

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of July 10, 2020

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 2, 2020 (“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	Jul 8-9 Tech Conf: Impacts of COVID-19 on the Energy Industry (AD20-17)	Jun 5, Jul 1 Jun 30-Jul 6 Jul 8-9	FERC issues supplemental notices of Jul 8-9 technical conference Speaker statements posted Technical conference held
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I. Complaints/Section 206 Proceedings

*	2	206 Proceeding: FCM Pricing Rules Complaints Remand (EL20-54)	July 1 Jul 2-10	FERC institutes this proceeding, pursuant to section 206 of the FPA, finding preliminarily that ISO-NE’s new entrant rules may be unjust and unreasonable, and establishing paper hearing procedures; interventions due Jul 22, 2020; initial briefs due Aug 24, 2020 NEPOOL, Brookfield, Calpine, ENE, Eversource, Exelon, LS Power, MA AG, NESCOE, NextEra, NRG, PJM EMM, Public Citizen intervene
*	3	Exelon PP-10 Complaint (EL20-52)	Jul 10 Jun 15 Jun 23 Jun 25 Jun 30 Jun 15-Jul 2 Jul 7 Jul 8 Jul 10	Constellation Mystic Power (Exelon) files Complaint NEPGA answers Exelon motion for shortened comment period Exelon moves to lodge Jun 13 letter from Anbaric to ISO-NE re: first stage of Boston RFP process NEPOOL files comments opposing Complaint Comments, protests and answers filed by ISO-NE , ISO-NE IMM , Anbaric , EMCOS , FirstLight , MA AG , NEPGA , NESCOE , TOs (Avangrid, Eversource, Nat’l Grid and VELCO) , Vistra , EPSA Brookfield, Calpine, Dominion, ENE, Footprint, LS Power, MMWEC, NextEra, NRG, Southern Power, CT AG, CT DEEP, CT PURA, MA DPU, NY TOs intervene Versant Power opposes Complaint ISO-NE opposes Exelon Jun 23 motion to lodge Jun 16 Anbaric letter Exelon answers ISO-NE and protesters
3		NERA Petition: FERC Jurisdiction Over Customer-Side-of-the-Retail-Meter Energy Sales (EL20-42)	Jun 3-Jul 10 Jun 30 Jun 30-Jul 1 Jul 9	Protests and comments submitted (more than 100 decisional and more than 500 non-decisional) NERA answers protests and comments Oxenham, Public Citizen answer NERA’s Jun 30 answer FERC sunshine notice lists Petition for action at the FERC’s Jul 16, 2020 Open Meeting
5		206 Investigation Terminated: ISO-NE Implementation of <i>Order 1000</i> Exemptions for Immediate Need Reliability Projects (EL19-90)	Jun 18	FERC terminates proceeding, finding insufficient evidence to hold 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
5		206 Proceeding: RNS/LNS Rates and Rate Protocols (ER20-2054; EL16-19-002)	Jun 4 Jun 9 Jun 15 Jun 30 Jul 6	NEPOOL supports Tariff changes proposed by Settlement Agreement II Chief Judge Cintron issues order holding EL16-19 in abeyance for an add’l 14 days to allow Settlement Agreement filing to be finalized TOs submit Settlement Agreement II NEPOOL submits comments supporting Tariff changes included with Settlement Agreement II FERC Trial Staff files comments not opposing Settlement Agreement II

II. Rate, ICR, FCA, Cost Recovery Filings

* 8	FCA15 De-List Bids Filing (ER20-2317)	Jul 2	ISO-NE submits filing describing Permanent and Retirement De-List Bids submitted on or prior to the FCA15 Existing Capacity Retirement Deadline; comment date Jul 23
		Jul 6-10	NEPOOL, Calpine, NRG intervene
10	MPD 2020 Annual Informational Filing (ER15-1429-000)	Jun 17	Versant Power (f/k/a Emera Maine) re-submits revisions to 2020 MPD Annual Update so that it is on file in ER20-1977 (Versant's notice of succession to MPD OATT) and reflects the OATT name change (Versant Power OATT for MPD)
11	MPD 2018 Annual Informational Filing Settlement Agreement (ER15-1429-012)	Jul 1	FERC approves Settlement Agreement, resolving all issues set for hearing in <i>2018 Challenge Order</i>

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

* 11	EE CSOs During Scarcity Conditions (ER20-1967)	Jun 3-23 Jun 23	Calpine, Dominion, Eversource, National Grid, NRG, MA DPU intervene AEE, NESCOE submit comments supporting changes
12	ESI Alternatives (ER20-1567)	Jun 5 Jun 10 Jun 16 Jun 22	Calpine/Vistra and NEPGA answer NESCOE's May 15 protest FirstLight answers NEPOOL and NESCOE answers ISO-NE submits answer to various pleadings NESCOE files second answer to Jun 5 answers by NEPGA and Calpine/Vistra
		Jun 30 Jul 1	NESCOE , MA AG answer ISO-NE's Jun 16 answer NEPOOL answers ISO-NE's out-of-time answer
13	Inventoried Energy Program (Chapter 2B) Remand (ER19-1428)	Jun 18	FERC accepts ISO-NE's Inventoried Energy Program, eff. May 28, 2019, following voluntary remand from the DC Circuit appeal of FERC's notice that the Program became effective by operation of law;; requests for rehearing due Jul 20, 2020

