards (“Schedule 20/21-Common Order 676-J Part I Changes”).<sup>58</sup> An effective date as of the date the FERC may determine was requested. Comments on this filing are due on or before March 23, 2022; none were filed. Doc-less interventions were filed by NEPOOL and Eversource. 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)).

- **Order 676-J Compliance Filing Part I (ISO-NE-Schedule 24) (ER22-1150)**

Again on March 2, 2022, in response to the requirements of *Order 676-J*, ISO-NE filed revisions to ISO-NE Tariff Schedule 24 (Incorporation by Reference of NAESB Standards) to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards (“Schedule 24 Order 676-J Part I Changes”).<sup>58</sup> An effective date no earlier than June 2, 2022 was requested. The Transmission Committee recommended that the Participants Committee support the Schedule 24 Order 676-J Part I Changes at its March 23 meeting, and the Participants Committee will consider the changes at the April 7 meeting (Consent Agenda Item # 1). Comments on this filing were due on or before March 23, 2022; none were filed. NEPOOL, Eversource, MA DPU, and National Grid submitted doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **TOs Order 676-I Compliance Filing (ER21-2529)**

On March 7, 2022, the FERC accepted the changes to ISO-NE Tariff Schedule 21-Common and Schedule 20A-Common proposed by the PTO AC, ISO-NE, Schedule 20A Service Providers, GMP, and VTransco (collectively, the “TOs”) in accordance with *Order 676-I*.<sup>59</sup> As previously reported, the changes included certain updated business practice standards (Version 003.2) adopted by NAESB’s Wholesale Electric Quadrant and incorporated by reference in the FERC’s regulations through *Order 676-I*. The changes were accepted

<sup>57</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”). *Order 676-J* revised FERC regulations to incorporate by reference the latest version (Version 003.3) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by NAESB’s Wholesale Electric Quadrant. The WEQ Version 003.3 Standards include, in their entirety, the WEQ-023 Modeling Business Practice Standards contained in the WEQ Version 003.1 Standards, which address the technical issues affecting Available Transfer Capability (“ATC”) and Available Flowgate Capability (“AFC”) calculation for wholesale electric transmission services, with the addition of certain revisions and corrections. The FERC also revised its regulations to provide that transmission providers must avoid unduly discriminatory and preferential treatment in the calculation of ATC.

<sup>58</sup> Compliance filings for the rest of the WEQ Version 003.3 Standards (Schedule 24 Order 676-J Part II Changes) are due 12 months after implementation of the WEQ Version 003.2 Standards, or no earlier than October 27, 2022.

<sup>59</sup> *ISO New England Inc. et al.*, Docket Nos. ER21-2529-000 and -001 (Mar. 7, 2022) (unpublished letter order).



effective May 1, 2022. Unless the March 7, 2022 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)).

- **CSC Schedule 18 Order 676-I Compliance Filing (ER21-2509)**

Also on March 7, 2022, the FERC accepted the revisions ISO-NE Tariff Schedule 18-Attachment Z (the inclusion of certain updated business practice standards (Version 003.2) adopted by NAESB's Wholesale Electric Quadrant and incorporated by reference in the FERC's regulations through Order 676-I) proposed by CSC and ISO-NE in response to Order 676-I.<sup>60</sup> The changes were accepted effective May 1, 2022. Unless the March 7, 2022 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)).

- **ISO-NE/NEPOOL Order 676-I Compliance Filing (ER21-941)**

Again, on March 7, 2022, the FEC accepted changes to incorporate by reference in Schedule 24 of the OATT the latest version (Version 003.2) of certain Standards for Business Practices and Communication Protocols for Public Utilities adopted by NAESB's Wholesale Electric Quadrant.<sup>61</sup> The changes were accepted effective May 1, 2022. Unless the March 7, 2022 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)).

## V. Financial Assurance/Billing Policy Amendments

- **FCM Billing Acceleration and RBA Changes (ER22-1167)**

On March 2, 2022, ISO-NE and NEPOOL jointly filed changes to the ISO-NE Financial Assurance Policy ("FAP") to (i) accelerate the settlement and billing of certain Forward Capacity Market ("FCM") charges and payments from a monthly settlement and billing to a daily settlement and bi-weekly billing (the "FCM Acceleration Changes"); (ii) make several corrections and clarifications to the FCM Cost Allocation provisions previously approved by the FERC in 2018 before those go into effect on June 1, 2022 (the "FCM Cost Allocation Changes"); (iii) revise the method to submit Requested Billing Adjustments (the "RBA Changes"); and (iv) make several conforming and clean-up changes (the "Clean-up Changes"). The changes were unanimously supported at the January 6, 2022 Participants Committee meeting. ISO-NE requested a May 1, 2022 effective date for the RBA Changes and a June 1, 2022 effective date for the FCM Acceleration Changes, FCM Cost Allocation Changes, and the Clean-Up Changes. Comments on the changes were due on or before March 23, 2022. Doc-less interventions were filed by Calpine, Dominion, Eversource, National Grid, and NRG. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)) or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

- **Non-Commercial Capacity Trading FA Changes (ER22-863)**

On March 21, 2022, the FERC accepted changes to the FAP to make certain adjustments to the Non-Commercial Capacity ("NCC") Trading Financial Assurance ("FA") calculation ("NCC Trading FA Changes").<sup>62</sup> Specifically, the NCC Trading FA Changes jointly filed by ISO-NE and NEPOOL (i) included the cash flow from any Annual Reconfiguration Transactions ("ARTs") associated with NCC in NCC Trading FA calculations; and (ii) further refined the Capacity Supply Obligation ("CSO") Bilateral price overwrite provisions in FA calculations. The NCC Trading FA Changes were accepted effective as of March 22, 2022, as requested. Unless the March 21 order is

<sup>60</sup> *ISO New England Inc. and Cross-Sound Cable Co.*, Docket No. ER21-2509-001 (Mar. 7, 2022) (unpublished letter order).

<sup>61</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER21-941-001 (Mar. 7, 2022) (unpublished letter order).

<sup>62</sup> *ISO New England Inc., New England Power Pool Participants Comm.*, Docket No. ER22-863 (Mar. 21, 2022) (unpublished letter order).

challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

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

- **Schedule 21-VP: Schedule 21 Name Update (ER22-1115)**

On February 25, 2022, Versant filed a revised Schedule 21-VP to rename the Schedule from “Schedule 21-EM” to “Schedule 21-VP” and to replace all references to “Emera Maine” with “Versant Power”. Comments on this filing were due on or before March 18, 2022; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-NEP: 3rd Revised RI LSAs (ER22-927)**

On March 31, 2022, the FERC accepted two third revised Local Service Agreements (“LSAs”), one among New England Power, ISO-NE, and The Narragansett Electric Company (“Narragansett”); the other among New England Power, ISO-NE, and Block Island Utility District d/b/a Block Island Power Company (“BIPCO”).<sup>63</sup> As previously reported, the filing revised a surcharge in the LSAs for the recovery of costs for the Block Island transmission system from a carrying charge approach to a formula that uses actual costs in the year the surcharge is calculated, with a true-up mechanism. The revisions are expected to result in lower rates to Rhode Island (“RI”) customers. The revised LSAs were accepted effective as of January 1, 2022, as requested. Unless the March 31 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).

- **Schedule 21-NEP: 2nd Revised Narragansett LSA (ER22-707)**

On February 18, 2022, the FERC accepted a Local Service Agreement (“LSA”) among New England Power, The Narragansett Electric Company (“Narragansett”) and ISO-NE.<sup>64</sup> As previously reported, the LSA reflects the construction of the new Iron Mine Hill Road Substation and related transmission modifications, and the assessment to Narragansett of a Direct Assignment Facilities Charge (“DAF Charge”) associated with the facilities. The Iron Mine Hill Road Substation, a new 115 kV/34.5 kV substation (including modifications necessary to loop Narragansett’s existing 115 kV H17 transmission line through the new substation) will connect to a new 34.5 kV distribution feeder, which will serve as the point of interconnection for several distributed generation projects being developed by Green Development, LLC (“Green Development”), located in North Smithfield, Rhode Island. The LSA was accepted effective as of January 1, 2022, as requested. The FERC was not persuaded by Green Development’s arguments that the revised Narragansett LSA was unjust and unreasonable and should be rejected.<sup>65</sup>

**Request for Rehearing.** On March 18, 2022, Green Development requested rehearing of the *2nd Rev Narragansett LSA Order*. Green Development’s request is pending, with FERC action required on or before April 18, 2022, or the request will be deemed denied by operation of law. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-VP: 2021 Annual Update Settlement Agreement (ER20-2119-001)**

On March 25, 2022, Versant Power submitted a joint offer of settlement between itself and the MPUC to resolve all issues raised by the MPUC in response to Versant’s 2021 annual charges update filed, as previously reported, on June 15, 2021, and as amended on June 20, 2021 and July 8, 2021 (the “Versant 2021

<sup>63</sup> *ISO New England Inc.*, Docket No. ER22-927 (Mar. 31, 2022) (unpublished letter order).

<sup>64</sup> *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 178 FERC ¶ 61,115 (Feb 18, 2022) (“*2nd Rev Narragansett LSA Order*”).

<sup>65</sup> *Id.* at P 55.



Annual Update Settlement Agreement”). Under Part V of Attachment P-EM to Schedule 21-VP, “Interested Parties shall have the opportunity to conduct discovery seeking any information relevant to implementation of the [Attachment P-EM] Rate Formula. . . .” and follow a dispute resolution procedure set forth there. In accordance with those provisions, the MPUC identified certain disputes with the 2021 Annual Update, all of which are resolved by the Versant 2021 Annual Update Settlement Agreement. Comments on the Versant 2021 Annual Update Settlement Agreement are due on or before April 14, 2022; reply comments, April 25, 2022. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-VP: 2020 Annual Update Settlement Agreement (ER15-1434-005)**

On November 19, 2021, Versant Power submitted a joint offer of settlement between itself and the MPUC to resolve all issues raised by the MPUC in response to Versant’s 2020 annual charges update filed, as previously reported, on June 15, 2020 (the “Versant 2020 Annual Update Settlement Agreement”). Under Part V of Attachment P-EM to Schedule 21-VP, “Interested Parties shall have the opportunity to conduct discovery seeking any information relevant to implementation of the [Attachment P-EM] Rate Formula. . . .” and follow a dispute resolution procedure set forth there. In accordance with those provisions, the MPUC identified certain disputes with the 2020 Annual Update, all of which are resolved by the Versant 2020 Annual Update Settlement Agreement. Comments on the Versant 2020 Annual Update Settlement Agreement were due on or before December 9, 2021; reply comments, December 19, 2021; none were filed. This matter is 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)).

- **Schedule 21-VP: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434-001 *et al.*)**

Still pending before the FERC is the MPS Merger Cost Recovery Settlement, filed by Emera Maine on May 8, 2018 to resolve all issues pending before the FERC in the consolidated proceedings set for hearing in the *MPS Merger-Related Costs Order*,<sup>66</sup> and certified by Settlement Judge Dring<sup>67</sup> to the Commission.<sup>68</sup> As previously reported, under this Settlement, permitted cost recovery over a period from June 1, 2018 to May 31, 2021 will be \$390,000 under Attachment P of the BHD OATT and \$260,000 under the MPD OATT. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VII. NEPOOL Agreement/Participants Agreement Amendments

### *No Activity to Report*

<sup>66</sup> *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*MPS Merger-Related Costs Order*”). In the *MPS Merger-Related Costs Order*, the FERC accepted, but established hearing and settlement judge procedures for, filings by Emera Maine seeking authorization to recover certain merger-related costs viewed by the FERC’s Office of Enforcement’s Division of Audits and Accounting (“DAA”) to be subject to the conditions of the orders authorizing Emera Maine’s acquisition of, and ultimate merger with, Maine Public Service (“Merger Conditions”). The Merger Conditions imposed a hold harmless requirement, and required a compliance filing demonstrating fulfillment of that requirement, should Emera Maine seek to recover transaction-related costs through any transmission rate. Following an audit of Emera Maine, DAA found that Emera Maine “inappropriately included the costs of four merger-related capital initiatives in its formula rate recovery mechanisms” and “did not properly record certain merger-related expenses incurred to consummate the merger transaction to appropriate non-operating expense accounts as required by [FERC] regulations [and] inappropriately included costs of merger-related activities through its formula rate recovery mechanisms” without first making a compliance filing as required by the merger orders. The *MPS Merger-Related Costs Order* set resolution of the issues of material fact for hearing and settlement judge procedures, consolidating the separate compliance filing dockets.

<sup>67</sup> ALJ John Dring was the settlement judge for these proceedings. There were five settlement conferences -- three in 2016 and two in 2017. With the Settlement pending before the FERC, settlement judge procedures, for now, have not been terminated.

<sup>68</sup> *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).

**VIII. Regional Reports**

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

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

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A*<sup>69</sup> and *531-B*<sup>70</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           | ◆ VTransco            |
| ◆ Eversource          | ◆ NSTAR         |                       |

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

- **Capital Projects Report - 2021 Q4 (ER22-1041)**

On February 10, 2022, ISO-NE filed its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter ("Q4") of calendar year 2021 (the "Report"). ISO-NE is required to file the Report under section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights include the following new projects: (i) nGEM Hardware Phase II (\$4.57 million); (ii) Forecast Enhancements (\$1.78 million); (iii) Solar Do-Not-Exceed ("DNE") Dispatch Phase I (\$1.595 million); (iv) Physical Security Improvement Project (\$1.136 million); (v) Replace Messaging Software (\$432,100); (vi) Asset Activation Automation (\$408,000); (vii) Browser Standardization (\$472,000); (viii) Linear State Estimator Phase I (\$362,000); (ix) Short-Term Load Forecast Curve Modification Enhancement (\$279,600); (x) FCM Delayed Commercial Resource Treatment Phase II (\$253,000); and (xi) Energy Management System Communications Monitoring (\$235,200). The one significant change for a Chartered Project was the Replacement of the LMP Monitor (an increase of \$265,000). Comments on this filing were due on or before March 3, 2022. NEPOOL filed comments on February 23 supporting the 2021 Q4 Report. Doc-less interventions were filed by Eversource and National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

- **Reserve Market Compliance (32<sup>nd</sup>) Semi-Annual Report (ER06-613)**

As directed by the original ASM II Order,<sup>71</sup> as modified,<sup>72</sup> ISO-NE submitted its 32nd semi-annual reserve market compliance report on April 1, 2022. In the 32nd report, ISO-NE stated that "In the coming months, the ISO plans to begin discussions with stakeholders regarding the development of day-ahead ancillary services. As those discussions proceed, the ISO will update the Commission regarding the relation of the proposed day-ahead ancillary services to a forward TMSR market, through future reports in this docket."

<sup>69</sup> *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

<sup>70</sup> *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

<sup>71</sup> See *NEPOOL and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006) ("*ASM II Order*") (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh'g denied* 117 FERC ¶ 61,106 (2006).

<sup>72</sup> See *NEPOOL and ISO New England Inc.*, 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve ("TMSR")).

The April 1 report was not noticed for public comment. If there are questions on this matter, please contact Dave Doot (860-275-0102; [dtadoot@daypitney.com](mailto:dtadoot@daypitney.com)).

- ***Voltus Petition for a FERC Technical Conference on Order 2222 (RM18-9)***

On December 22, 2022, Voltus, Inc. (“Voltus”) requested that the FERC convene a technical conference regarding *Order 2222*-related issues sometime in the months of February or March, 2022. Specifically, Voltus requested the technical conference to allow for a collective discussion of key issues arising from the ISO/RTO *Order 2222* compliance proposals, including certain regional variability, roles of industry participants, narrowing perceived knowledge gaps, and subsequent FERC guidance, all of which Voltus asserts supports the request for a technical conference. On January 7, 2022, the FERC issued a notice of Voltus’ request, inviting comments on Voltus’ request on or before February 7, 2022. Comments supporting Voltus’ request were filed by: [AEE](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), [ISO-RTO Council](#), [MISO](#), [SPP](#), [Sunrun](#), [Ameren](#), [Camus Energy](#), [Energy Web Foundation](#), [Entegrity Energy Partners](#), [Environmental Law and Policy Center](#), [Fermata LLC](#), [Google](#), [Leapfrog Power](#), [Nuvve Holding](#), [Tesla](#), [U Delaware EV Research and Development Group](#), and [Utilidata](#). Voltus’ request remains pending before the FERC.