IV. OATT Amendments / TOAs / Coordination Agreements

19	CIP IROL Cost Recovery Rules (ER20-739)	Jun 25 Jul 10	IROL-Critical Facility Owners request reh'g of <i>CIP IROL Cost Recovery Order</i> ; FERC action required on or before Jul 27 NESCOE answers IROL-Critical Facility Owners' Jun 25 request
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V. Financial Assurance/Billing Policy Amendments

* 20	FAP Updates and Enhancements (ER20-2145)	Jun 24 Jun 26-Jul 6	ISO-NE and NEPOOL file updates and enhancements; comment date Jul 15 Calpine, Eversource, National Grid, NRG, Financial Marketers Coalition intervene
* 20	Billing Policy Enhancements and Clean-Up Changes (ER20-1862)	Jun 10 Jun 10, 15	National Grid intervenes NEPOOL, ISO-NE answer Plant-E protest regarding the limitation on use of pre-payments

VI. Schedule 20/21/22/23 Changes

20	Schedule 21-NEP: NSTAR LSA (ER20-1692)	Jun 10	FERC accepts LSA, eff. Mar 30, 2020
21	Schedule 20A-NEP: NEP-Brookfield RTM Phase I/II HVDC-TF Service Agreement (ER20-1626)	Jun 4	FERC accepts Service Agreement, eff. Sep 1, 2020

* 22	Schedule 21-VP 2020 Annual Informational Filing (ER15-1434)	Jun 15	Versant Power submits annual update to its local transmission service rates
* 22	Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)	Jun 30	NSTAR submits CWIP supplement to Jun 1 annual informational filing
* 22	Schedule 21-CMP Annual Informational Filing (ER09-938)	Jun 30	CMP files updated formula rates reflecting actual 2019 cost data and estimated 2020 cost data

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

23	Capital Projects Report - 2020 Q1 (ER20-1824)	Jun 4 Jun 18	NEPOOL submits comments supporting 2020 Q1 Report FERC accepts Q1 Report, eff. Apr 1, 2020
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IX. Membership Filings

* 24	July 2020 Membership Filing (ER20-2277)	Jun 30	Memberships: Hampshire Power; Invenia Technical Computing Corp.; and Power Ledger Pty. Ltd.; comment date Jul 21
* 24	Invenia Additional Conditions Informational Filing (ER20-2001)	Jun 5	ISO-NE submits filing identifying additional condition placed on Invenia in connection with its participation in the New England Markets
25	May 2020 Membership Filing (ER20-1694)	Jun 11	FERC accepts (i) the memberships of Axon Energy; Energy Harbor; and Nexus Energy; and (ii) the termination of the Participant status of ADG Group; Beacon Falls Energy Park; Clear River Energy; Entergy Nuclear Power Marketing; and Rinar Power
* 25	Suspension Notice – Manchester Methane (not docketed)	Jun 4	ISO-NE files notice of Jun 2 suspension of Manchester Methane from the New England Markets
* 25	Suspension Notice – Chris Anthony (not docketed)	Jun 4	ISO-NE files notice of Jun 2 suspension of Chris Anthony from the New England Markets

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

26	Complaint re: CIP-014-2 (Physical Security) (EL20-21)	Jun 9	FERC denies Complaint
26	Revised Reliability Standard: PRC-024-3 (RD20-7)	Jul 9	FERC approves revised PRC-024-3, eff. Sep 1, 2022
26	CIP Standards Development: Virtualization & Cloud Computing Services Projects (RD20-2)	Jun 19	NERC submits quarterly informational filing, reporting Project 2016-02 targeted for a Dec 2021 filing; Project 2019-02, a Dec 2020 filing
* 27	Revised Reliability Standard: CIP-002-6 (RM20-17)	Jun 12	NERC files revised CIP-002-6 (Cyber Security – BES Cyber System Categorization)
27	NOI: Virtualization and Cloud Computing Services in BES Operations (RM20-8)	Jun 19-Jul 2	NERC, the IRC, Accenture, Amazon Web Services, Bonneville, B. Jones, Georgia System Ops, GridBright, Idaho Power, Microsoft, MISO, MISO TOs, Tri-State, AEE, APPA, Canadian Electricity Assoc., EEI, NRECA submit comments
* 28	Secure Evidence Locker Development Funding (RR19-8)	Jun 8 Jun 22	NERC requests approval for funding of SEL development FERC approves request

XI. Misc. - of Regional Interest

29	PJM MOPR-Related Proceedings (EL18-178; EL16-49)	Jun 15 Jun 9-17	FERC issues tolling order in response to requests for rehearing and/or clarification of <i>April 2020 PJM MOPR Rehearing Order</i> Several additional parties petition DC Circuit for review of <i>PJM MOPR Orders</i>
* 32	<i>Opinion 569-A</i> : FERC's Base ROE Methodology (EL14-12; EL15-45)	Jun 22	EI, FirstEnergy, Louisiana PSC, MISO Complaint-Aligned Parties request rehearing and/or clarification of <i>Opinion 569-A</i>
* 33	D&E Agreement Cancellation: CL&P-NTE CT (ER20-2327)	Jul 6	CL&P files notice of D&E Agreement with NTE CT, which was superseded by an LGIA; comment date Jul 27, 2020
33	D&E Agreement: CL&P-Gravel Pit Solar (ER20-1871)	Jul 10	FERC accepts Agreement, eff. Mar 21, 2020
33	System Upgrade Reimbursement Agreement Cancellation: NEP/Deerfield Wind (ER20-1814)	Jul 9	FERC accepts NEP's notice of cancellation of its System Upgrade Reimbursement Agreement with Deerfield, eff. Jul 13, 2020
34	VTransco/VEC ShPA and O&M Agreements (ER20-1679)	Jun 25	FERC accepts Agreements, eff. May 1, 2020

XII. Misc. - Administrative & Rulemaking Proceedings

34	Carbon Pricing in RTO/ISO Markets Tech Conf (Sep 30, 2020) (AD20-14)	Jun 9 Jun 17	API, National Hydropower Assoc. file comments FERC notices Sep 30, 2020 tech. conf.
35	Hybrid Resources Tech Conf (Jul 23, 2020) (AD20-9)	Jun 16	FERC issues supplemental notice that Jul 23, 2020 conf. will be held electronically
37	Increasing Market & Planning Efficiency Through Improved Software Tech Conf (AD10-12)	Jun 15 Jun 23-25	FERC issues final agenda FERC holds 11 th consecutive tech. conf. on this topic
37	NOPR – Electric Transmission Incentives Policy (RM20-10)	Jun 24-Jul 2	Over 80 sets of comments filed
42	Waiver of Tariff Requirements (PL20-7)	Jun 18 Jul 2	IRC, AEE, APPA, AWEA/SEIA, EEI, EPSA, Indicated Generators, INGAA, KEPC, NGA, NGSA, NRECA, Public Citizen, Sunflower Electric Power, and TAPS file comments APPA, Joint Trade Associations, KEPC, and the Sustainable FERC Project file reply comments
43	FERC's ROE Policy for Natural Gas and Oil Pipelines (PL19-4)	Jun 2 Jun 11 Jun 15, 18 Jun 30	Complainant-Aligned Parties respond to New England TOs' May 12, 2020 supplemental comments Liquids Shippers Group requests FERC reconsideration of May 21, 2020 Policy Statement Joint Parties, WIRES submit supplemental comments Six Cities answer Joint Parties' Jun 15 supplemental comments

XIII. Natural Gas Proceedings**No Activity to Report****XIV. State Proceedings & Federal Legislative Proceedings****No Activity to Report**

XV. Federal Courts	
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49	<i>Order 841</i> (Electric Storage Participation in RTO/ISO Markets) (19-1142, 19-1147) (consol.)	Jul 10	DC Circuit denies petitions filed by NARUC and APPA et al.
49	<i>Allegheny Defense Project v. FERC</i> (19-1098)	Jun 30 Jul 6 Jul 8	DC Circuit rules that the NGA does not allow FERC to delay appellate review of its substantive orders through the issuance of tolling orders FERC requests stay of issuance of mandate Petitioners oppose stay request
51	PennEast Project (18-1128)	Jun 29	Joint Status Report filed; proceeding continues to be held in abeyance
50	FERC orders on PG&E Bankruptcy (19-71615) (9th Cir.)	Jun 24 Jul 9	Court orders parties to submit supplemental briefs addressing the impact on this appeal of the confirmation of PG&E's bankruptcy plan Parties submit briefs
* 51	Opinion 569/569-A: FERC's Base ROE Methodology (16-1325, 20-1227)	Jun 3 Jun 25 Jun 30 Jul 2	MISO TOs case consolidated with others removed from abeyance FirstEnergy petitions Court for review Court issues procedural schedule in FirstEnergy case Initial submissions in MISO TOs case extended to Aug 10, 2020

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: July 10, 2020

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”),¹ state regulatory commissions, and the Federal Courts and legislatures through July 10, 2020. If you have questions, please contact us.

COVID-19

- **Jul 8-9 Tech Conf: Impacts of COVID-19 on the Energy Industry (AD20-17)**

On July 8-9, 2020, the FERC convened a Commissioner-led technical conference to explore the potential longer-term impacts of the emergency conditions caused by COVID-19 on FERC-jurisdictional entities “in order to ensure the continued efficient functioning of energy markets, transmission of electricity, transportation of natural gas and oil, and reliable operation of energy infrastructure today and in the future, while also protecting consumers”. The conference included consideration of: (i) the energy industry’s ongoing and potential future operational and planning challenges due to COVID-19 and as the situation evolves moving forward; (ii) the potential impacts of changes in electric demand on operations, planning, and infrastructure development; (iii) the potential impacts of changes in natural gas and oil demand on operations, planning, and infrastructure development; and (iv) issues related to access to capital, including credit, liquidity, and return on equity.