- **ISO-NE FERC Form 715 (not docketed)**

On March 28, 2022, ISO-NE submitted its 2021 Annual Transmission Planning and Evaluation Report. These filings are not noticed for public comment.

## IX. Membership Filings

- **April 2022 Membership Filing (ER22-1531)**

On March 31, 2022, NEPOOL requested that the FERC accept the following Applicant’s membership in NEPOOL: AMP Solar US Holdings Inc. (AR Sector, DG Sub-Sector); NRG Kiosk LLC d/b/a Power Kiosk (Data-Only Member); and Octopus Energy (Supplier Sector). Comments on this filing are due on or before April 21, 2022.

- **March 2022 Membership Filing (ER22-1131)**

On February 28, 2022, NEPOOL requested that the FERC accept (i) the following Applicant’s membership in NEPOOL: Emera Energy Services Subsidiary No. 6 [Related Person to Emera Energy Services companies (Supplier Sector)]; and Tidal Energy USA (Supplier Sector); and (ii) the name changes of GB II New Haven LLC (f/k/a PSEG New Haven LLC) and GB II Connecticut LLC (f/k/a PSEG Power Connecticut LLC), each of which are now Related Persons to Great River Hydro (AR Sector; RG Sub-Sector), and Generate Colchester Fuel Cells, LLC (f/k/a Bloom Connecticut Clean Energy Company, LLC). Comments on this filing were due on or before March 22, 2022; none were filed. This matter is pending before the FERC.

- **Involuntary Termination Filing: Sunwave USA Holdings Inc. (ER22-1039)**

On February 11, 2022, NEPOOL and ISO-NE jointly requested that the FERC accept the involuntary termination of the NEPOOL membership and MPSA with ISO-NE (Market Participant status) of Sunwave USA Holdings, Inc. (Supplier Sector), effective April 13, 2022. Comments on this filing are due on or before March 4, 2022.

- **February 2022 Membership Filing (ER22-945)**

On March 31, 2022, the FERC accepted<sup>73</sup> (i) the following Applicant’s membership in NEPOOL: Sam Mintz (End User Sector); (ii) the termination of the Participant status of the following 16 Participants: Aminpour, Farhad (End User Sector); Brooks, Richard (End User Sector); King Forest Industries, Inc. (End User Sector); Kuser, Michael (End User Sector); PNE Energy Supply LLC (Supplier Sector); Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, and Montville Power LLC [each Related Persons to Great River Hydro/Generation Bridge

<sup>73</sup> *New England Power Pool Participants Comm.*, Docket No. ER22-945 (Mar. 31, 2022) (unpublished letter order).

Companies (AR Sector; RG Sub-Sector)); and Ambit Northeast LLC, Connecticut Gas & Electric, Inc., Energy Rewards, LLC, Everyday Energy, LLC, Massachusetts Gas and Electric, Inc., Public Power, LLC, and Viridian Energy, LLC [each Related Persons to Dynegy Marketing and Trade (Supplier Sector)]; and (iii) the name change of Constellation Energy Generation, LLC (f/k/a Exelon Generation Company, LLC) (Supplier Sector). Comments on this filing were due on or before February 21, 2022; none were filed. This matter is pending before the FERC.

#### X. Misc. - ERO Rules, Filings; Reliability Standards<sup>74</sup>

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)).

- **CIP Standards Development: Informational Filings on Virtualization and Cloud Computing Services Projects (RD20-2)**

As previously reported, NERC is required to file on an informational basis quarterly status updates regarding the development of new or modified Reliability Standards pertaining to virtualization and cloud computing services. On March 15, 2022, NERC submitted an informational filing regarding one active CIP standard development project (Project 2016-02 – Modifications to CIP Standards (“Project 2016-02”)).<sup>75</sup> Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. A revised schedule for Project 2016-02 calls for final balloting of revised standards in April 2022, NERC Board of Trustees Adoption in May 2022 and filing of the revised standards with the FERC in June 2022.

- **Revised Reliability Standard (CIP-014 Compliance Section) (RD22-3)**

On February 16, 2022, NERC filed for approval proposed changes to the compliance section of CIP-014 (Physical Security). The modifications remove from the Compliance section the provision that requires all evidence demonstrating compliance with the standard to be retained at the Transmission Owner’s or Transmission Operator’s facility. No changes to the mandatory and enforceable provisions of the CIP-014 standard were proposed. Comments on the CIP-014 changes were due on or before March 15, 2022 and were filed by EEI (which protested NERC’s proposed change, suggesting that for security reasons the records be required to be maintained at the TOs’ facilities. NERC answered EEI’s comments on March 21 and EEI answered those comments on March 30. This matter is pending before the FERC.

- **Revised Reliability Standards (SOL Changes): FAC-003-5, 011-4, 014-3; IRO-008-3; PRC 002-3, 023-5, -026-2; and TOP-001-6 (RD22-2)**

On March 4, 2022, the FERC approved proposed changes to the following Reliability Standards related to establishing and communicating System Operating Limits (“SOLs”, and together the “SOL Changes”).<sup>76</sup>

- ◆ FAC-011-4 (System Operating Limits Methodology for the Operations Horizon)
- ◆ FAC-014-3 (Establish and Communicate System Operating Limits)
- ◆ FAC-003-5 (Transmission Vegetation Management)
- ◆ IRO-008-3 (Reliability Coordinator Operational Analyses and Real-time Assessments)
- ◆ PRC-002-3 (Disturbance Monitoring and Reporting Requirements)
- ◆ PRC-023-5 (Transmission Relay Loadability)
- ◆ PRC-026-2 (Relay Performance During Stable Power Swings)

<sup>74</sup> Reporting on the following proceedings has been suspended since the last Report and will be continued if and when there is new activity to report: NOI: Enhancements to CIP Standards (RM20-12).

<sup>75</sup> The other project which had been addressed in prior updates, Project 2019-02, has concluded, and the FERC approved in RD21-6 the Reliability Standards revised as part of that project (CIP-004-7 and CIP-011-3) on Dec. 7, 2021.

<sup>76</sup> *N. Amer. Elec. Rel. Corp.*, Docket No. RD22-2 (Mar. 4, 2022) (unpublished letter order).

## ◆ TOP-001-6 (Transmission Operations)

FERC also approved the retirement of Reliability Standard FAC-010-3 (System Operating Limits Methodology for the Planning Horizon) and modifications to NERC's Glossary of Terms to revise the definition for System Operating Limit and to include "System Voltage Limit". As previously reported, the SOL Changes (NERC Project 2015-09) were developed in response to recommendations from a periodic review of the FAC-010, FAC-011, and FAC-014 Reliability Standards. The revised Reliability Standards will become effective (and the currently effective versions be retired) on June 1, 2024 (or the first day of the first calendar quarter that is 24 months following FERC approval). Unless the March 4 order is challenged, this proceeding will be concluded.

- **NOI: Virtualization and Cloud Computing Services in BES Operations (RM20-8)**

On February 20, 2020, the FERC issued a NOI seeking comments on (i) the potential benefits and risks associated with the use of virtualization and cloud computing services in association with bulk electric system ("BES") operations; and (ii) whether the CIP Reliability Standards impede the voluntary adoption of virtualization or cloud computing services.<sup>77</sup> On March 25, 2020, Joint Associations<sup>78</sup> requested an extension of time to submit comments and reply comments. On April 2, the FERC granted Joint Associations' request and extended the deadline for initial comments on the NOI to July 1, 2020; the deadline for reply comments, July 31, 2020. Comments were filed by NERC, the IRC, Accenture, Amazon Web Services ("Amazon"), Bonneville, the Bureau of Reclamation, Barry Jones, Georgia System Operations, GridBright, Idaho Power, Microsoft, MISO, MISO Transmission Owners, Siemens Energy Management, Tri-State Generation and Transmission Association, VMware, Inc., AEE, American Association for Laboratory Accreditation ("A2LA"), APPA, Canadian Electricity Assoc., EEI, NRECA, and Waterfall Security Solutions. Reply comments were due on or before July 31, 2020, and were filed by AEE, Amazon and Microsoft.

**Dec 2021 Informational Filing.** In part in response to the comments filed, the FERC, in a December 17, 2020 order,<sup>79</sup> directed NERC to begin a formal process to assess, and to make an informational filing in a little over one year (January 1, 2022) that addresses, the feasibility of voluntarily conducting BES operations in the cloud in a secure manner, as well as the status and schedule for any plans to modify the standards. NERC submitted that informational filing on December 17, 2021. In that filing, NERC addressed the status of NERC's formal process to assess the feasibility of voluntarily conducting BES operations in the cloud in a secure manner, evaluated potential modifications to the CIP Standards to facilitate expanded use of the cloud, and considered topic areas raised in comments to the NOI. NERC requested that the FERC accept the informational filing as consistent with the *Order Directing Info. Filing*. NERC committed to continue to consider ways to support industry in securely adopting evolving technologies as necessary, including conducting BES reliability operating services in the cloud. NERC reported that there is no Standard Authorization Request ("SAR") to initiate standards development or a field test, nor had it identified a reliability gap that would necessitate standards development to facilitate BES reliability operating services in the cloud.

- **Order 873 - Retirement of Reliability Standard Requirements (Standards Efficiency Review) (RM19-17; RM19-16)**

On September 17, 2020, the FERC approved the retirement of the 18 Reliability Standard requirements through the retirement of four Reliability Standards and the modification of five Reliability Standards,<sup>80</sup> concluding

<sup>77</sup> *Virtualization and Cloud Computing Services*, 170 FERC ¶ 61,110 (Feb. 20, 2020).

<sup>78</sup> "Joint Associations" are for purposes of this proceeding: EEI, APPA, NRECA, and LPPC.

<sup>79</sup> *Virtualization and Cloud Computing Services*, 173 FERC ¶ 61,243 (Dec. 17, 2020) ("*Order Directing Info. Filing*").

<sup>80</sup> *Elec. Rel. Org. Proposal to Retire Reqs. in Rel. Standards Under the NERC Standards Efficiency Review*, Order No. 873, 172 FERC ¶ 61,225 (Sep. 17, 2020) ("*Order 873*"). The four Reliability Standards being eliminated in their entirety are FAC-013-2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT-004-3.1 (Dynamic Transfers), INT-010-2.1 (Interchange Initiation and Modification for Reliability), MOD-020-0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators). The five modified Reliability Standards are INT-006-5 (Evaluation of Interchange Transactions),

that the 18 requirements “(1) provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.”<sup>81</sup> The FERC also approved the associated violation risk factors, violation severity levels, implementation plan, and effective dates proposed by NERC. Because it was not persuaded by NERC’s justification for the retirement of FAC-008-4 requirement R8, the FERC remanded the retirement of requirements R7 and R8 to NERC for further consideration.<sup>82</sup>

The FERC left for another day its final action on the remaining 56 requirements for which the FERC proposed to approve retirement in the *Retirements NOPR*<sup>83</sup> (the “MOD A Reliability Standards”). The FERC intends to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor NAESB business practice standards (v. 003.3) that include Modeling business practices, which were accepted in *Order 676-J*.<sup>84</sup>

- **NPCC Bylaws Changes (RR22-2)**

On March 11, 2022, NERC and NPCC filed for approval changes to the NPCC Bylaws (the “Bylaws”) designed to, among other things: (1) to improve corporate governance; (2) to ensure consistency with the Not-for-Profit Corporation Law of the State of New York (“N-PCL”), pursuant to which NPCC is organized; and (3) to remove extraneous provisions from the Bylaws, create efficiencies, and reflect changes at NPCC since 2012 (when the last changes to the Bylaws were filed). The Bylaws changes are to take effect upon FERC approval. Comments on this filing were due on or before April 1, 2022. Public Citizen protested the filing, arguing that the FERC should require a change to the composition of NPCC’s Board of Directors. Specifically, Public Citizen suggests that NPCC be compelled to ensure that, of NPCC’s eight board sectors and 15 voting members, “household consumer advocates” have two voting seats in Sector 7 (Sub-Regional Reliability Councils, Customers, Other Regional Entities and Interested Entities), and that regulators, reliability coordinators, and end-users compose at least half of the voting seats of the board. National Grid filed a doc-less intervention. This matter is pending before the FERC.

- **Rules of Procedure Changes (CMEP Risk-Based Approach Enhancements) (RR21-10)**

On September 29, 2021, NERC filed for approval changes to sections 400 (Compliance Monitoring and Enforcement) and 1500 (Confidential Information), Appendix 2 (Definitions) and Appendix 4C (Compliance Monitoring and Enforcement Program) of the NERC Rules of Procedure (“ROP”). The changes were proposed to further enhance the risk-based approach to the Compliance Monitoring and Enforcement Program (“CMEP”) whereby registered entities and the ERO Enterprise focus on the greatest risks to the reliability and security of the Bulk Power System (“BPS”). Comments on this filing were due on or before October 20, 2021. Comments were

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INT-009-3 (Implementation of Interchange) and PRC-004-6 (Protection System Misoperation Identification and Correction), IRO-002-7 (Reliability Coordination—Monitoring and Analysis), TOP-001-5 (Transmission Operations).

<sup>81</sup> *Order 873* at P 2.

<sup>82</sup> *Order 873* at P 5. Pursuant to FPA section 215(d)(4), if the FERC disapproves a modification to a Reliability Standard in whole or in part, it must remand the entire Reliability Standard to NERC for further consideration. Accordingly, although it was satisfied here with the justification for the retirement of R7, the FERC was required to remand both R7 and R8 so that its concerns with the retirement of Requirement R8 could be addressed.

<sup>83</sup> *Electric Reliability Organization Proposal to Retire Requirements in Rel. Standards Under the NERC Standards Efficiency Review*, 170 FERC ¶ 61,032 (Jan. 23, 2020) (“*Retirements NOPR*”) (proposing to approve the retirement of 74 of 77 Reliability Standard requirements requested to be retired by NERC in these two dockets in connection with the first phase of work under NERC’s Standards Efficiency Review, an initiative begun in 2017 that reviewed the body of NERC Reliability Standards to identify those Reliability Standards and requirements that were administrative in nature, duplicative to other standards, or provided no benefit to reliability). As previously reported, NERC withdrew its proposed changes to VAR-001-6 on May 14, 2020, reducing to 76 the number of requirements proposed to be retired.

<sup>84</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”).



filed by Public Utility District No. 1 of Chelan County and jointly by APPA/LPPC/TAPS. This matter remains pending before the FERC.

- **Rules of Procedure Changes (Reliability Standards Development Revisions) (RR21-8)**

On August 18, 2021, NERC filed for approval revisions to sections 300 (Reliability Standards Development), Appendix 3B (Procedure for Election of Members of the Standards Committee) and Appendix 3D (Development of Registered Ballot Body Criteria) of the NERC Rules of Procedure (“ROP”), which are designed to update language, staff titles, and processes; remove unnecessary or duplicative obligations; and clarify roles and responsibilities related to the development of Reliability Standards (the “Reliability Standards Development ROP Revisions”). Comments on this filing were due on or before September 8, 2021; none were filed.

**Deficiency Letter, Response & Amendment.** On February 24, 2022, the FERC issued a deficiency letter, directing NERC to provide, on or before March 28, 2022, additional information and clarifications. On March 18, NERC provided an amended petition for approval, including revisions to Section 305.3.3 (Review of Segment Criteria) to provide that the qualification guidelines and rules for joining Registered Ballot Body Segments shall be reviewed periodically, instead of every three years. Comments on NERC’s amended petition are due on or before April 8, 2022.