- **Remote ALJ Hearings (AD20-12)**

All hearings before Administrative Law Judges will be held remotely through video conference software until further notice.² The Presiding Judge in each remote hearing will ensure that the participants have access to an IT Day prior to the hearing to allow all participants, witnesses, and the public who will attend the hearing to learn more about the remote hearing software and to get their technical questions answered by the appropriate FERC staff.

- **Extension of Filing Deadlines (AD20-11)**

Entities may seek waiver of FERC orders, regulations, tariffs and rate schedules, including motions for waiver of regulations that govern the form of filings, as appropriate, to address needs resulting from steps they have taken in response to the coronavirus. The FERC committed to take action on any such motions as

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

² *Chief Administrative Law Judge’s Notices to the Public*, Docket No. AD20-12 (June 17, 2020).

expeditiously as possible.³ In addition, FERC's regulations that require that filings with the FERC be notarized or supported by sworn declarations are waived through September 1, 2020.⁴

- **Blanket Waiver of ISO/RTO Tariff In-Person Meeting and Notarization Requirements (EL20-37)**

On April 2, 2020, the FERC, pursuant to Section 206 of the Federal Power Act ("FPA"), provided a blanket waiver, effective April 2, 2020 and through September 1, 2020, of all jurisdictional agreement⁵ requirements for (i) document notarization and (ii) *in-person* meetings (such meetings must still be held, but should be conducted by other means). The FERC, noting alternatives like electronic signatures and telephonic and web-based meeting capabilities, indicated that it took the action given the President's proclamation of a National Emergency, the unprecedented risk to health and safety currently presented by personal contact, and to be consistent with guidance from public health officials on social distancing. The blanket waiver made moot requests separately filed earlier by ISO-NE (ER20-1484) and NYISO (ER20-1419), among others.

I. Complaints/Section 206 Proceedings

- **206 Proceeding: FCM Pricing Rules Complaints Remand (EL20-54)**

In response to the February 2, 2018 remand by the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit")⁶ (where the DC Circuit found that the FERC did not adequately explain why it allowed ISO-NE to forego an offer floor for its seven-year price lock period despite previously rejecting PJM's request to remove the offer floor for its three-year price lock period), the FERC instituted this proceeding, pursuant to section 206 of the FPA, finding preliminarily that ISO-NE's new entrant rules may be unjust and unreasonable.⁷ The FERC established paper hearing procedures and posed the following questions, which need to be addressed in initial briefs due on or before **August 24, 2020**:⁸

- (a) **to evaluate the need for the price lock in its entirety:** (i) how many resources have taken advantage of the price lock to date? (ii) is a price lock still needed to incent new entry in ISO-NE? (iii) does the price lock lead to unreasonable price suppression in the entry year? (iv) does the price lock with the zero-price offer rule result in unreasonable price suppression in years 2-7? (v) is the price lock unduly discriminatory? and (vi) if the price lock is retained, should the term be shortened and, if so, what would be a just and reasonable term?
- (b) **to evaluate retaining the price-lock and adding an offer floor:** (i) how would an offer floor be implemented? (2) would an offer floor require significant market redesign? and (iii) what would be the timeline for implementing an offer floor in ISO-NE?
- (c) **to evaluate whether to impose an alternative replacement rate:** (i) are there alternative approaches to the current price-lock that would be sufficient to incent new entry? (ii) how would these alternative approaches address any concerns related to unreasonable price suppression? and (iii) how would

³ *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Apr. 2, 2020).

⁴ *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (May 8, 2020).

⁵ This waiver applies to any tariff, rate schedule, service agreement, or contract subject to the FERC's jurisdiction under the FPA, the Natural Gas Act, or the Interstate Commerce Act.

⁶ *New England Power Generators Assoc. v FERC*, 881 F.3d 202 (DC Cir. 2018) (granting NEPGA's and Exelon's petitions for review of orders accepting the Forward Capacity Market's ("FCM") 7-year price lock-in (EL14-7) and capacity-carry-forward rules (EL15-23)).

⁷ *ISO New England Inc.*, 172 FERC ¶ 61,005 (Jul 1, 2020) ("*FCM Pricing Rules Complaints Remand Order*").

⁸ Notice of the initiation of this proceeding was published in the *Fed. Reg.* on July 9, 2020 (Vol. 85, No. 132) p. 41,237. Aug. 24, 2020 is the first business day that is 45 days after publication.

these alternative approaches address any concerns related to undue discriminatory or preferential treatment?

Interventions are due on or before **July 22, 2020**. Responses to initial briefs will be due **September 23, 2020** (30 days after the date that the initial briefs are due). No additional answers or briefs will be permitted. In order to accept the changes originally filed, the FERC must provide some analysis and explanation why it changed course. The FERC established July 9, 2020 (the date of publication in the *Federal Register*) as the refund effective date. The FERC noted its expectation that it would issue a final order in this proceeding within the 180-day period contemplated under FPA section 206(b). Thus far, interventions have been filed by NEPOOL, Brookfield, Calpine, ENE, Eversource, Exelon, LS Power, MA AG, NESCOE, NextEra, NRG, PJM EMM, and Public Citizen. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Exelon PP-10 Complaint (EL20-52)**

On June 10, 2020, Constellation Mystic Power, LLC (“Exelon”) filed a complaint against ISO-NE requesting that the FERC prohibit ISO-NE from (i) implementing changes to Planning Procedure No. 10 (Planning Procedure to Support the Forward Capacity Market),⁹ which it asserted would significantly affect the rates, terms and conditions of jurisdictional services by dramatically changing the way in which ISO-NE conducts its annual transmission security review of capacity auction retirement bids and the Network Model upon which the capacity auction is based, and (ii) violating the requirements of its Tariff for *Order 1000* competitive transmission procurements. Exelon requested fast track processing, a shortened 14-day answer period (which was not granted), and an order by August 4, 2020, which Exelon asserted would provide ISO-NE time to revise its transmission security review currently underway should the Complaint be granted.

ISO-NE’s response, as well as comments, protests and answers, to the Complaint were due on or before June 30, 2020, and were filed by ISO-NE, ISO-NE IMM, NEPOOL, Anbaric, EMCOS, FirstLight, MA AG, NEPGA, NESCOE, TOs (Avangrid, Eversource, Nat’l Grid and VELCO), Versant Power (out-of-time), Vistra, and EPSA. Doc-less interventions only were filed by Brookfield, Calpine, Dominion, ENE, Footprint, LS Power, MMWEC, NextEra, NRG, Southern Power, CT AG, CT DEEP, CT PURA, MA DPU, and the NY TOs. Also, on June 23, Exelon moved to lodge a June 16 letter from Anbaric to ISO-NE. ISO-NE opposed that motion on July 8. On July 10, Exelon answered ISO-NE and protesters. 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) or Sophia Browning (202-218-3904; sbrowning@daypitney.com).

- **NERA Petition: FERC Jurisdiction Over Customer-Side-of-the-Retail-Meter Energy Sales (EL20-42)**

As previously reported, the New England Ratepayers Association (“NERA”) has asked the FERC, through an April 14, 2020 petition for declaratory order, to assert jurisdiction over energy sales from facilities located on the customer side of the retail meter (rooftop solar and other DG) (i) whenever the DG output exceeds customer demand or (ii) where the energy from the DG is designed to bypass the customer’s load and therefore is not used to serve demand behind the customer’s meter, and ensure the output is priced accordingly. Comments on NERA’s Petition were due on or before June 15, 2020.¹⁰

⁹ The PP-10 Revisions were supported by the Participants Committee at its June 4 meeting by a vote of 99.12% in support (only Exelon opposing).

¹⁰ The comment date was initially noticed as May 14, 2020. A number of state-affiliated organizations, including NARUC, NRECA/APPA, “State Entities” (Mass. Attorney General Maura Healey (“MA AG”), the state attorneys general of Conn., the District of Columbia, Iowa, Maryland, Michigan, Minnesota, New Jersey, North Carolina, Rhode Island (“RI AG”), the Maine Office of the Public Advocate (“MOPA”), and the Pub. Util. Comm. of Oregon), the Organization of MISO States, and the National Association of State Energy Officials, requested a 90-day extension of time. Several parties, including NESCOE, Joint Parties (the Conn. Pub. Utils. Regulatory Authority (“CT PURA”), the New Jersey Board of Pub. Utils. (“NJ BPU”), the Conn. Dept. of Energy and Environ. Protection (“CT DEEP”), the Conn. Office of Consumer Counsel (“CT OCC”) and the New Jersey Division of Rate Counsel), PIOs (the Center for Biological Diversity, Climate +

The Petition engendered both national and regional attention. Hundreds of Entities, including NEPOOL, simply intervened. Well over 120 sets of decisional comments were submitted. Nearly 600 sets of comments were filed by individuals who did not intervene as parties (non-decisional comments). The comments and protests were nearly uniform in their opposition to NERA's request. NERA answered the comments and protests on June 30, 2020. Two answers to NERA's June 30 answer were filed, including one by Public Citizen. This matter is pending before the FERC, and was listed on the FERC's latest sunshine notice for action at the FERC's July 16, 2020 Open Meeting.

- **Liberty Complaint – Eversource/ISO-NE Failure to Correct Nov 2018 Meter Data Error/Load Assignment (EL20-27)**

Liberty's February 28, 2020 Meter Data Error Complaint remains pending before the FERC. As previously reported, Liberty Power Holdings, LLC ("Liberty") filed a complaint against Eversource Energy Company ("Eversource") and ISO-NE related to a November 2018 Meter Data Error ("Nov 2018 Error") for a load in Metering Domain #685 ("Nov 2018 Load"). Liberty asserted (i) that Eversource incorrectly assigned the Nov 2018 Load to Liberty (as it did with a December 2018 load, which was subsequently corrected via Meter Data Error ("MDE") request #12/18/02MD); and (ii) ISO-NE refused to correct the error for the Nov 2018 Load at Liberty's Request Billing Adjustment ("RBA") because the RBA was not received within three months of the date that the Invoice containing the Disputed Amount was issued. Liberty further asserted that the Tariff, in light of the facts and circumstances Liberty describes in the Complaint, provides a basis for the correction beyond the three-month period for RBA submissions.¹¹ The amount in dispute is \$191,440 plus interest ("Disputed Amount"). Liberty seeks an order directing Eversource to refund the Disputed Amount to ISO-NE and directing ISO-NE to refund the Disputed Amount to Liberty.