## XI. Misc. - of Regional Interest

- **203 Application: Pixelle / Spectrum (EC22-49)**

On April 1, 2022, Pixelle<sup>85</sup> requested authorization for the sale of 100% of the interests in Pixelle Holding by affiliates of the LG Fund to Spectrum Group Buyer, Inc. (“Spectrum”). Comments on the 203 application are due on or before April 22, 2022. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Howard Wind / Greenbacker Wind (EC22-13)**

On January 11, 2022, the FERC authorized Greenbacker Wind, LLC’s acquisition of 100% of the equity interests in Howard Wind LLC from Everpower Wind Holdings, Inc. (“Everpower”).<sup>86</sup> Pursuant to the December 6 order, Greenback Wind must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: PPL/Narragansett (EC21-87)**

On September 23, 2021, the FERC authorized a transaction pursuant to which a wholly-owned subsidiary of PPL Corporation will acquire 100% of the outstanding shares of common stock of The Narragansett Electric Company (“Narragansett”).<sup>87</sup> This transaction is expected to close in the first quarter of 2022. Pursuant to the September 23 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **CL&P Att. F App. D Depreciation Rate Change (ER22-1548)**

On April 1, 2022, CL&P proposed changes to the transmission plant depreciation rate for the Norwalk Harbor-Northport underground transmission line set forth in CL&P’s Appendix D to Attachment F of the ISO-NE

<sup>85</sup> “Pixelle” includes Pixelle Specialty Solutions Holding LLC (“Pixelle Holding”) and its indirectly, wholly-owned subsidiaries with FERC-jurisdictional facilities, Pixelle Specialty Solutions LLC, Pixelle Androscoggin LLC, and Pixelle Energy Services LLC (a member of the Generation Sector).

<sup>86</sup> *Howard Wind LLC*, 178 FERC ¶ 62,024 (Jan. 11, 2022)

<sup>87</sup> *PPL Corp. and The Narragansett Elec. Co.*, 176 FERC ¶ 61,175 (Sep. 23, 2021).



OATT. CL&P stated that the proposed depreciation rate will reduce CL&P's revenue requirement by approximately \$215,199 annually. A July 1, 2022 effective was proposed. Comments on this filing are due on or before April 22, 2022. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Maine Power Link Application for Negotiated Rate Authority (ER22-1290)**

On March 10, 2022, Maine Power Link, LLC ("MPL") submitted an application for authority to charge negotiated rates associated with transmission capacity rights on its proposed Northern Maine Line transmission project (the "Project").<sup>88</sup> Comments on MPL's application were due on or before March 28, 2022. The Maine Office of Public Advocate ("MOPA") submitted comments urging the FERC to condition its approval of the application subject to a number of additional conditions.<sup>89</sup> A doc-less intervention was also filed by Public Citizen. 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).

- **TSA: NSTAR/Park City Wind (ER22-1247)**

On March 8, 2022, NSTAR and Park City Wind LLC ("PCW") requested approval of a Transmission Support Agreement ("TSA") that commits NSTAR to construct, and sets forth the Parties' respective responsibilities to finance and pay for, the transmission facilities required to interconnect PCW's proposed 800 MW wind farm off the coast of Martha's Vineyard to NSTAR's transmission system (near West Barnstable on Cape Cod). Comments on this TSA were due on or before March 29, 2022. On March 22, 2022, Mayflower Wind submitted comments requesting that the FERC, in any approval of the TSA, provide clear guidance that NSTAR must provide comparable treatment to similarly-situated interconnection customers in future transmission support arrangements. NSTAR answered Mayflower on March 25, 2022. 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)).

- **Versant Power MPD OATT Order 676-J Compliance Filing Part I (ER22-1142)**

On March 2, 2022, in response to the requirements of *Order 676-J*, Versant Power filed revisions to Section 4 of the Versant OATT for the Maine Public District ("MPD OATT") to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards ("Versant MPD OATT Order 676-J Part I Changes").<sup>58</sup> A placeholder effective date was submitted. Comments on this filing were due on or before March 23, 2022; none were filed. 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)).

- **ISA Cancellation: NSTAR/Servistar (ER22-1013)**

On February 15, 2022, NSTAR filed a notice of termination of the Interconnection Study Agreement ("ISA") between NSTAR and Servistar. NSTAR reported that Servistar has withdrawn the project and has terminated the ISA. NSTAR has finalized all billing and refunds under the Agreement and no further work is being done pursuant to the Agreement. A February 10, 2022 effective date was requested. Comments on this filing were due on or before March 3, 2022; 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>88</sup> The Project, if selected by the Maine Public Utility Commission ("MPUC") in its request for proposals ("RFP") for renewable energy generation and transmission projects ("Northern Maine RFP"), would be a transmission line to connect renewable energy generation projects in northern Maine to the New England transmission system in southern Maine.

<sup>89</sup> The conditions proposed by MOPA included: (i) a demonstration that the MPUC's competitive bidding process will be "sufficiently open, transparent and robust to constrain rates"; (ii) that the rates assessed to the Maine utilities actually reflect the results of the competitive bidding process; (iii) some assurance that the cost of excess capacity on the transmission line is not paid for by Maine customers; and (iv) MPL will bear the full market risk of the project, including the potential for under-recovery of the line's costs if the line is not fully used.

- **D&E Agreement Cancellation: CL&P/UCONN (ER22-912)**

On March 24, 2022, the FERC accepted the notice of cancellation of an Engineering, Design, and Procurement Agreement (“D&E Agreement”) between CL&P and the University of Connecticut (“UCONN”).<sup>90</sup> As previously reported, the D&E Agreement, which set forth the terms and conditions under which CL&P would undertake certain preliminary engineering and design activities for a proposed increase in capacity of its transmission interconnection service, ended on September 21, 2021. The cancellation notice was accepted effective as of January 28, 2022, as requested. Unless the March 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement Cancellation: NSTAR/Ocean State (ER22-911)**

Also on March 24, 2022, the FERC accepted NSTAR’s notice of cancellation of a D&E Agreement with Ocean State Power, LLC (“Ocean State”).<sup>91</sup> As previously reported, the D&E Agreement set forth the terms and conditions under which NSTAR would undertake certain preliminary engineering and design activities consistent with Ocean State’s April 26, 2018 interconnection request (queue position #758) (for a proposed increase in capacity of its Large Generating Facility). The term of the Agreement ended on October 23, 2021. NSTAR completed all refunds and billing under the Agreement on January 4, 2022, and no further work will be done under the Agreement. The cancellation notice was accepted effective as of January 28, 2022, as requested. Unless the March 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Cost Reimbursement Agreement: Narragansett/BIPCO (ER22-817)**

On March 11, 2022, the FERC accepted a Cost Reimbursement Agreement between Narragansett and Block Island Utility District d/b/a Block Island Power Company (“BIPCO”).<sup>92</sup> As previously reported, under the agreement, Narragansett will perform certain work to modify its substation equipment in order to facilitate voltage modifications that Block Island plans to make to its distribution system. The Agreement as accepted effective as of November 29, 2021, as requested. Unless the March 11 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 Termination: CL&P / Sterling Property (ER21-2860)**

As previously reported, the FERC rejected the notice of termination filed by CL&P of a 2002 Interconnection Agreement (“IA”) governing interconnection service to what CL&P characterized as a since-decommissioned 26 MW waste-tire fueled generator located in Sterling, Connecticut (the “Facility”).<sup>93</sup> In rejecting the notice, the FERC found that CL&P had “not provided adequate justification demonstrating that the Facility has been decommissioned in order to terminate the Interconnection Agreement.”<sup>94</sup> However, the FERC noted that its determination did not indicate that Sterling retains any interconnection rights under the IA, stating that there had been no interconnection rights associated with the facility since ISO-NE deemed the Facility retired in 2017.

***Requests for Rehearing and/or Clarification Denied by Operation of Law; Sterling IA Allegheny Order.*** On January 10, 2022, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and

<sup>90</sup> *The Conn. Light and Power Co.*, Docket No. ER22-912 (Mar. 24, 2022) (unpublished letter order).

<sup>91</sup> *NSTAR Elec. Co.*, Docket No. ER22-911-001 (Mar. 24, 2022) (unpublished letter order).

<sup>92</sup> *The Narragansett Electric Co.*, Docket No. ER22-817-000 (Mar. 11, 2022) (unpublished letter order).

<sup>93</sup> *The Connecticut Light and Power Co.*, 177 FERC ¶ 61,083 (Nov. 8, 2021) (“*Sterling IA Order*”).

<sup>94</sup> *Id.* at P 23.

Providing for Further Consideration”.<sup>95</sup> The Notice confirmed that the 60-day period during which a petition for review of the *Sterling IA Order* can be filed with an appropriate federal court was triggered when the FERC did not act on CL&P’s and Brookfield’s requests for rehearing of the *Sterling IA Order*.<sup>96</sup> The Notice also indicated that the FERC would address, as is its right, the rehearing requests in a future order, and may modify or set aside its orders, in whole or in part, “in such manner as it shall deem proper.” On March 24, 2022, the FERC issued that order, modifying the discussion in the *Sterling IA Order* and continuing to reach the same result.<sup>97</sup> If you have any questions, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Versant Power MPD OATT Order 676-I Compliance Filing (ER21-2498)**

On March 7, 2022, the FERC conditionally accepted Versant Power’s proposed revisions to Section 4 of the Versant Power Open Access Transmission Tariff for Maine Public District (the “MPD OATT”) to incorporate by reference certain of the revisions required by *Order 676-I*, including waiver of certain of those standards that are not applicable to MPD and/or the MPD OATT.<sup>98</sup> In accepting the filing, the FERC directed Versant to revise the MPD OATT to include a citation to the FEC order originally granting the waiver requests to be continued by the *Versant Order 676-I Compliance Filing Order I*. Versant submitted that compliance filing on April 1, 2022. Comments on that filing are due on or before April 22, 2022. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)**

In accordance with *Order 864*<sup>99</sup> and *Order 864-A*,<sup>100</sup> and extensions of time granted, New England’s transmission-owning public utilities submitted their *Order 864* compliance filings, with specific dockets and filing dates identified in the following table. The FERC has addressed a number of the compliance filings, with some yet to be acted on, and others submitting further compliance filings (generally to reflect a January 27, 2020 effective date). The *Order 864* compliance proceedings that remain open are as follows:

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<sup>95</sup> The Conn. Light & Power Co., 178 FERC ¶ 62,015 (Jan. 10, 2022).

<sup>96</sup> CL&P and Brookfield each requested rehearing and/or clarification of the *Sterling IA Order* on Dec. 8, 2021.

<sup>97</sup> *The Conn. Light and Power Co.*, 178 FERC ¶ 61,206 (Mar. 24, 2022) (“*Sterling IA Allegheny Order*”).

<sup>98</sup> *Versant Power*, 178 FERC ¶ 61,159 (Mar. 7, 2022) (“*Versant Order 676-I Compliance Filing Order I*”).

<sup>99</sup> *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (Nov. 21, 2019), *reh’g denied and clarification granted in part*, 171 FERC ¶ 61,033 (Apr. 16, 2020) (“*Order 864*”). *Order 864* requires all public utility transmission providers with transmission rates under an OATT, a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the 2017 Tax Cuts and Jobs Act (“2017 Tax Law”). Specifically, for transmission formula rates, *Order 864* requires public utilities (i) to deduct excess Accumulated Deferred Income Taxes (“ADIT”) from or add deficient ADIT to their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT; and (ii) to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information (“ADIT Worksheet”). The **ADIT Worksheet** must contain the following five specific categories of information: (i) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein (“**Category 1 Information**”); (ii) is the accounting for any excess or deficient amounts in Accounts 254 (Other Regulatory Liabilities) and 182.3 (Other Regulatory Assets) (“**Category 2 Information**”); (iii) whether the excess or deficient ADIT is protected (and thus subject to the Tax Cuts and Jobs Act’s normalization requirements) or unprotected (“**Category 3 Information**”); (iv) the accounts to which the excess or deficient ADIT are amortized (“**Category 4 Information**”); and (v) the amortization period of the excess or deficient ADIT being returned or recovered through the rates (“**Category 5 Information**”). In addition, the FERC stated that it expects public utilities to identify each specific source of the excess and deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each classification or source.

<sup>100</sup> *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, 171 FERC ¶ 61,033, Order No. 864-A (Apr. 16, 2020) (“*Order 864-A*”).

Docket(s)	Transmission Provider	Date of Last Filing	Date Accepted
ER21-1130 ER20-2572	New England TOs (RNS)	Feb 18, 2022	Pending
ER20-2429	Central Maine Power ("CMP") (LNS)	Mar 31, 2022	Pending
ER21-1702	CMP (Schedule 1 Appendix A Implem. Rule)	Feb 28, 2022	Pending
ER21-1654	CL&P (LNS)	Feb 28, 2022	Pending
ER21-1295	Eversource (CL&P, PSNH, NSTAR) (LNS; Schedule 21-ES)	Feb 23, 2022	Pending
ER21-1154	FG&E (LNS)	Feb 23, 2022	Pending
ER21-1694	Green Mountain Power	Feb 18, 2022	Pending
ER20-1089	New England Elec. Trans. Corp.	Feb 18, 2022	Pending
ER20-1087	New England Hydro Trans. Corp.	Feb 18, 2022	Pending
ER20-1088	New England Hydro Trans. Elec. Co.	Feb 18, 2022	Pending
ER21-1241	NEP (LNS)	Feb 28, 2022	Pending
ER20-2551	NEP (Schedule 21-NEP and TSA-NEP-22 Compliance Revisions)	Jul 30, 2020	Pending
ER20-2219	NEP (Tariff No. 1)	Jun 29, 2020	Pending
ER20-2553	NEP (MECO/Nantucket LSA)	Jul 30, 2020	Pending
ER21-1293	NSTAR (LNS)	Feb 23, 2022	Pending
ER21-1709	VTransco (LNS)	Feb 22, 2022	Pending
ER20-2594	VTransco (1991 VTA)	Feb 25, 2022	Pending
ER20-2133 -001, -002	Versant Power	Nov 22, 2021	Conditionally, Feb 28, 2022

**Compliance Filings Accepted.** The FERC has accepted the following RNS and LNS-related *Order 864* compliance filings (with those accepted conditionally, subject to 60-day compliance filings, followed by an asterisk):

♦ **ER20-2572; ER21-1130 (New England Transmission Owners ("TOs") - RNS).**\* The FERC conditionally accepted the *Order 864*-related changes to Tariff Attachment F and the Settlement Agreement attached thereto as Appendix A, subject to a further, 60-day compliance filing.<sup>101</sup> Areas the TOs must address in their compliance filing include: (i) changes to the Rate Base Adjustment and Income Tax Allowance Adjustment Mechanisms (TOs must adjust the Settled Formula Rate with respect to each mechanism to meet *Order 864* transparency requirements by specifying the source of the data used in those mechanisms); (ii) ADIT Worksheet Category 3 Information (TOs must clearly identify if excess and deficient ADIT is protected or unprotected); Category 4 Information (TOs must revise the Revised ADIT Worksheet to show amortized excess ADIT amounts included in Account 411.1 and amortized deficient ADIT amounts included in Account 410.1); Category 5 Information (TOs must correct discrepancies in the Revised ADIT Worksheet and the amortization periods; Versant Power must clarify which amortization method it will use; and UI, MEPCO, CMP, and VTransco must provide further justification for their proposed unprotected non-plant amortization periods). Also, the TOs were directed to file the Revised ADIT Worksheet in eTariff format. The Interim Period Formula Rate was accepted effective as of January 27, 2020; the Settled Formula Rate, January 1, 2022. The TOs filing in response to the requirements of the *TOs First Order 864 Compliance Filings Order* was due and was filed on February 18, 2022. Comments on that filing were due on or before March 11, 2022; none were filed. The February 18 filing is pending before the FERC.

♦ **Various Dockets (TOs LNS Compliance Filings).** On December 30, 2021, the FERC accepted, with the exception of CMP's filing in ER21-1702, which it conditionally accepted, subject to a further 60-day compliance filing, the TOs' revisions to each of their currently effective local transmission formula rate templates under Schedule 21 of the ISO-NE Tariff.<sup>102</sup> The FERC also accepted revisions to certain TOs' currently effective formula

<sup>101</sup> *ISO New England Inc. et al.*, 177 FERC ¶ 61,219 (Dec. 22, 2021) ("*TOs First Order 864 Compliance Filings Order*").

<sup>102</sup> *ISO New England Inc. et al.*, 177 FERC ¶ 61,239 (Dec. 30, 2021) ("*TO's Order 864 LNS Compliance Order*"). *Order 864* LNS compliance filings accepted were those by: FG&E (ER21-1154-001); NEP (ER21-1241-001); NSTAR (ER21-1293-001 and ER21-1650-001);

rate templates for scheduling, system control, and dispatch service for various transmission services under the respective Schedule 1 of the ISO-NE Tariff, and VTransco's revisions to its formula rate under its grandfathered 1991 Vermont Transmission Agreement ("VTA").

♦ **ER20-2429 (CMP - LNS).**\* The FERC conditionally accepted CMP's proposed Tariff revisions, effective January 27, 2020,<sup>103</sup> subject to a further, 60-day compliance filing.<sup>104</sup> CMP must address in that compliance filing the following aspects of its ADIT Worksheet: (i) Category 1 (provide sufficiently detailed information in the re-measurement portion of the ADIT Worksheets to permit interested parties to tie the amounts provided to the rest of the ADIT Worksheets); (ii) Category 4 (revise the ADIT Worksheets to show amortized excess ADIT amounts recorded to Account 411.1, and deficient ADIT amounts recorded to Account 410.1); and (iii) Category 5 (revise its proposal such that the amortization period for unprotected non-plant, deficient ADIT balances is the same amortization period as unprotected non-plant, excess ADIT balances or demonstrate how its deviation from this requirement is consistent with or superior to this requirement of *Order 864*; and revise note (g) of its ADIT Worksheet to make clear that it will amortize unprotected excess ADIT over a five-year period and unprotected deficient ADIT over a 10-year period). CMP's compliance filing, following a request for an extension of time requested by CMP and granted by the FERC on March 25, 2022, was due and filed on March 31, 2022. Comments on the March 31 filing are due on or before April 21, 2022.

♦ **ER20-2133 (Versant).**\* On February 28, 2022, the FERC conditionally accepted Versant Power's *Order 864* filings, subject to certain compliance obligations (e.g. to clearly identify if excess and deficient ADIT is protected or unprotected in order to satisfy the Order No. 864 ADIT Worksheet category 3 requirements).<sup>105</sup> The Versant compliance filing was accepted effective as of January 27, 2020. Versant's compliance filing is due on or before April 29, 2022.

## XII. Misc. - Administrative & Rulemaking Proceedings<sup>106</sup>

### • **NOI: Dynamic Line Ratings (AD22-5)**

On February 17, 2022, the FERC issued a notice of inquiry ("NOI")<sup>107</sup> seeking comments on (i) whether and how the required use of dynamic line ratings ("DLR") is needed to ensure just and reasonable wholesale rates; (ii) whether the lack of DLR requirements renders current wholesale rates unjust and unreasonable; (iii) potential criteria for DLR requirements; (iv) the benefits, costs, and challenges of implementing DLRs; (v) the nature of potential DLR requirements; and (vi) potential timeframes for implementing DLR requirements. This NOI represents the first step in the FERC's effort to gather more information about the costs and benefits, and potentially mandating the use, of DLRs. A more [detailed summary](#) was provided to the Transmission Committee and is posted on the Transmission Committee's [webpage](#). Initial comments are due **April 25, 2022**; reply

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Eversource (ER21-1295-001); NHT (ER21-1325-001); CL&P (ER21-1654-001); GMP (ER21-311-000; ER21-1694-001); CMP (ER21-1702-001); and VTransco (ER21-1709-001; ER20-2594-001).

<sup>103</sup> The FERC denied CMP's request for a Jan. 1, 2018 effective date, which was earlier than the FERC is authorized under section 206 of the FPA to prescribe a rate 'to be thereafter observed'. Rather, the FERC accepted this filing on the earliest possible date, or Jan. 20, 2020, the date the FERC in *Order 864* required parties to make changes to their tariffs.

<sup>104</sup> *ISO New England Inc. and Central Maine Power Co.*, 177 FERC ¶ 61,218 (Dec. 22, 2021) ("*CMP First Order 864 Compliance Filings Order*").

<sup>105</sup> *ISO New England Inc. and Versant Power*, 178 FERC ¶ 61,152 (Feb. 28, 2022).

<sup>106</sup> Reporting on the following proceedings has been suspended since the last Report and will be continued if and when there is new activity to report: Electrification and the Grid of the Future (AD21-12); ISO/RTO Credit Principles and Practices (AD21-6); Offshore Wind Integration in RTOs/ISOs (AD20-18); Waiver of Tariff Requirements (PL20-7); FERC's ROE Policy for Natural Gas and Oil Pipelines (PL19-4); and NOI: Certification of New Interstate Natural Gas Facilities (PL18-1).

<sup>107</sup> *Implementation of Dynamic Line Ratings*, 178 FERC ¶ 61,110 (Feb. 17, 2022) ("*Dynamic Line Ratings NOI*").



comments; **May 25, 2022.**<sup>108</sup> Since the last Report, one set of comments, by TS Conductor, was filed on March 22, 2022.

- **Joint Federal-State Task Force on Electric Transmission (AD21-15)**

On June 17, 2021, the FERC established a Joint Federal-State Task Force on Electric Transmission (“Transmission Task Force”).<sup>109</sup> The Transmission Task Force is comprised of all FERC Commissioners as well as representatives from 10 state commissions (two from each NARUC region). State commission representatives will serve one-year terms from the date of appointment by FERC and in no event will serve on the Task Force for more than three consecutive terms. The Transmission Task Force will convene multiple formal meetings annually, with FERC issuing orders fixing the time and place and agenda for each meeting, and the meetings will be open to the public for listening and observing and on the record. The Transmission Task Force will focus on “topics related to efficiently and fairly planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective.”<sup>110</sup> On July 19, 2021, NARUC nominated the 10 state commissioners to the Transmission Task Force, including New England Commissioners Riley Allen (VT PUC) and Matt Nelson (Chair, MA DPU). Since the last Report, the FERC confirmed NARUC’s nomination of Utah PSC Chairman T. LeVar to represent the Western Conference region (to replace Commissioner Kate Raper, who resigned her position with the Idaho PUC on January 21, 2022).<sup>111</sup>

#### **Public Meetings.**

- ♦ **Nov 10, 2021.** The first Joint Federal-State Task Force meeting, which focused on incorporating state perspectives into regional transmission planning, was convened on November 10, 2021. A transcript of this meeting is posted in eLibrary. Comments on the issues discussed at that meeting were filed by: [AEP](#), [LA PSC](#), [MI PSC](#), [PJM](#), and [Public Citizen](#).

- ♦ **Feb 16, 2022.** A second meeting was held February 16, 2022 in Washington, DC. The agenda included a discussion, for purposes of transmission planning and cost allocation, specific categories and types of transmission benefits that transmission providers should consider and cost allocation principles, methodologies, and decision processes. A transcript of this meeting is posted in eLibrary. On March 2, 2022, the FERC invited interested persons to file post-meeting comments to address issues raised during the February 16 meeting and identified in the agenda issued February 2, 2022. Post-meeting comments were due on or before April 1, 2022 and were filed by AZ PSC, NJ PBU, NARUC, ND PSC, OH PUC Office of the Federal Energy Advocate, VA State Corp. Comm., Americans for a Clean Energy Grid, ITC, PJM, and Sunflower Electric.

- ♦ **May 6, 2022.** Discussion at the May 6, 2022 meeting will be focused on examining barriers to the efficient, expeditious, and reliable interconnection of new resources through the FERC-jurisdictional interconnection processes, including the allowance of participant funding for interconnection-related network upgrades in regional transmission organizations and independent system operators. All interested persons were invited to file by April 12, 2022 comments suggesting agenda items relating to this topic. An agenda for the May 6 meeting will be issued no later than April 22, 2022.

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<sup>108</sup> The *Dynamic Line Ratings NOI* was published in the Fed. Reg. on Feb. 24, 2022 (Vol. 87, No. 37) pp. 10,349-10,354.

<sup>109</sup> *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (June 18, 2021).

<sup>110</sup> Topics that the Task Force may consider include: (i) identifying barriers that inhibit planning and development of optimal transmission necessary to achieve federal and state policy goals, as well as potential solutions to those barriers; (ii) exploring potential bases for one or more states to use FERC-jurisdictional transmission planning processes to advance their policy goals, including multi-state goals; (iii) exploring opportunities for states to voluntarily coordinate in order to identify, plan, and develop regional transmission solutions; (iv) reviewing FERC rules and regulations regarding planning and cost allocation of transmission projects and potentially identifying recommendations for reforms; (v) examining barriers to the efficient and expeditious interconnection of new resources through the FERC-jurisdictional interconnection processes, as well as potential solutions to those barriers; and (vi) discussing mechanisms to ensure that transmission investment is cost effective, including approaches to enhance transparency and improve oversight of transmission investment including, potentially, through enhanced federal-state coordination.

<sup>111</sup> *Joint Federal-State Task Force on Electric Transmission*, 178 FERC ¶ 61,080 (Feb. 4, 2022).

- **Climate Change, Extreme Weather, and Electric Sys. Reliability: Jun 1-2 Technical Conference (AD21-13)**

On June 1-2, 2021, FERC staff convened a technical conference to discuss issues surrounding the threat to electric system reliability posed by climate change and extreme weather events. This technical conference addressed (i) concerns that, because extreme weather events are increasing in frequency, intensity, geographic expanse, and duration, the number and severity of weather-induced events in the electric power industry may also increase; and (ii) specific challenges posed to electric system reliability by climate change and extreme weather, which may vary by region. The FERC seeks to understand the near, medium and long-term challenges facing the regions of the country; how decision makers in the regions are evaluating and addressing those challenges; and whether further FERC action is needed to help achieve an electric system that can withstand, respond to, and recover from extreme weather events. Pre-technical conference comments were due on or before April 15, 2021 and were filed by, among others, [ISO-NE](#), [AEE](#), [Dominion](#), [EDF](#), [Eversource](#), [Exelon](#), [LS Power](#), [National Grid](#), [PSEG](#), [Vistra](#), [APPA](#), [Capital Power](#), [EEL](#), [NARUC](#), [NEI](#), [NERC](#), [NRECA](#), and the [R Street Institute](#). Speaker materials were posted in eLibrary on June 3, 2021; transcripts of the June 1-2 days, July 22, 2021.

On August 11, 2021, the FERC issued a [notice inviting post-technical conference comments](#). Comments could address the questions raised in the notice, as well as any other issues raised during the technical conference or identified in the Supplemental Notices of Technical Conference issued March 15 and May 21, 2021. Comments were due on or before September 27, 2021 and were filed by: [CAISO](#); [MISO](#); [NYISO](#); [PJM](#); [AEP](#); [City of New Orleans](#); [City of New York](#); [Columbia Law School's Sabin Center for Climate Change Law](#); [EDF and Sabin Center for Climate Change Law](#); [EEL](#); [EPSC](#); [Eversource](#); [Exelon](#); [Jupiter Intelligence](#); [Louisville Gas and Electric Company and Kentucky Utilities Company](#); [MI PSC](#); [NRDC](#), [Sierra Club](#), [Sustainable FERC Project](#), and [UCS](#); [Old Dominion Electric Cooperative](#) ("ODEC"); [NERC](#); and [C. Wright](#). On October 14, [Entergy](#) answered the comments submitted by City of New Orleans. This matter is pending before the FERC.

- **Reliability Technical Conference (Sep 30) (AD21-11)**

On September 30, 2021, the FERC convened its annual Commissioner-led technical conference to discuss policy issues related to the reliability of the Bulk-Power System ("BPS"). Panel discussions addressed: (1) BPS reliability and security (current state, challenges and initiatives); (2) extreme weather, risks and challenges; (3) managing cyber risks in the electric power sector; and (4) maintaining electric reliability with changing resource mix. A detailed final agenda, identifying the presenters and panelists, is available [here](#). Speaker materials have been posted to eLibrary. A transcript of the September 30 technical conference was posted in eLibrary on November 16, 2021. On January 7, 2022, the FERC issued a notice inviting post-technical conference comments, either to address the questions raised in the January 7 notice or any other issues raised during the technical conference. Comments were due on or before February 22, 2022 and were filed by: [ISO-NE](#), [Americans for a Clean Energy Grid](#), [AGA/APGA](#), [CAISO](#), [EEL](#), [Energy Systems Integration Group](#), [EPSC](#), [Grain Belt Express](#), [Grid Lab](#), [MISO](#), [Natural Gas Council](#), [Natural Gas Supply Association](#), [Public Power Associations](#). This matter is pending before the FERC.

- **Modernizing Electricity Market Design - Resource Adequacy (AD21-10)**

**March 23 Tech Conf (PJM).** The FERC convened a Commissioner-led technical conference on March 23, 2021 to provide input to the Commission on resource adequacy in the evolving electricity sector. Speaker materials from the March 23 technical conference have been posted to eLibrary. On March 29, Ohio PUC Commission Dan Conway submitted written comments. On April 5, 2021, the FERC issued a notice inviting post-technical conference comments on specific PJM-specific questions. Initial comments were due on or before April 26, 2021; reply comments must be submitted on or before May 10, 2021. More than 45 sets of comments were filed, including by: [AEE](#), [Calpine](#), [Cogentrix](#), [Dominion](#), [Exelon](#), [FirstLight](#), [LS Power](#), [NESCOE](#), [NEPGA](#), [NRG](#), [PSEG](#), [Shell](#), [Vistra](#), [CT DEEP](#), [EEL](#), [EPSC](#), and [NRECA/APPA](#), some of which addressed issues to be discussed in the May 25 New England technical conference (identified immediately below). On May 10, 2021, reply comments were filed by the [American Clean Power Association](#) ("ACPA"), [AEP](#), [EPSC](#), [Exelon](#), [Joint Consumer Advocates](#), [LS Power](#), [Old Dominion Electric Cooperative](#) ("ODEC"), [PJM Power Providers](#) ("P3"), [Public Interest Organizations](#) ("PIOs"), and the [Retail Electric Supply Association](#) ("RESA").



**May 25 Tech Conf (New England).** On May 25, 2021, the FERC held a Commissioner-led technical conference regarding the wholesale markets administered by ISO New England Inc. Supplemental notices of the technical conference were issued on May 3 and May 17. The May 17 supplemental notice identified panelists and topics/questions for discussion for the technical conference. Panel discussions included: (1) a Commissioner-led discussion of the relationship between state policies and the New England Markets; (2) a Staff-led discussion of short-term options and complementary potential market changes to accommodate state policies in New England; and (3) a Staff-led discussion of long-term options and centralized procurement of clean energy.

**Post (New England) Tech Conf Comments.** On June 4, 2021, the FERC issued a notice inviting post-technical conference comments on the issues raised during the technical conference, including the questions listed in the May 17, 2021 supplemental notice. Post-technical conference comments were due on or before **July 19, 2021** and were filed by: [AEE](#), [Calpine](#), [CT Parties](#), [Dominion](#), [Eversource](#), [MMWEC](#), [NESCOE](#), [NEPGA](#), [NextEra](#), [NRG](#), [Public Interest Orgs](#), [Vistra](#), [AEMA](#), [EPSA](#), [RENEW](#).

- **Modernizing Electricity Market Design - Energy and Ancillary Service Markets (AD21-10)**

**Tech Conferences.** As previously reported, the FERC held in the Fall of 2021 two staff-led technical conferences addressing ISO/RTO energy and ancillary services markets (including potential energy and ancillary services market reforms, such as market reforms to increase operational flexibility, that may be needed as the resource fleet and load profiles change over time).<sup>112</sup> The first technical conference was held September 14, 2021; the second, October 12, 2021. Transcripts of both technical conferences are posted in eLibrary.

**Post-Technical Conference Comments.** On December 6, 2021, the FERC invited all interested persons to file initial and reply comments on the topics discussed during each of the two technical conferences. Initial comments were due on or before February 4, 2022 and were filed by: [ISO-NE](#), [Appian Way Energy Partners](#), [Constellation](#), [Dominion](#), [Envir. Defense Fund](#), [FirstLight](#), [LS Power](#), [CAISO](#), [MISO](#), [NYISO](#), [PJM](#), [SPP](#), [MMU](#), [ACPA](#), [Clean Energy Organizations](#), [EEI](#), [Energy Trading Institute](#), [EPRI](#), [EPSA](#), [Middle River Power](#), [National Hydropower Assoc.](#), [NYSERDA](#), [PJM Providers Group](#), [Public Citizen](#). Reply comments were due on or before March 7, 2022 and were filed by [EPRI](#), [NERC and its Regional Entities](#) and [Vistra](#). This matter is pending before the FERC.

- **Hybrid Resources (AD20-9)**

As previously reported, the FERC convened a July 23, 2020 technical conference to discuss technical and market issues prompted by growing interest in projects that are comprised of more than one resource type at the same plant location (“hybrid resources”). The focus was on generation resources and electric storage resources paired together as hybrid resources. Speaker materials and a transcript of the technical conference have been posted to the FERC’s eLibrary. Post-technical conference comments were filed by ISO-NE, CAISO, MISO, NYISO, PJM, Enel, American Council on Renewable Energy, AWEA, EEI, EPRI, R Street Institute, Savion, and SEIA.