ISO-NE and Eversource responded to Liberty's Complaint on March 19 and 18, 2020, respectively. In its response, **ISO-NE** asserted that "Liberty's Complaint has no basis under the Tariff, law, or equity, and should be rejected" because Liberty "failed to take timely or appropriate action to detect the [Nov 2018 E]rror and request that it be corrected" pursuant to ISO Tariff procedures. ISO-NE reported that, "in the three months leading up to the applicable deadline, Liberty was given information on five separate occasions that should have alerted it ... to the Nov[] 2018 [E]rror." ISO-NE stated that the "tolling provision that Liberty claims gives safe harbor where a party only discovers an error after the deadline has passed is taken from a set of billing procedures that explicitly do not apply in this case." ISO-NE added that the Liberty Complaint "also ignores the importance of settlement finality that underlies the correction procedures in the Tariff." **Eversource** argued for summary dismissal in its response by highlighting the opportunities Liberty had to timely identify the Nov 2018 Error, by explaining why denying the Complaint is consistent with and supportive of the filed-rate doctrine, as well as distinguishable from other instances in which the FERC has allowed the correction of billing errors. Eversource also explained that any correction would have been (or would need to be) paid by different retail supplier (not Eversource). NEPOOL submitted a doc-less motion to intervene.

There was no activity in this proceeding since the last Report and this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

Energy Project, Conservation Law Foundation ("CLF"), Environmental Law & Policy Center, Natural Resources Defense Council ("NRDC"), Public Citizen, Idaho Conservation League, RENEW Wisconsin, Sierra Club, Solar United Neighbors, Sustainable FERC Project, and Vote Solar), Advanced Energy Economy ("AEE"), Solar Energy Industries Association ("SEIA"), and the Kansas Corp. Comm., supported the request for a 90-day extension of time. NERA opposed the requests for 90 days, suggesting instead an extension of between 30 and 60 days. On May 4, the FERC granted a 30-day extension of time to intervene/comment in this proceeding.

¹¹ See § 6.3.1 of the Tariff: A Disputing Party must submit its Requested Billing Adjustment within three months of the date that the Invoice or Remittance Advice containing the Disputed Amount was issued by the ISO unless the Disputing Party could not have reasonably known of the existence of the alleged error within such time.

- **206 Investigation Terminated: ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (EL19-90)**

On June 18, 2020, the FERC terminated this FPA Section 206 proceeding,¹² which it instituted to consider whether ISO-NE may be implementing exemptions for immediate need reliability projects in a manner that is inconsistent with what the FERC directed pursuant to *Order 1000*.¹³ In its *Order Terminating Proceeding*, the FERC found (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;¹⁴ (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”;¹⁵ and (iii) that ISO-NE complies with the five criteria established for the immediate need reliability project exemption.¹⁶ Accordingly, the FERC terminated this proceeding (PJM and SPP were not so lucky). Unless the *Order Terminating Proceeding* 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).

- **RNS/LNS Rates and Rate Protocols Settlement Agreement II (ER20-2054; EL16-19-002)**

On June 15, 2020, the Transmission Owners submitted, on behalf of the Settling Parties, an uncontested Joint Offer of Settlement (“Settlement Agreement II”) to resolve all issues in Docket No. EL16-19, a Section 206 proceeding first instituted by the FERC on December 28, 2015.¹⁷ Recall that, as previously reported, the first joint offer of settlement filed (“Settlement Agreement I”) was contested¹⁸ and subsequently rejected by the FERC.¹⁹ The Tariff changes included with Settlement Agreement II were considered through the Participants Processes

¹² *ISO New England Inc.*, 171 FERC ¶ 61,211 (June 18, 2020) (“*Order Terminating Proceeding*”).

¹³ *ISO New England Inc. et al.*, 169 FERC ¶ 61,054 (Oct. 17, 2019) (“*Order Instituting Proceeding*”). As previously reported, ISO-NE submitted its responses on Dec. 27, 2019. Comments on ISO-NE’s response were filed by: [NEPOOL](#), [Avangrid](#), [Eversource](#), [LSP Transmission](#), [MMEWC](#), [National Grid](#), [NESCOE](#), [CT PURA](#), [State Agencies](#), [Developers Advocating Transmission Advancements](#), and [EEI](#). Reply comments were submitted by [ISO-NE](#), [Eversource and Avangrid](#) and [National Grid](#). [State Agencies](#) answered National Grid’s reply comments and [LSP Transmission](#) replied to the replies submitted by ISO-NE, Eversource/Avangrid and National Grid.

¹⁴ *Order Terminating Proceeding* at PP 1, 11.

¹⁵ *Id.* a P 11.

¹⁶ *Id.*

¹⁷ *ISO New England Inc. Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh’g denied*, 154 FERC ¶ 61,230 (Mar. 22, 2016) (“*RNS/LNS Rates and Rate Protocols Order*”). The *RNS/LNS Rates and Rate Protocols Order* found the ISO-NE Tariff unjust, unreasonable, and unduly discriminatory or preferential because the Tariff “lacks adequate transparency and challenge procedures with regard to the formula rates” for Regional Network Service (“RNS”) and Local Network Service (“LNS”). The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”. The FERC encouraged the parties to make every effort to settle this matter before hearing procedures are commenced. The FERC-established refund date is January 4, 2016.

¹⁸ Settlement Agreement I was opposed by FERC Trial Staff and “Municipal PTF Owners” (Braintree, Chicopee, Middleborough, Norwood, Reading, Taunton, and Wallingford).

¹⁹ As previously reported, the Settling Parties filed the Settlement on Aug. 17, 2018, in ER18-2235. The Settlement proposed changes to Section II.25, Schedules 8 and 9, Attachment F (including the addition of Interim Formula Rate Protocols (“Interim Protocols”)), and the Schedule 21s to the ISO-NE OATT. The Interim Protocols, as well as the changes to Section II.25 and Schedules 8 and 9, were supported by the Participants Committee at its July 24, 2018 meeting. However, the FERC found insufficient detailed information to enable it to apply any of the approaches available to it to approve a contested settlement and remanded the proceeding (EL16-19) to Chief Judge Cintron to resume hearing procedures. *ISO New England Inc. Participating Transmission Owners Admin. Comm., et al.*, 167 FERC ¶ 61,164 (May 22, 2019) (“*RNS Rate/Rate Protocol Settlement I Order*”).

(Transmission and Participants Committee review), and supported by the Participants Committee at its June 4, 2020 meeting (Agenda Item # 13).

Comments on Settlement Agreement II were due on or before July 6, 2020. NEPOOL filed comments supporting the Tariff changes included with Settlement Agreement II. FERC Trial Staff filed comments not opposing Settlement Agreement II. Reply Comments, if any, must be filed on or before July 15, 2020.

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; 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,²⁰ 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*).²¹ However, the FERC's orders were challenged, and in *Emera Maine*,²² the 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.
- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)²³ and third (EL14-86)²⁴ 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.²⁵ The *Initial Decision* also lowered the ROE ceilings. Parties to these

²⁰ 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*").

²¹ *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*").

²² *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).

²³ 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%.

²⁴ The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General ("MA AG"), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the "2014 ROE Complainants"), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

²⁵ *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*").

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 proceeding²⁶ also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.²⁷ 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.²⁸ 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.²⁹ 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* (EL14-12; EL15-45) in Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.³⁰

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.

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

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

²⁸ *Id.* at P 2.; Finding of Fact (B).

²⁹ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) ("*Order Directing Briefs*" or "*Coakley*").

³⁰ *Id.* at 19.

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%.³¹ 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 Customers³² 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. 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, FERC Trial Staff.

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*³³ 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, 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) or Joe Fagan (202-218-3901; jfagan@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- **FCA15 De-List Bids Filing (ER20-2317)**

Pursuant to Market Rule 1 § 13.8.1(a), ISO-NE submitted on July 2, 2020 a filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the FCA15 Existing Capacity Retirement Deadline. ISO-NE reported that the Existing Capacity Retirement Deadline for FCA15 was March 13, 2020 and it received 1 Permanent De-List Bid, 13 Retirement De-List Bids, and 0 substitution auction test prices from 10 Lead Market Participants. The bids were for resources located in the CT, VT, ME, South Eastern Massachusetts, and Western Central MA Load Zones, with 241.256 MWs of aggregate capacity. All but four of the Bids were for resources under 20 MW or that did not meet the affiliation requirements that would have required IMM review, with two (representing 20.712 MWs) requiring substitution auction test price reviews because the Bids were for greater than 3 MWs. The IMM did review the remaining four Bids (from four separate suppliers) for

³¹ *Id.* at P 59.

³² For purposes of the motion seeking clarification, "Customers" are CT PURA, MA AG and EMCOS.

³³ *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019) ("*MISO ROE Order*"), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154 (May 21, 2020).

213.376 MWs of capacity. The IMM's determination regarding those bids is described in the version of the filing that was filed confidentially as required under §13.8.1(a) of Market Rule 1.

ISO-NE reported that, because the Energy Security Improvements ("ESI") filing described in Section III below (ER20-1567) is still pending and FCA15 participants will receive final mitigated prices from the Internal Market Monitor ("IMM") before there is a FERC determination on the ESI filing, the IMM provided Participants with conditional retirement notifications that included a price under the current Market Rules, and a price to be used under each of the ISO-NE and NEPOOL ESI alternatives, should one of those be accepted.