On January 19, 2021, the FERC issued an order directing each ISO/RTO to submit, within 6 months (or before July 19, 2021), a report that provides: (a) a description of its current practices related to each of the following four hybrid resource issues: (1) terminology; (2) interconnection; (3) market participation; and (4) capacity valuation (collectively, the “Issues”); (b) an update on the status of any ongoing efforts to develop reforms related to each of the Issues; and (c) responses to the specific requests for information contained in the order. The ISO/RTO Reports, including ISO-NE’s, were filed on July 19, 2021. Public comments in response to the ISO/RTO reports were filed in September 20, 2021.<sup>113</sup>

<sup>112</sup> In advance of the technical conferences, in an effort to frame discussions at those technical conferences, FERC staff issued on Sept. 7, 2021, a White Paper entitled “[Energy and Ancillary Services Market Reforms to Address Changing System Needs](#)” summarizing recent energy and ancillary services markets reforms as well as reforms then under consideration.

<sup>113</sup> Public comments were initially due Aug. 18, 2021. However, in response to a request by the Energy Storage Association (“ESA”), the American Clean Power Association (“ACP”), and SEIA, the FERC granted a 30-day extension of time, to Sep. 20, 2021, to file comments in response to the ISO/RTO reports.

**Hybrid Resources White Paper.** On May 26, 2021, the FERC issued a white paper that discusses the hybrid resources technical conference, as well as information learned in post-technical conference comments. Interested persons were invited to submit comments on the white paper and encouraged to jointly respond to both the white paper and RTO/ISO informational reports where applicable to avoid duplicate comments. Comments on the white paper will also be due on September 20, 2021.

**Comments.** Comments on the RTO filing and on the FERC's Hybrid Resources White Paper were submitted by the American Council on Renewable Energy ("ACRE"), Clean Grid Alliance, EEI, the City of New York, Hybrid Resource Coalition, NRECA, Pine Gate Renewables, PJM IMM, and UCS. On October 20, 2021, NYISO submitted comments in response to issues raised by those comments. These matters remain pending before the FERC.

- **Increasing Market and Planning Efficiency Through Improved Software Tech Conf (Jun 21-23, 2022) (AD10-12)**

On February 24, 2022, the FERC announced that it will hold its 13<sup>th</sup> annual technical conference addressing increasing Real-Time and Day-Ahead market efficiency through improved software from June 21-23. A detailed agenda with the list of and times for the selected speakers will be published on the FERC's website<sup>114</sup> and in eLibrary after May 20, 2022.

- **NOI: Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses (RM22-5)**

On December 16, 2021, the FERC issued a notice of inquiry<sup>115</sup> seeking comments on (i) the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses; (ii) the ratemaking implications of potential accounting and reporting changes; (iii) whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare purposes; and (iv) a framework for guidance should the FERC determine action is necessary to further define the recoverability of industry association dues charged to utilities and/or utilities' expenses from civic, political, and related activities. Initial comments were due February 22, 2022 and were filed by [AGA](#), [APPA](#), [EEI](#), [EPRI](#), [Harvard Electricity Law Institute](#), [INGA](#), [MA AG](#), [National Grid](#), [NEI](#), [Nexamp](#), [NRECA](#), [PJM](#), [Public Citizen](#), [Public Interest Organizations](#), [Ratepayers](#), [Sunova](#), and [UCS](#). Reply comments were due on or before March 23, 2022 and were filed by, among others: [DTE](#), [MA AG](#), [NECOS](#), [AGA](#), [EEI](#), [INGA](#), [Joint Consumer Advocates](#), and [WIRES](#).

- **NOPR: Internal Network Security Monitoring for High and Medium Impact BES Cyber Systems (RM22-3)**

On January 20, 2022, the FERC issued a NOPR<sup>116</sup> proposing to direct NERC to develop and submit for FERC approval new or modified Reliability Standards that require internal network security monitoring ("INSM")<sup>117</sup> within a trusted Critical Infrastructure Protection networked environment for high and medium impact Bulk Electric System ("BES") Cyber Systems. The FERC stated that "including INSM requirements in the CIP Reliability Standards would ensure that responsible entities maintain visibility over communications between networked devices within a trust zone (i.e., within an ESP), not simply monitor communications at the network perimeter access point(s), i.e., at the boundary of an ESP as required by the current CIP requirements. In the event of a

<sup>114</sup> <https://www.ferc.gov/industries-data/electric/power-sales-and-markets/increasing-efficiency-through-improved-software>.

<sup>115</sup> *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, 177 FERC ¶ 61,180 (Dec. 16, 2021) ("Dues & Expenses NOI").

<sup>116</sup> *Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems*, 178 FERC ¶ 61,038 (Jan. 20, 2022) ("Internal Network Security Monitoring NOPR").

<sup>117</sup> INSM is a subset of network security monitoring that is applied within a "trust zone," such as an Electronic Security Perimeter ("ESP"), and is designed to address situations where vendors or individuals with authorized access are considered secure and trustworthy but could still introduce a cybersecurity risk to a high or medium impact BES Cyber System.

compromised ESP, improving visibility within a network would increase the probability of early detection of malicious activities and would allow for quicker mitigation and recovery from an attack.”<sup>118</sup>

Comments on the *Internal Network Security Monitoring NOPR* were due on or before March 28, 2022.<sup>119</sup> Comments were filed by: the IRC, NERC, EEI, EPSA, TAPS, Bonneville Power Admin., Consumers Energy, Cynalytica, CA Department of Water Resources, Electricity Canada, Entergy, Idaho Power, Juniper Networks, ITC, Microsoft, North American Generator Forum, Nozomi Networks, Operational Technology Cybersecurity Coalition, the US Bureau of Reclamation, and T. Conway. This matter is pending before the FERC.

- **NOI: Reactive Power Capability Compensation (RM22-2)**

On November 18, 2021, the FERC issued a notice of inquiry<sup>120</sup> seeking comments on reactive power capability compensation and market design. Specifically, the FERC seeks comments on whether (i) the AEP Methodology remains a just and reasonable approach to determining reactive power revenue requirements in all circumstances; (ii) other potential alternative methodologies not based on the costs of the particular resource(s) at issue in a given proceeding should be considered or better used to develop reactive power capability revenue requirements; and (iii) resources interconnected to a distribution system and participating in wholesale markets are technically capable of providing reactive power to the transmission system in such a way that they should be eligible for reactive power capability compensation through transmission rates. Initial comments were due February 21; Reply Comments, March 23, 2022. Initial comments were filed by over 35 parties. Reply comments were filed by: Ameren, Clean Energy Coalition, DE Shaw, EDF, EEI, EPSA, Joint Customers,<sup>121</sup> MISO TOs, PJM IMM, PSEG, Vistra, and N. Bhushan. This matter is pending before the FERC.

- **ANOPR: Transmission Planning and Allocation and Generator Interconnection (RM21-17)**

On July 15, 2021, the FERC issued an advanced notice of proposed rulemaking (“ANOPR”)<sup>122</sup> to consider whether there should be changes in the regional transmission planning and cost allocation and generator interconnection processes and, if so, which changes are necessary to ensure that transmission rates remain just and reasonable and not unduly discriminatory or preferential and that reliability is maintained. Specifically, the ANOPR discusses proposals or concepts for changes to existing processes in several broad categories: regional transmission planning, regional cost allocation, generator interconnection funding, generator interconnection queueing processes and consumer protection, and in several instances the ANOPR also offers a potential rationale or argument for potential proposals. The FERC seeks comments from the public on these proposals and welcomes commenters to offer additional or alternative proposals for consideration.

Pre-technical conference comments were submitted by over 175 parties, including by: [NEPOOL](#), [ISO-NE](#), [AEE](#), [Anbaric](#), [Avangrid](#), [BP](#), [CPV](#), [Dominion](#), [EDF](#), [EDP](#), [Enel](#), [EPSA](#), [Eversource](#), [Exelon](#), [LS Power](#), [MA AG](#), [MMWEC](#), [National Grid](#), [NECOS](#), [NESCOE](#), [NextEra](#), [NRDC](#), [Orsted](#), [Shell](#), [UCS](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [ACORE](#), [ACPA/ESA](#), [APPA](#), [EEI](#), [ELCON](#), [Industrial Customer Orgs](#), [LPPC](#), [MA DOER](#), [NARUC](#), [NASUCA](#), [NASEO](#), [NERC](#), [NRECA](#), [SEIA](#), [State Agencies](#), [TAPS](#), [WIRES](#), [Harvard Electric Law Initiative](#); [NYU Institute for Policy Integrity](#), [New England for Offshore Wind Coalition](#), and the [R Street Institute](#).

**November 15, 2021 Tech Conf.** On November 15, 2021, the FERC convened a technical conference to examine in detail issues and potential reforms related to regional transmission planning as described in the July

<sup>118</sup> *Id.* at P 2.

<sup>119</sup> The *Internal Network Security Monitoring NOPR* was published in the *Fed. Reg.* on Jan. 27, 2022 (Vol. 87, No. 18) pp. 4,173-4,180.

<sup>120</sup> *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, 177 FERC ¶ 61,180 (Dec. 16, 2021) (“*Dues & Expenses NOI*”).

<sup>121</sup> “Joint Customers” are Old Dominion Electric Cooperative (“ODEC”), Northern Virginia Electric Cooperative, Inc. (“NOVEC”), and Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Dominion”).

<sup>122</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (July 15, 2021) (“*Transmission Planning & Allocation/Generation Interconnection ANOPR*”).

15, 2021 ANOPR. Specifically, the technical conference examined issues related to incorporating sufficiently long-term and comprehensive forecasts of future transmission needs during regional transmission planning processes, including considering the needs of anticipated future generation in identifying needed transmission facilities. Speaker materials were posted to eLibrary on November 16, 2021.

**Reply and Post-Tech Conf Comments.** ANOPR Reply Comments and Post-November 15 technical conference comments were due on or before **November 30, 2021** and were filed by over 100 parties, including: by: [CT AG](#), [Acadia Center/CLF](#), [CT AG](#), [Dominion](#), [Enel](#), [Eversource](#), [LS Power](#), [MA AG](#), [MMWEC](#), [NESCOE](#), [NextEra](#), [Shell](#), [UCS](#), [Vistra](#), [ACPA/ESA](#), [AEE](#), [APPA](#), [EEI](#), [ELCON](#), [Environmental and Renewable Energy Advocates](#), [EPSA](#), [Harvard ELI](#), [NRECA](#), [Potomac Economics](#), and [SEIA](#). Subsequently, supplemental reply comments were filed by [WIRES](#) and a group of [former military leaders and former Department of Defense officials](#) filed a statement. Since the last Report, joint supplemental comments were filed by the [Clean Energy Coalition](#).<sup>123</sup> This matter is pending before the FERC.

- **NOI: Removing the DR Opt-Out in ISO/RTO Markets (RM21-14)**

On March 18, 2021, the FERC issued a NOI<sup>124</sup> seeking comments on whether to revise its Demand Response (“DR”) Opt-Out regulations established in *Orders 719 and 719-A*. Those regulations require an ISO/RTO not to accept bids from an aggregator of retail customers (“ARC”) that aggregates DR of the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers’ DR to be bid into ISO/RTO markets by an ARC. The FERC now seek information to help it examine the potential costs/burdens and benefits, both quantitative and qualitative, of removing the DR Opt-Out, as well as other changes relating to DR since the FERC issued *Orders 719 and 719-A*. The FERC is not seeking comment on the Small Utility Opt-In. Comments on the NOI, following an extension, were due on or before July 23, 2021 and were filed by nearly 30 parties, including by [AEE](#), [Voltus](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), and [NARUC](#). Reply comments were due on or before August 23, 2021, and were filed by [AEP](#), [Armada Power](#), [Entergy](#), [Southern Pioneer Electric](#), [Voltus](#), State Commissions from [LA/MS](#), [MI](#), [MO](#), [NC](#), [APPA/NRECA](#), Assoc. of Bus. Advocating Tariff Equity (“[ABATE](#)”), and [PIOs](#). Since the last Report, the Mississippi Public Service Commission moved to lodge its Protest and Response filed in a recent Complaint proceeding initiated and subsequently withdrawn by Voltus (EL21-12), to ensure its pleading is a part of the record of this proceeding. On March 29, 2022, the U.S. House Sustainable Energy and Environment Coalition (“SEEC”) Power Sector Task Force urged the FERC to proceed to a NOPR that would eliminate the demand response Opt-Out. This matter is pending before the FERC.

- **NOPR: Cybersecurity Incentives (RM21-3)**

On December 17, 2020, the FERC issued a NOPR<sup>125</sup> proposing to establish rules for incentive-based rate treatment for voluntary cybersecurity investments by a public utility for or in connection with the transmission or sale of electric energy subject to FERC jurisdiction, and rates or practices affecting or pertaining to such rates for the purpose of ensuring the reliability of the BPS.

Comments on the *Cyber security Incentives NOPR* were due on or before April 6, 2021. Comments were filed by: [NECPUC](#), [APPA](#), [EEI](#), [EPSA](#), [LPPC](#), [NERC](#), [NRECA](#), [TAPS](#), [Accenture](#), [aDolus Inc. et al.](#),<sup>126</sup> [Alliant](#), [Anterix](#), [Bureau of Reclamation](#), [CA Dept of Water Resources State Water Project/CPUC](#), [George Cotter](#), [FRS](#), [Hitachi ABB Power Grids](#), [IECA](#), [ITC](#), [Joint Consumer Advocates](#), [MI PUC](#), [Org of MISO States](#), [MISO TOs](#), [PJM](#)

<sup>123</sup> The “Clean Energy Coalition” are ACPA, AEE and SEIA.

<sup>124</sup> *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (March 18, 2021) (“DR Aggregator NOI”).

<sup>125</sup> *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Cybersecurity Incentives NOPR*”).

<sup>126</sup> These joint comments were filed by aDolus Inc., Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC.

TOs, and [Public Citizen](#). Reply comments were due May 6, 2021<sup>127</sup> and were filed by [APPA/TAPS](#), [EEI](#), [SEIA](#), California Public Utilities Commission and California Department of Water Resources (“[CA PUC/DWR](#)”), and the Office of the Ohio Federal Energy Advocate (“[Ohio FEA](#)”). This matter remains pending before the FERC.

- **Order 881: Managing Transmission Line Ratings (RM20-16)**

On December 16, 2021, the FERC issued its final rule, *Order 881*, on Managing Transmission Line Ratings.<sup>128</sup> In *Order 881*, the FERC reforms both the *pro forma* OATT and its regulations to improve the accuracy and transparency of transmission line ratings. Specifically, *Order 881* requires:

- (i) transmission providers to implement ambient-adjusted ratings on the transmission lines over which they provide transmission service;
- (ii) ISO/RTOSs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly;
- (iii) transmission owners to share transmission line ratings and transmission line rating methodologies with their respective transmission provider(s) and, in ISO/RTOs, with their respective market monitor(s); and
- (iv) transmission providers to maintain a database of transmission owners’ transmission line ratings and transmission line rating methodologies on the transmission provider’s Open Access Same-Time Information System (“OASIS”) site or other password-protected website.

*Order 881* will become effective March 14, 2022.<sup>129</sup> Requests for rehearing and/or clarification of *Order 881* were filed by ATC, EEI, ITC Holdings, MISO IMM, and the MISO TOs on January 18, 2022, but may be deemed denied by operation of law. On February 18, 2022, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.<sup>130</sup> The Notice confirmed that the 60-day period during which a petition for review of *Order 881* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of *Order 881*. The Notice also indicated that the FERC would address, as is its right, the rehearing requests in a future order, and may modify or set aside its orders, in whole or in part, “in such manner as it shall deem proper.”

- **NOPR: Electric Transmission Incentives Policy (RM20-10)**

**Supplemental NOPR.** In light of comments already received in this proceeding,<sup>131</sup> the FERC issued on April 15, 2021 a *Supplemental NOPR*<sup>132</sup> to propose and seek comment on a revised incentive for transmitting and electric utilities that join Transmission Organizations (“Transmission Organization Incentive”). The Incentive would be reduced from 100 to 50 basis points and would be available only for three years. The FERC seeks comment on whether voluntary participation should be a requirement, and if so, how “voluntary” should be determined. In addition, the FERC now proposes to require each utility that has received a Transmission Organization Incentive for three or more years to submit a compliance filing revising its tariff to remove the incentive from its

<sup>127</sup> The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

<sup>128</sup> *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179 (Dec. 16, 2021) (“*Order 881*”).

<sup>129</sup> *Order 881* was published in the *Fed. Reg.* on Jan. 13, 2022 (Vol. 87, No. 9) pp. 2,244-2,307.

<sup>130</sup> *Managing Transmission Line Ratings*, 178 FERC ¶ 62,104 (Feb. 18, 2022) (“*Order 881 Notice of Denial of Rehearings by Operation of Law*”).

<sup>131</sup> Over 80 sets of comments on the *March NOPR* were filed on or before the July 1, 2020 comment date, including comments by: Avangrid, EDF Renewables, EMCOS, Eversource, Exelon, LS Power, MMWEC/NHEC/CMEEC, National Grid, NESOCE, NextEra, UCS, CT PURA, and Potomac Economics. Reply comments were filed by AEP, ITC Holding, the N. California Transmission Agency, and WIRES.

<sup>132</sup> *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) (“*Supplemental NOPR*”).



transmission tariff. The *Supplemental NOPR* did not address the other proposals contained in the *March NOPR*.<sup>133</sup> A more detailed summary of the NOPR was distributed to the Transmission Committee and discussed at the TC's March 25, 2020 meeting.

Comments on the *Supplemental NOPR* were due on or before June 25, 2021. Over 60 sets of comments were filed, including by the New England TOs, MMWEC/NHEC/CMMEC, NECOS, NESCOE, Potomac Economics, and CT PURA. Reply comments were due on or before July 26, 2021, with 28 sets of comments received, including by the [New England TOs](#), [NECOS](#), [NESCOE](#), [CT PURA/CT DEEP/MA AG](#), [CT AG](#), and [Public Interest Groups](#).<sup>134</sup> Since the last Report, reply comments were posted from New England State Parties,<sup>135</sup> Alliant/Consumers/DTE, AEP, Pacific Gas & Electric, Joint Consumer Advocates, and the American Clean Power Association.

**September 10, 2021 Workshop.** The FERC convened a workshop on September 10, 2021<sup>136</sup> to discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies. The notice states that the workshop will explore: the maturity of the modeling approaches for various transmission technologies; the data needed to study the benefits/costs of such technologies; issues pertaining to access to or confidentiality of this data; the time horizons that should be considered for such studies; and other issues related to verifying forecasted benefits. The workshop also discussed whether and how to account for circumstances in which benefits do not materialize as anticipated and may explore other performance-based ratemaking approaches for transmission technologies seeking incentives under FPA section 219, particularly market-based incentives. The FERC issued an agenda for the workshop, which included the final workshop program and expected speakers, on August 23, 2021. The FERC supplemented that notice on September 9, 2021. On October 13, 2021, the FERC posted a transcript of the workshop in eLibrary.

**Notice Inviting Post-Workshop Comments.** On October 18, 2021, the FERC issued a notice inviting those interested to file post-workshop comments to address the issues raised during the workshop concerning incentives and shared savings. Comments were due on or before January 14, 2022 and were filed by APPA, CAISO,

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<sup>133</sup> As previously reported, the *March NOPR* proposed revisions to the FERCs existing transmission incentives policy and corresponding regulations, including the following:

- ◆ A shift from risks and challenges to a **consumers' benefits test** that focuses on ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.
- ◆ **ROEs incentive for Economic Benefits.** A 50-basis-point adder for transmission projects that meet an economic benefit-to-cost ratio in the top 75th percentile of transmission projects examined over a sample period and an additional 50-basis-point adder for transmission projects that demonstrate *ex post* cost savings that fall in the 90th percentile of transmission projects studied over the same sample period, as measured at the end of construction.
- ◆ **ROE for Reliability Benefits.** A 50-basis-point adder for transmission projects that can demonstrate potential reliability benefits by providing quantitative analysis, where possible, as well as qualitative analysis.
- ◆ **Abandoned Plant Incentive.** 100 percent of prudently incurred costs of transmission facilities selected in a regional transmission planning process that are cancelled or abandoned due to factors that are beyond the control of the applicant. Recovery from the date that the project is selected in the regional transmission planning process.
- ◆ **Eliminate Transco Incentives.**
- ◆ **Transmission Organization Incentive.** A 50-basis-point increase for transmitting utilities that turn over their wholesale facilities to a Transmission Organization and *only for the first three years after transferring operational control of its facilities*. The FERC seeks comment as to whether participation must be voluntary to receive the incentive, and if so, how the CFERC should determine whether the decision to join is voluntary.
- ◆ **Transmission Technologies Incentives.** Eligible for both a stand-alone, 100-basis-point ROE incentive on the costs of the specified transmission technology project and specialized regulatory asset treatment. Pilot programs presumptively eligible (though rebuttable).
- ◆ **250-Basis-Point Cap.** Total ROE incentives capped at 250 basis points in place of current "zone of reasonableness" limit.
- ◆ **Updated Date Reporting Processes.** Information to be obtained on a project-by-project basis, information collection expanded, updated reporting process.

<sup>134</sup> "Public Interest Groups" are NRDC, Sierra Club, Sustainable FERC Project, and Western Grid Group.

<sup>135</sup> "New England State Parties" are CT PURA, CT DEEP and the MA AG.

<sup>136</sup> Notice of Workshop, *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Docket Nos. RM20-10 and AD19-19 (Apr. 15, 2021).



Clean Energy Parties,<sup>137</sup> EDF Renewables, EEI, the Industrial Energy Consumers of America (“IECA”), National Grid, PJM IMM, TAPS.

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

### XIII. FERC Enforcement Proceedings

#### Electric-Related Enforcement Actions

- **Constellation New Energy (IN22-4)**

On March 29, 2022, the FERC approved a Stipulation and Consent Agreement with Constellation NewEnergy, Inc. (“CNE”)<sup>138</sup> that resolved OE’s investigation into whether CNE complied with pertinent California Independent System Operator (“CAISO”) tariff provisions regarding the treatment of imports for Resource Adequacy (“RA”) purposes.<sup>139</sup> OE determined that, at certain times when it placed bids in the day-ahead market, CNE lacked a sufficiently reasonable basis to expect to secure electricity in the spot market to support its RA imports (during times when the market was constrained), and therefore, as required under the CAISO tariff, could not reasonably expect to be “available and capable of performing at the levels specified” and “comply with operating instructions issued by [ ] CAISO”. Under the Settlement, in which CNE neither admits nor denies the alleged violations, CNE must **disgorge \$2.3 million**,<sup>140</sup> and **pay a \$2.4 million civil penalty** to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Dynegy Marketing & Trade (IN22-3)**

On March 28, 2022, the FERC approved a Stipulation and Consent Agreement with Dynegy Marketing & Trade, LLC (“Dynegy”)<sup>141</sup> that resolved OE’s investigation into whether (i) Dynegy’s Real-Time energy market offers by ten dual-fuel combustion turbines in PJM misrepresented that the units could ramp to their maximum oil-based output attained during their summer capacity tests while running on gas; (ii) Dynegy failed to comply with PJM arrangements that required each unit to be able to change output at the ramping rate specified in the Offer Data; and (iii) Dynegy violated the FERC’s Market Behavior Rules, which among other things, require a Seller to provide accurate and factual information and not submit false or misleading information to an RTO, when it maintained a prospective 16 MW capacity increase for one of its dual-fuel facilities based on (a) unit upgrades that were never completed by the previous owner and (b) the use of auxiliary generators, which was prohibited by PJM. OE determined that Dynegy’s Real-Time offers misrepresented the ramping rate for the segment of the Real-Time offer curve that could only be reached on oil, that Dynegy submitted false or misleading information to PJM when it (a) made Real-Time Offers that misrepresented that when running on gas, the dual-fuel units could ramp upward to the oil-based ICAP in one

<sup>137</sup> The “Clean Energy Parties” are: Working for Advanced Transmission Technologies (“WATT Coalition”), the American Clean Power Association (“ACP”), AEE, American Council on Renewable Energy (“ACORE”), Natural Resources Defense Council (“NRDC”), and the Sustainable FERC Project.

<sup>138</sup> *Constellation NewEnergy, Inc.*, 178 FERC ¶ 61,231 (Mar. 29, 2022).

<sup>139</sup> OE found that, entering 2017, CNE had in place a business practice whereby it did not source electricity for import before offering into both the CAISO day-ahead and real-time markets. CNE did not have a specific source of power linked to a specific RA import prior to submitting offers and instead intended to rely on the bilateral spot energy market if needed. As a part of this business practice, CNE regularly offered its import capacity into the CAISO day-ahead market at \$399/MWh. If those day-ahead offers cleared, CNE would reoffer the import capacity in the real-time market at either \$899/MWh or \$999/MWh. In June and August 2017, CNE did not meet RA-related dispatches because it was unable to secure electricity in the bilateral spot market. Following those events, CNE chose to cease this business practice. *Id.* at PP 5-6.

<sup>140</sup> CAISO was directed to distribute the disgorgement *pro rata* to network load.

<sup>141</sup> *Dynegy Marketing and Trade, LLC*, 178 FERC ¶ 61,230 (Mar. 28, 2022).

minute and (b) allowed the registration of one of its dual-fuel units to continue at 16 more MWs of capacity than the unit could produce during its summer tests, even when running on oil. Under the Settlement, in which Dynegy neither admits nor denies the alleged violations, Dynegy must **disgorge \$119,425,<sup>142</sup> and pay a \$450,000 civil penalty** to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **PacifiCorp (IN21-6)**

On April 15, 2021, in the FERC's first-ever Show Cause Order addressing alleged violations of NERC Reliability Standards,<sup>143</sup> the FERC directed PacifiCorp to show cause why it should not be found to have violated FPA section 215(b)(1) and section 39.2 of the FERC's regulations by failing to comply with Reliability Standard FAC 009-1 (Establish and Communicate Facility Ratings), Requirement R1, and the successor Reliability Standard FAC-008-3 (Facility Ratings), Requirement R6 (collectively, "FAC-009-1 R1"), which requires a transmission owner to establish and have facility ratings that are consistent with its Facility Ratings Methodology ("FRM"). An Enforcement investigation found that clearance measurements on a majority of PacifiCorp's transmission lines were incorrect under the National Electric Safety Code, which were used to calculate PacifiCorp's facility ratings, thus making PacifiCorp's facility ratings inconsistent with its FRM. Enforcement alleges that PacifiCorp was aware of incorrect clearances on its system since at least 2007 when FAC-009-1 R1 became mandatory, but failed to identify and remedy them in a timely manner, and PacifiCorp's violations began on August 31, 2009, when it implemented its FRM policy, and at least some of the violations continued until August 2017 when PacifiCorp completed remediation of all of its incorrect clearances to make them consistent with its FRM. Enforcement also pointed to the role of the violations in the Wood Hollow, Utah wildfire that lasted from June 23 to July 1, 2012. In light of these alleged violations, the FERC directed PacifiCorp to show cause why it should not be assessed civil penalties in the amount of **\$42 million**.

On July 16, 2021, PacifiCorp answered the PacifiCorp Show Cause Order, denying the alleged violations of FAC-009. Enforcement filed its reply on September 14, 2021. This matter remains pending before the FERC. (Should the FERC choose to pursue a civil penalty against PacifiCorp for the alleged violations, PacifiCorp has already exercised its right to adjudicate these allegations in federal district court.) If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

### **Natural Gas-Related Enforcement Actions**

- **Rover Pipeline, LLC and Energy Transfer Partners, L.P. (CPCN Show Cause Order) (IN19-4)**

On January 20, 2022, the FERC issued an order establishing a hearing to determine whether Rover Pipeline, LLC ("Rover") and its parent company Energy Transfer Partners, L.P. ("ETP" and collectively with Rover, "Respondents") violated section 157.5 of the FERC's regulations and to ascertain certain facts relevant for any application of the FERC's Penalty Guidelines.<sup>144</sup>

As previously reported, on March 18, 2021, the FERC issued a show cause order<sup>145</sup> in which it directed Rover Pipeline, LLC ("Rover") and Energy Transfer Partners, L.P. ("ETP" and together with Rover, "Respondents") to show cause why they should not be found to have violated Section 157.5 of the FERC's regulations by misleading the FERC in its Application for Certificate of Public Convenience and Necessity ("CPCN") under NGA section 7(c).<sup>146</sup> The FERC directed Respondents to show cause why they should not be assessed civil penalties in

<sup>142</sup> PJM was directed to use its best efforts to allocate the disgorgement funds on a *pro rata* basis to affected market participants.

<sup>143</sup> *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) ("*PacifiCorp Show Cause Order*").

<sup>144</sup> *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 178 FERC ¶ 61,028 (Jan. 20, 2022) ("*Rover/ETP Hearings Order*").

<sup>145</sup> *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) ("*Rover/ETP CPCN Show Cause Order*").

<sup>146</sup> Specifically, Rover stated that it was "committed to a solution that results in no adverse effects" to the Stoneman House, an 1843 farmstead located near Rover's largest proposed compressor station. In truth, the OE Staff Report alleges, Rover was simultaneously

the amount of **\$20.16 million**. On April 5, 2021, the FERC extended by 60 days, to June 18, 2021, the deadline for Respondents' answer. On June 18, 2021, Rover and ETP answered the *Rover/ETP Show CPCN Cause Order*, asserting that the FERC should dismiss this matter and decline to initiate an enforcement action. On July 21, 2021, Enforcement Staff answered Rover/ETP's answer, stating the evidence supports a finding that Rover violated the FERC's Regulations and should be assessed the civil penalty identified in the *Rover/ETP Show Cause Order*. Rover answered the July 21 answer on September 15.

**Hearings.** As previously reported, ALJ Joel DeJesus will be the presiding judge for hearings in this matter. On March 8, 2022, Chief Judge Cintron issued an order extending the procedural time standards for this proceeding. Based on that order, the deadlines for the commencement of the hearing is now March 6, 2023 and the deadline to issue the initial decision is now June 20, 2023. A virtual prehearing conference was also held on March 8, a transcript of which is posted in eLibrary.

- **Rover and ETP (Tuscarawas River HDD Show Cause Order) (IN17-4)**

On December 16, 2021, the FERC issued a show cause order<sup>147</sup> in which it directed Rover and ETP (together, "Respondents") to show cause why they should not be found to have violated NGA section 7(e), FERC Regulations (18 C.F.R. § 157.20); and the FERC's Certificate Order,<sup>148</sup> by: (i) intentionally including diesel fuel and other toxic substances and unapproved additives in the drilling mud during its horizontal directional drilling ("HDD") operations under the Tuscarawas River in Stark County, Ohio, in connection with the Rover Pipeline Project;<sup>149</sup> (ii) failing to adequately monitor the right-of-way at the site of the Tuscarawas River HDD operation; and (iii) improperly disposing of inadvertently released drilling mud that was contaminated with diesel fuel and hydraulic oil. The FERC directed Respondents to show why they should not be assessed civil penalties in the amount of **\$40 million**. Following a request from Respondents, the answer period was extended to and including March 21, 2022.

Since the last Report, on March 21, 2022, Respondents answered and denied the allegations in the *Rover/ETP CPCN Show Cause Order*. In addition, the FERC issued a notice that Respondent's February 22, 2022 request for rehearing of the FERC's January 21, 2022 unpublished Updated Notice of Designation of Commission Staff as Non-Decisional can deemed denied by operation of law and will be addressed in a future order, in which it "may modify or set aside its notice ..., in whole or in part, in such manner as it shall deem proper."<sup>150</sup>

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planning to purchase the house with the intent to demolish it, if necessary, to complete its pipeline. The OE Staff Report alleges that Rover purchased the house in May 2015 and demolished the house in May 2016. The OE Staff Report further finds that despite taking these actions during the year and a half that Rover's application was pending before the FERC, Rover did not notify the FERC that it purchased the Stoneman House, intended to destroy the Stoneman House, and did destroy the Stoneman House. The OE Staff Report therefore concludes that Rover violated section 157.5's requirement for full, complete and forthright applications, through its misrepresentations and omissions, when it decided not to tell FERC that it had purchased the house and was considering demolishing it, and when Rover demolished it in May 2016 without notifying FERC.

<sup>147</sup> *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) ("*Rover/ETP Tuscarawas River HDD Show Cause Order*").

<sup>148</sup> *Rover Pipeline LLC*, 158 FERC ¶ 61,109 (2017), *order on clarification & reh'g*, 161 FERC ¶ 61,244 (2017), *Petition for Rev., Rover Pipeline LLC v. FERC*, No. 18-1032 (D.C. Cir. Jan. 29, 2018) ("Certificate or Certificate Order").

<sup>149</sup> The Rover Pipeline Project is an approximately 711 mile long interstate natural gas pipeline designed to transport gas from the Marcellus and Utica shale supply areas through West Virginia, Pennsylvania, Ohio, and Michigan to outlets in the Midwest and elsewhere.

<sup>150</sup> *Rover Pipeline, LLC and Energy Transfer Partners, L.P.*, 178 FERC ¶ 62,169 (Mar. 25, 2022).

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,<sup>151</sup> a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.<sup>152</sup> *Opinion 549-A* modifies the discussion in *Opinion 549*, but reaches the same the result (ultimately requiring BP to pay a **\$20.16 million civil penalty (roughly \$24.4 million with accrued interest) and disgorge \$207,169**). Of note, *Opinion 549-A* denied BP's motion to dismiss this enforcement action as time barred (by the five-year statute of limitations set forth in 28 U.S.C. § 2462), finding BP waived any statute of limitations defense by failing to raise it earlier in this proceeding.<sup>153</sup> *Opinion 549-A* revised Ordering Paragraph (C) to direct the disgorged profits to non-profits that disburse the Low Income Home Energy Assistance Program of Texas funds, rather than to the Texas Department of Housing.<sup>154</sup>

On December 29, 2020, BP filed a notice that it intends to appeal *Opinion 549-A* to the Fifth Circuit Court of Appeals and paid the civil penalty amount on December 28, 2020, under protest and with full reservation of rights pending the outcome of judicial review of that Opinion. On January 19, BP filed a notice that it disgorged \$250,295 (\$207,169 principal plus interest), divided equally (\$83,431.67) among the following 3 entities identified in the "2016 Comprehensive Energy Assistance Program Subrecipient List": Dallas County Dept. of Health and Human Services (serving Dallas); El Paso Community Action, Project Bravo (Serving El Paso); and Panhandle Community Services (serving Armstrong and numerous other counties), again under protest and with full reservation of rights pending the outcome of judicial review of *Opinion 549/549-A*.

- **Total Gas & Power North America, Inc. et al. (IN12-17)**

On April 28, 2016, the FERC issued a show cause order<sup>155</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>156</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

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<sup>151</sup> *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*").

<sup>152</sup> *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*") (affirming Judge Cintron's Aug. 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 FERC's regulations ("Anti-Manipulation Rule") and NGA Section 4A (*BP America Inc. et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

<sup>153</sup> *BP Penalties Allegheny Order* at P 1.

<sup>154</sup> *Id.* at P 319.

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

<sup>156</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 NGA section 4A 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.

answer on July 12, 2016. OE Staff replied to Respondents' answer on September 23, 2016. Respondents answered OE's September 23 answer on January 17, 2017, and OE Staff responded to that answer on January 27, 2017.

**Hearing Procedures.** On July 15, 2021, the FERC issued an order establishing hearing procedures to determine whether Respondents violated the FERC's Anti-Manipulation Rule, and to ascertain certain facts relevant for any application of the FERC's Penalty Guidelines.<sup>157</sup> On July 27, Chief Judge Cintron designated Judge Suzanne Krolikowski as the Presiding ALJ and established an extended Track III Schedule<sup>158</sup> for the proceeding. Judge Krolikowski scheduled and convened on August 26, 2021 a prehearing conference. Judge Krolikowski issued an order confirming her rulings from the August 26 prehearing conference and establishing a procedural schedule that calls for, among other dates, pre-hearing briefs by July 25, 2022, hearings (estimated to take 2-3 weeks) to begin on August 15, 2022, and an initial decision on January 9, 2023. In light of the settlement judge procedures undertaken, Chief Judge Cintron extended the hearing commencement and initial decision deadlines to September 26, 2022, and February 20, 2023, respectively. Since the last Report, oral argument was held on March 15 on a number of procedural issues. Judge Krolikowski issued an order on March 24 confirming his bench rulings. In addition, OE requested and was granted an extension of time to file its privilege log, Respondents' motions to issue subpoenas to various parties were granted, and OE withdrew and re-submitted pre-filed direct testimony and exhibits.

#### XIV. 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)).

##### **New England Pipeline Proceedings**

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

- **Iroquois ExC Project (CP20-48)**
  - ▶ 125,000 Dth/d of incremental firm transportation service to ConEd and KeySpan by building and operating new natural gas compression and cooling facilities at the sites of four existing Iroquois compressor stations in Connecticut (Brookfield and Milford) and New York (Athens and Dover).
  - ▶ Three-year construction project; service request by November 1, 2023.
  - ▶ February 2, 2020 application for a certificate of public convenience and necessity pending; Iroquois requests on January 26, 2021 that the FERC act promptly and issue the certificate; National Grid and ConEd submit comments supporting Iroquois' application and request for action.
  - ▶ On May 27, 2021, FERC staff issued a notice that it will prepare an environmental impact statement ("EIS") for this Project, which will respond to comments filed on the Environmental Assessment, and plans to release that EIS on September 3, 2021.
  - ▶ On June 11, 2021, FERC staff issued a notice that it has prepared a draft EIS for this Project, which responds to comments on the September 30, 2020 Environmental Assessment, and with the exception of greenhouse gas ("GHG") emissions, concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would not result in significant environmental impacts. FERC staff did not come to a determination of significance with regards to GHG emissions. Comments on the draft EIS were due on or before August 9, 2021. Since the last Report, 93 sets of individual comments were filed, bringing to nearly 300 the number of individual comments that have been filed. Algonquin responded to those comments on August 24, 2021.

<sup>157</sup> *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

<sup>158</sup> The hearing in this proceeding will be convened within 55 weeks (Aug. 15, 2022) and the initial decision issued within 76 weeks (January 9, 2023) of the issuance of the Chief Judge's order.

- ▶ On September 2, 2021, FERC staff modified the issuance date of its final EIS for the Project, due to the “complexity of comments received on the draft EIS”. Issuance of a final EIS is now expected on November 12, 2021; the 90-day Federal Authorization Decision Deadline, February 9, 2022.
- ▶ On September 3, 2021, FERC staff issued environmental information request #4, to which Iroquois responded on September 13, 2021.
- ▶ On October 15, 2021, Iroquois submitted a supplemental Life Cycle Greenhouse Gas Analysis Report.
- ▶ On November 12, 2021, FERC staff issued the final EIS for the Project, which responds to comments that were received on the September 30, 2020 Environmental Assessment and June 11, 2021 draft EIS and discloses downstream GHG emissions for the Project. “With the exception of climate change impacts, FERC staff concluded that approval of the proposed Project, with the mitigation measures recommended in this EIS, would not result in significant environmental impacts.”
- ▶ Since the last Report, Iroquois, ConEd and National Grid answered/replied to the December 20, 2021 comments on the final EIS by the U.S. Environmental Protection Agency (“EPA”).

### Non-New England Pipeline Proceedings

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

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

- ▶ The New York State Department of Environmental Conservation (“NY DEC”) and the Sierra Club requested rehearing of the *Northern Access Certificate Rehearing Order* on August 14 and September 5, 2018, respectively. On August 29, National Fuel Gas Supply Corporation and Empire Pipeline (“Applicants”) answered the NY DEC’s August 14 rehearing request and request for stay. On April 2, 2019, the FERC denied the NY DEC and Sierra Club requests for rehearing.<sup>159</sup> Those orders have been challenged on appeal to the US Court of Appeals for the Second Circuit (19-1610).
- ▶ As previously reported, the August 6, 2018 *Northern Access Certificate Rehearing Order* dismissed or denied the requests for rehearing of the *Northern Access Certificate Order*.<sup>160</sup> Further, in an interesting twist, the FERC found that a December 5, 2017 “Renewed Motion for Expedited Action” filed by National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (the “Companies”), in which the Companies asserted a separate basis for their claim that the NY DEC waived its authority under section 401 of the Clean Water Act (“CWA”) to issue or deny a water quality certification for the Northern Access Project, served as a motion requesting a waiver determination by the FERC,<sup>161</sup> and proceeded to find that the NY DEC was obligated to act on the application within one year, failed to do so, and so waived its authority under section 401 of the CWA.
- ▶ The FERC authorized the Companies to construct and operate pipeline, compression, and ancillary facilities in McKean County, Pennsylvania, and Allegany, Cattaraugus, Erie, and Niagara Counties, New York (“Northern Access Project”) in an order issued February 3, 2017.<sup>162</sup> The Allegheny Defense Project and Sierra Club (collectively, “Allegheny”) requested rehearing of the *Northern Access Certificate Order*.

<sup>159</sup> *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

<sup>160</sup> *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 164 FERC ¶ 61,084 (Aug. 6, 2018) (“*Northern Access Rehearing & Waiver Determination Order*”), *reh’g denied*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

<sup>161</sup> The DC Circuit has indicated that project applicants who believe that a state certifying agency has waived its authority under CWA section 401 to act on an application for a water quality certification must present evidence of waiver to the FERC. *Millennium Pipeline Co., L.L.C. v. Seggos*, 860 F.3d 696, 701 (D.C. Cir. 2017).

<sup>162</sup> *Nat’l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 (2017) (“*Northern Access Certificate Order*”), *reh’g denied*, 164 FERC ¶ 61,084 (Aug 6, 2018) (“*Northern Access Certificate Rehearing Order*”).



- ▶ Despite the FERC’s *Northern Access Certificate Order*, the project remained halted pending the outcome of National Fuel’s fight with the NY DEC’s April denial of a Clean Water Act permit. NY DEC found National Fuel’s application for a water quality certification under Section 401 of the Clean Water Act, as well as for stream and wetlands disturbance permits, failed to comply with water regulations aimed at protecting wetlands and wildlife and that the pipeline failed to explore construction alternatives. National Fuel appealed the NY DEC’s decision to the 2nd Circuit on the grounds that the denial was improper.<sup>163</sup> On February 2, 2019, the 2nd Circuit vacated the decision of the NY DEC and remanded the case with instructions for the NY DEC to more clearly articulate its basis for the denial and how that basis is connected to information in the existing administrative record. The matter is again before the NY DEC.
- ▶ On November 26, 2018, the Applicants filed a request at FERC for a 3-year extension of time, until February 3, 2022, to complete construction and to place the certificated facilities into service. The Applicants cited the fact that they “do not anticipate commencement of Project construction until early 2021 due to New York’s continued legal actions and to time lines required for procurement of necessary pipe and compressor facility materials.” The extension request was granted on January 31, 2019.
- ▶ On August 8, 2019, the NY DEC again denied Applicants request for a Water Quality Certification, and as directed by the Second Circuit,<sup>164</sup> provided a “more clearly articulate[d] basis for denial.”
- ▶ On August 27, 2019, Applicants requested an additional order finding on additional grounds that the NY DEC waived its authority over the Northern Access 2016 Project under Section 401 of the CWA, even if the NY DEC and Sierra Club prevail in their currently pending court petitions challenging the basis for the Commission’s Waiver Order.<sup>165</sup>
- ▶ On October 16, 2020, Applicants requested, due to ongoing legal and regulatory delays, an additional 2-year extension of time, until December 1, 2024, to complete construction of the Project and enter service. More than 50 sets of comments on the requested extension were filed and on December 1, 2020, the FERC dismissed, without prejudice, Applicants’ request for an extension of time,<sup>166</sup> finding the request premature. The FERC reiterated its encouragement that pipeline applicants requesting extensions “file their requests no more than 120 days before the deadline to complete construction”, so that the FERC has the relevant information available to determine whether good cause exists to grant an extension of time and whether the FERC’s prior findings remain valid.<sup>167</sup>
- ▶ On January 28, 2022, Applicants again requested an additional extension of time, this time until December 31, 2024, to complete construction of the Project and enter service. Comments on that request were due on or before February 16, 2022. Many individual comments and protests were received. The NY DEC filed comments opposing the extension request. On March 7, 2022, National Fuel answered the NY DEC protest. This matter is pending before the FERC.

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<sup>163</sup> *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

<sup>164</sup> Summary Order, *Nat’l Fuel Gas Supply Corp. v. N.Y. State Dep’t of Env’tl. Conservation*, Case 17-1164 (2d. Cir., issued Feb. 5, 2019).

<sup>165</sup> See *Sierra Club v. FERC*, No. 19-01618 (2d Cir. filed May 30, 2019); *NYSDEC v. FERC*, No. 19-1610 (2d. Cir., filed May 28, 2019) (consolidated).

<sup>166</sup> *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

<sup>167</sup> *Id.* at P 10.

## XV. State Proceedings & Federal Legislative Proceedings

- **New England States' Vision Statement**

In October 2020, the six New England states released their "[Vision Statement](#)", outlining their vision for "a clean, affordable, and reliable 21st century regional electric grid" and committing to engage in a collaborative and open process, supported by NESCOE, intended to advance the principles discussed in the Vision Statement. As part of that effort, the following series of online technical forums to discuss the issues presented in the Vision Statement were held:

Jan 13, 2021	Wholesale Market Reform
Jan 25, 2021	Wholesale Market Reform
Feb 2, 2021	Transmission Planning
Feb 25, 2021	Governance Reform
Mar 18, 2021	Equity and Environmental Justice

Written comments on the topics and discussions addressed in the on the equity and environmental justice topics and discussions were, following an extension, due by May 13, 2021. Comments submitted are posted on [NewEnglandEnergyVision.com](#). Recordings of the technical forums, as well as draft notices, agendas, and additional information on these sessions, are also available on the New England States' Vision Statement website (<https://newenglandenergyvision.com/>).

**Report to the Governors.** On June 29, 2021, the NESCOE Managers published their Progress Report to the New England Governors Regarding "Advancing the New England Energy Vision". The Report was further discussed at the August 5, 2021 Participants Committee meeting. View Report [here](#).

**ISO-NE Board Response.** On September 23, 2021, the ISO-NE Board responded to the New England States' Vision Statement and Advancing the Vision Report. A copy of that response was included with the materials for the October 7, 2021 Participants Committee meeting and is posted on the ISO-NE website [here](#).

## XVI. 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 ("DC 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)).

- **NTE CT Petition for Review of *Killingly CSO Termination Orders* (22-1027)**

**Underlying FERC Proceeding: ER22-355<sup>168</sup>**

**Petitioner: NTE CT**

**Status: Briefing Schedule Established**

On February 23, 2022, NTE CT petitioned the DC Circuit for review of the FERC's orders accepting the termination of the Killingly Energy Center's CSO. On March 28, 2022, NTE CT filed a Docketing Statement,

<sup>168</sup> *ISO New England Inc.*, 178 FERC ¶ 61,001 (Jan. 3, 2022) ("*Killingly CSO Termination Order*") (order accepting CSO termination); *ISO New England Inc.*, 178 FERC ¶ 62,082 (Feb. 11, 2022) (notice denying *reh'g* by operation of law and providing for further consideration); *ISO New England Inc.*, 178 FERC ¶ 61,130 (Feb. 23, 2022) (order addressing arguments raised on *reh'g*, sustaining results of *Killingly CSO Termination Order*). Together, these orders referred to as the "*Killingly CSO Termination Orders*".

Statement of Issues, the underlying decisions from which the appeal arises, a proposed briefing schedule, and a request that the Court set oral argument for or before October 2022. On March 30, 2022, the Court granted ISO-NE's and NEPGA's interventions. Dispositive motions, if any, and a Certified Index to the Record must be filed by April 11, 2022. On April 4, 2022, the Court established the following briefing schedule (all dates in 2022): May 11 (Petitioner's Brief); July 8 (Respondent's Brief); July 22 (Intervenor for Respondent's Brief(s)); August 5 (Petitioner's Reply Brief); August 12 (Deferred Appendix); and August 17 (Final Briefs).

- **CSC Request for Regulatory Asset Recovery of Previously-Incurred CIP IROL Costs (21-1275)**

**Underlying FERC Proceeding: ER21-2334<sup>169</sup>**

**Petitioner: CSC**

**Status: Being Held in Abeyance**

On December 30, 2021, CSC petitioned the DC Circuit Court of Appeals for review of the FERC's orders denying it authorization to establish a regulatory asset that would include all CIP-IROL Costs prudently incurred between January 1, 2016 and May 31, 2021 and to recover those costs under Schedule 17 over a five-year period. Appearances are due February 2, 2022. CSC must file a Docketing Statement, Statement of Issues, any Procedural Motions, and the underlying decision from which the appeal arises by February 2, 2022. Dispositive motions, if any, and a Certified Index to the Record must be filed by February 17, 2022.

NESCOE intervened on January 28, 2022. On February 2, 2022, CSC filed a docketing statement and statement of issues. Also on February 2, the FERC asked that the Court hold the petition for review in abeyance, including suspending the initial filing schedule, until the Commission issues an order addressing Petitioner's request for rehearing. On February 16, 2021, the FERC granted the FERC's motion to hold the petition in abeyance, directing (i) the FERC to file status reports at 30-day intervals (with the first such report due March 18, 2022) and (ii) the parties to file motions to govern future proceedings within 30 days of the completion of FERC's proceedings. Since the last Report, the FERC filed the first of its 30-day status reports on March 18, 2022. The FERC will continue to file status reports at 30-day intervals and the parties will file motions to govern within 30 days of the completion of the FERC's proceedings on rehearing.

- **Mystic ROE (21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, 22-1026) (consolidated)**

**Underlying FERC Proceeding: EL18-1639-010, -011,<sup>170</sup> -013<sup>171</sup>**

**Petitioners: Mystic, CT Parties,<sup>172</sup> MA AG, ENECOS**

**Status: Filing of Initial Submissions Underway**

As previously reported, this case was initiated when, on October 8, 2021, Mystic petitioned the DC Circuit Court of Appeals for review of the FERC's orders setting the base ROE for the Mystic COS Agreement at 9.33%. The *Mystic ROE Order* and subsequent FERC orders addressing the Mystic ROE issues have all also been appealed by various parties and consolidated under 21-1198. Docketing Statements and Statements of Issues to be Raised, and the Underlying Decision from which the various appeals arise have been filed as new dockets have been opened and then consolidated with 21-1198. As previously reported, the Certified Index to the Record was due, and filed by the FERC, on February 22, 2022.

Since the last Report, MMWEC and NHEC filed, on March 10, 2022, a notice of intent to participate in support of FERC in case nos. 21-1198, 22-1008, and 22-1026 and in support of Petitioners in the remaining

<sup>169</sup> *Cross-Sound Cable Co., LLC*, 176 FERC ¶ 61,073 (Aug. 31, 2021) ("*August 31 Order*"); *Cross-Sound Cable Co., LLC*, 177 FERC ¶ 62,064 (Nov. 1, 2021) (Notice of Denial By Operation of Law of Rehearings of *August 31 Order*).

<sup>170</sup> *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) ("*Mystic ROE Order*"); *Constellation Mystic Power, LLC*, 176 FERC ¶ 62,127 (Sep. 13, 2021) ("*September 13 Notice*") (Notice of Denial By Operation of Law of Rehearings of *Mystic ROE Order*).

<sup>171</sup>

<sup>172</sup> In this appeal, "CT Parties" are the Connecticut Public Utilities Regulatory Authority ("CT PURA"), Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the Connecticut Office of Consumer Counsel ("CT OCC").

consolidated cases, and filed a statement of issues. On March 17, 2022, CT Parties moved to intervene. On March 31, 2022, the parties filed a proposed briefing format and schedule.

- **ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422)**  
**Underlying FERC Proceeding: EL19-90<sup>173</sup>**

**Petitioner: LS Power**

**Status: Petition for Review Denied**

As previously reported, On October 16, 2020, LSP Transmission Holdings II, LLC (“LS Power”) petitioned the DC Circuit for review of the FERC’s orders addressing ISO-NE’s implementation of the *Order 1000* exemptions for immediate need reliability projects. Following completion of briefing, oral argument before Judges Rogers, Pillard and Randolph was held on January 27, 2022. In a decision issued on March 22, 2022, the Court denied LS Power’s petition for review. On the merits, the Court found that the FERC adequately addressed LS Power’s objection to the use of “need-by” rather than “in-service” dates to determine whether a reliability project is exempt from *Order 1000*’s competitive selection requirement. And although the Court acknowledged that LSP may have a point in that far too many projects are winding up exempt from competition, it concluded that, in the absence of an alleged Tariff violation, the appropriate balance struck - between competitive procurement and quick redress of reliability needs - is the sort of policy judgment to be left to the FERC. The Court directed the Clerk to withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing or petition for rehearing *en banc*.

- **Mystic 8/9 Cost of Service Agreement (20-1343; 20-1361, 20-1362; 20-1365, 20-1368; 21-1067; 21-1070)(consolidated)**  
**Underlying FERC Proceeding: EL18-1639<sup>174</sup>**  
**Petitioners: Mystic (20-1343), NESCOE (20-1361, 21-1067), MA AG (20-1362), CT Parties (20-1365, 20-1368, 21-1070)**

**Status: Briefing Complete; Oral Argument May 5, 2022**

Mystic, NESCOE, MA AG, and CT Parties have separately petitioned the DC Circuit Court of Appeals for review of the FERC’s orders addressing the COS Agreement among Mystic, ExGen and ISO-NE.<sup>175</sup> The cases have been consolidated into Case No. 20-1343. On February 17 and 24, 2021, the Court consolidated with 20-1343 the most recent appeals in cases 21-1067 (NESCOE) and 21-1070 (CT Parties), respectively. On March 25, 2021, the Court issued an order returning this case to its active docket. On March 26, 2021, the Court granted the interventions by MMWEC/NHEC, NESCOE, and ENECOS. Briefing was completed on February 24, 2022. Oral argument was scheduled for **May 5, 2022**. On March 24, the parties proposed format for oral argument. Oral argument will be heard by Judges Srinivasan, Henderson and Rao.

<sup>173</sup> *ISO New England Inc.*, 171 FERC ¶ 61,211 (June 18, 2020) (“*Order Terminating Proceeding*”) (finding (i) “insufficient evidence in the record to find under FPA section 206 that [ISO-NE’s] implementation of the exemption for immediate need reliability projects is unjust, unreasonable, or unduly discriminatory or preferential; (ii) “insufficient evidence in the record to find that ISO-NE implemented the immediate need reliability project exemption in a manner that is inconsistent with or more expansive than [the FERC] directed”; and (iii) that ISO-NE complies with the five criteria established for the immediate need reliability project exemption); and *ISO New England Inc.*, 172 FERC ¶ 61,293 (Sep. 29, 2020) (“*Order 1000 Exemptions Allegheny Order*”) (addressing arguments raised by request for rehearing denied by operation of law, modifying discussion in *Order Terminating Proceeding*, but reaching same result).

<sup>174</sup> *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order.*

<sup>175</sup> The COS Agreement is to provide compensation for the continued operation of the Mystic 8 & 9 units from June 1, 2022 through May 31, 2024.

- **CASPR (20-1333, 21-1031) (consolidated)\*\***  
Underlying FERC Proceeding: ER18-619<sup>176</sup>  
Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF  
**Status: Being Held in Abeyance (until June 1, 2022)**

On August 31, 2020, the Sierra Club, NRDC, RENEW Northeast, and CLF petitioned the DC Circuit Court of Appeals for review of the FERC's order accepting ISO-NE's CASPR revisions (which, under *Allegheny*, is ripe for review). On October 2, 2020, appearances, docketing statements, a statement of issues to be raised, and a statement of intent to utilize deferred joint appendix were filed. On October 19, 2020, the FERC moved to dismiss the case for a lack of jurisdiction (arguing that Petitioners missed their opportunity to timely file their Petition for review in 2018, and filing within 60 days of *Allegheny* did not make their Petition timely). Alternatively, the FERC asked that the case be held in abeyance for 60 days pending issuance of a further FERC order on this matter. On October 29, Petitioners opposed the FERC's motion. On November 5, 2020, the FERC filed a reply, indicated that an order on rehearing would be issued imminently and suggested that, if the Court declines to dismiss the petition, it should be held in abeyance until the Commission issues an order on rehearing. As noted above, the FERC issued the *CASPR Allegheny Order* on November 19, modifying the discussion in the *CASPR Order*, but reaching the same the result. The Sierra Club, NRDC and CLF also requested rehearing of the November 19 order.

On January 12, 2021, the Court dismissed as moot the FERC's October 19 motion to hold this proceeding in abeyance and ordered that the motion to dismiss be referred to the merits panel (Judges Pillard, Katsas and Walker) and addressed by the parties in their briefs. On January 25 and 26, 2021, CT Parties and MMWEC and NHEC filed statements of issues and notices that they intend to participate in support of Petitioners. On January 27, 2021, the Court ordered the parties to submit by February 26, 2021, proposed formats for the briefing of these cases. On March 24, 2021, the Court granted NEPOOL's intervention and established a briefing schedule that, as explained just below, has since been superseded.

On April 7, 2021, the Court granted Petitioners' motion to hold this matter in abeyance, pending further order of the Court. The parties were directed to file motions to govern future proceedings in these cases on or before October 22, 2021. On October 22, 2021, Petitioners Sierra Club, NRDC, Renew Northeast, Inc., and CLF moved the Court to hold this matter in abeyance until June 1, 2022. On October 25, 2021, the Court granted Petitioners' second motion to hold this matter in abeyance. The parties were directed to file motions to govern future proceedings in these cases on or before June 1, 2022.

- **Opinion 531-A Compliance Filing Undo (20-1329)**  
Underlying FERC Proceeding: ER15-414<sup>177</sup>  
Petitioners: TOs' (CMP et al.)  
**Status: Being Held in Abeyance**

On August 28, 2020, the TOs<sup>178</sup> petitioned the DC Circuit Court of Appeals for review of the FERC's October 6, 2017 order rejecting the TOs' filing that sought to reinstate their transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*<sup>179</sup> decision. On September 22, 2020, the FERC submitted an unopposed motion to hold this proceeding in abeyance for four months to allow for the Commission to "a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the Commission." On October 2, 2020, the Court granted the FERC's motion, and directed the parties to file motions to govern future proceedings in this case by February 2, 2021. On January 25, 2021, the FERC requested that the Court continue to hold this

<sup>176</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

<sup>177</sup> *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

<sup>178</sup> The "TOs" are CMP; Eversource Energy Service Co., on behalf of its affiliates CL&P, NSTAR and PSNH; National Grid; New Hampshire Transmission; UI; Unitil and Fitchburg; VTransco; and Versant Power.

<sup>179</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that this case remain in abeyance pending further order of the court. On April 21, 2021, the FERC filed an unopposed motion for continued abeyance of this case *because* the Commission intends to issue a future order on Petitioners' request for rehearing of the challenged Order Rejecting Compliance Filing, and because the remand proceeding in which the challenged order was issued remains ongoing.

On May 4, 2021, the Court ordered that this case remain in abeyance pending further order of the Court, directing the FERC to file a status report by September 1, 2021 and at 120-day intervals thereafter. The parties were directed to file motions to govern future proceedings in this case within 30 days of the completion of agency proceedings. On December 15, 2021, the FERC submitted a status report indicating that the proceedings before the Commission remain ongoing and that this appeal should continue to remain in abeyance.

- **ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224\*\*\*; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428<sup>180</sup>**  
**Petitioners: ENECOS (Belmont et al.) (19-1224); MA AG (19-1247); NH PUC/NH OCA (19-1252); Sierra Club/UCS (19-1253)**

**Status: Briefing Complete; Oral Argument Held Oct 21, 2021; Awaiting Decision**

As previously reported, at the unopposed request of the FERC, the Court issued an order suspending the previous briefing schedule and remanding the record back to the FERC. Subsequently, the FERC issued its *IEP Remand Order* (June 18, 2020) and its Notice of Denial by Operation of Law of the requests for rehearing of its *IEP Remand Order* (August 20, 2020). As previously reported, each of the Petitioners filed amended petitions for review in the consolidated proceeding in order to bring the FERC's *IEP Remand Order* and the post-remand FERC record before the DC Circuit. Following completion of briefing, oral argument was held October 21, 2021 before Judges Wilkins, Katsas and Jackson. This matter is pending before the Court

#### Other Federal Court Activity of Interest

- **Order 872 (20-72788,\* 21-70113; 20-73375, 21-70113) (consol.) (9<sup>th</sup> Cir.)**  
**Underlying FERC Proceeding: RM19-15<sup>181</sup>**  
**Petitioners: SEIA et al.**

**Status: Oral Argument Held March 8, 2022; Awaiting Decision**

On September 17, 2020, SEIA petitioned the 9<sup>th</sup> Circuit Court of Appeals for review of *Order 872*.<sup>182</sup> Briefing is complete and oral argument was held March 8, 2022 before Judges Nguyen, Miller and Bumatay. This matter is pending before the Court.

<sup>180</sup> 162 FERC ¶ 61,127 (Feb. 15, 2018) ("*Order 841*"); 167 FERC ¶ 61,154 (May 16, 2019) ("*Order 841-A*").

<sup>181</sup> *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 62,181 (Feb. 3, 2017); *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 (Dec. 6, 2017).

<sup>182</sup> *Order 872* approved pricing and eligibility revisions to the FERC's long-standing regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), including: state flexibility in setting QF rates; a decrease (to 5 MW) to the threshold for a rebuttable presumption of access to nondiscriminatory, competitive markets; updates to the "One-Mile Rule"; clarifications to when a QF establishes its entitlement to a purchase obligation; and provision for certification challenges.



- **Opinion 569/569-A: FERC's Base ROE Methodology (16-1325, 20-1182, 20-1240, 20-1241, 20-1248, 20-1251, 20-1267, 20-1513) (consol.)**

**Underlying FERC Proceeding:** EL14-12; EL15-45<sup>183</sup>

**Petitioners:** MISO TOs, Transource Energy, Dec 23 Petitioners et al.

**Status:** Oral Argument Held Nov 18, 2021; Awaiting Decision

The MISO TOs, Transource and "Dec 23 Petitioners",<sup>184</sup> among others, have appealed *Opinion 569/569-A*. The MISO TOs' case has been consolidated with previous appeals that had been held in abeyance, with the lead case number assigned as 16-1325. Following completion of briefing, oral argument was held on November 18, 2021 before Judges Srinivasan, Katsas and Walker. This matter is pending before the Court.

- **Algonquin Atlantic Bridge Project Briefing Order (21-1115\*, 21-1138, 21-1153, 21-1155) (consol.);**

**Underlying FERC Proceeding:** CP16-9-012<sup>185</sup>

**Petitioners:** LS Power, Algonquin, INGA

**Status:** Case Being Held in Abeyance

On May 3, 2021, Algonquin petitioned the DC Circuit Court of Appeals for review of the *Briefing Order* and the *April 19 Notice of Denial of Rehearings by Operation of Law*. Appearances, docketing statements and a statement of issues were due and filed June 4, 2021. Also on June 4, 2021, the FERC filed an unopposed motion to hold this proceeding in temporary abeyance, until August 2, 2021, including the filing of the certified index to the record, because "the May 3 petition for review no longer reflects the [FERC]'s latest determination in this matter." The Court granted the first abeyance motion. On November 15, 2021, the Court granted a third abeyance motion by the FERC, directing the parties to file motions to govern future proceedings by January 31, 2022. On January 31, 2022, Algonquin and INGA asked the Court to extend the abeyance by an additional 120 days (to May 31, 2022). On February 15, 2022, the Court issued an order extending the abeyance and directing the Petitioners to file motions to govern future proceedings by May 31, 2022.

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<sup>183</sup> *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 62,181 (Feb. 3, 2017); *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 (Dec. 6, 2017).

<sup>184</sup> "Dec 23 Petitioners" are: Assoc. of Bus. Advocating Tariff Equity; Coalition of MISO Transmission Customers: IL Industrial Energy Consumers; IN Industrial Energy Consumers, Inc.; MN Large Industrial Group; WI Industrial Energy Group; AMP; Cooperative Energy; Hoosier Energy Rural Elec. Coop.; MS Public Service Comm.; MO Public Service Comm.; MO Joint Municipal Electric Utility Comm.; Organization of MISO States, Inc.; Southwestern Elec. Coop., Inc.; and Wabash Valley Power Assoc.

<sup>185</sup> *Briefing Order*; *April 19 Notice of Denial of Rehearings by Operation of Law*.

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