Comments on this filing are due on or before July 23. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Final actions by the FERC in this proceeding remain pending. As previously reported, the FERC conditionally accepted the Cost-of-Service Agreement ("COS Agreement")³⁴ among Constellation Mystic Power ("Mystic"), Exelon Generation Company ("ExGen") and ISO-NE.³⁵ The COS Agreement will provide compensation for the continued operation of the Mystic 8 & 9 units from June 1, 2022 through May 31, 2024. The *Mystic Order* directed Mystic to submit a compliance filing (intended to modify aspects of the COS Agreement that FERC rejected or directed be changed) on or before February 18, 2019, and established a paper hearing to ascertain whether and how the ROE methodology that FERC proposed in *Coakley* should apply in the case. Requests for clarification and/or rehearing of the *Mystic Order* were filed by Constellation Mystic Power, CT Parties, EDF, ENECOS, MA AG, NESCOE, NextEra, and Repsol. CT Parties answered Constellation's request for rehearing. Constellation answered the other parties' requests for rehearing. NESCOE answered Constellation's answer. On February 15, 2019, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending.

Mystic's Compliance Filing. On March 1, 2019, Mystic submitted its required compliance filing. The compliance filing included the following modifications:

- ◆ Modification to Section 2.2 (Termination) which provides ISO-NE will be required to seek FERC authorization to extend the term of the COS Agreement beyond May 31, 2024; deletion of Section 2.2.1 in its entirety;
- ◆ Inclusion of a clawback provision;
- ◆ Modification to Section 4.4 related to settlement of over- and underperformance credits;
- ◆ A clarification that fuel opportunity costs will not be included as part of the Stipulated Variable Costs used to calculate the revenue credits;
- ◆ Modifications to information access provisions (§ 6.2) both to allow ISO-NE full access to information and to support verification of third-party sales;
- ◆ Modifications to Schedule 3 supporting multiple compensation-related directives (e.g. cost of capital/cost of service, fuel supply charge, settlement of over- and under-performance credits);
- ◆ Schedule 3A modifications related to Mystic's true-up process; and
- ◆ Non-substantive conforming changes.

³⁴ 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, and on the continued provision of surplus LNG from Distrigas to third parties.

³⁵ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (Dec. 20, 2018) ("*Mystic Order*").

In addition, Mystic's compliance filing included for informational purposes changes to the Fuel Supply and Terminal Services Agreements. Comments on Mystic's compliance filing were due on or before March 22, 2019. Protests and comments were filed by CT Parties, ENECOS, MA AG, National Grid, Public Systems (MMWEC/NHEC), and NESCOE. Mystic answered the March 22 protests on April 8. Also, on March 22, Concord, Reading and Wellesley moved for the release from Protective Order a documentary response regarding the net book value of Mystic 8 and 9 from the 2006 Mystic 8/9 RMR proceeding (ER06-427). Mystic's compliance filing and the pleadings related thereto remain pending before the FERC.

ROE Paper Hearing. The *Mystic Order* established a paper hearing to determine the just and reasonable ROE to be used in setting charges under Mystic's COS Agreement. On April 19, Mystic, Connecticut Parties, ENECOS, MA AG, and FERC Trial Staff filed initial briefs. On July 18, 2019, Constellation Mystic Power, CT Parties, ENECOS, MA AG, National Grid, FERC Trial Staff filed reply briefs. The ROE Paper Hearing is now pending before the FERC.

July Mystic COS Agreement Order. Rehearing remains pending of the FERC's July order. As previously reported, the FERC issued an initial order regarding the COS Agreement, accepting the COS Agreement but suspending its effectiveness and setting it for accelerated hearings and settlement discussions.³⁶ The *Mystic COS Agreement Order* was approved by a 3-2 vote, with dissents by Commissioners Powelson and Glick. Challenges to the *July Mystic COS Agreement Order* were filed by NESCOE, ENECOS, MA AG, and the NH PUC. Constellation answered the NESCOE request for reconsideration on August 21. On September 10, 2018, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending.

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

- **Versant Power MPD 2020 Annual Informational Filing (ER15-1429-000)**

On May 1, 2020, Emera Maine (now known as Versant Power) submitted its annual informational filing setting forth, for the June 1, 2020 to May 31, 2021 rate year, the charges for transmission service under the Maine Public District ("MPD") OATT ("MPD Charges") and an updated transmission real power loss factor. On May 18, 2020, Versant Power revised its filing of the 2020-2021 MPD Charges to reflect the loss of the load of Houlton Water Company, which on May 15, 2020 interconnected its electric system with that of NB Power ("Revised Charges"). Since the last Report, on June 17, 2020, Versant Power re-submitted its Revised Charges to reflect the Versant Power name, as set forth in its June 3, 2020 notice of succession and its *Order 864* compliance filing in Docket Nos. ER20-1977 and ER20-1736, respectively. While none of these informational filings will be noticed for public comment, the 2020 charges will be subject to the process established in the Annual Review "Protocols for Implementing and Reviewing Charges Established by the Attachment J Formulas" and may result in further proceedings (*see, e.g.*, 2019 and 2018 filings below). If there are questions on the 2020 MPD OATT Informational Filing, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Versant Power MPD 2019 Annual Informational Filing (ER15-1429-000)**

The motion by Maine Customer Group ("MCG") to strike a portion of the 2019 MPD Informational Filing remains pending. As previously reported, MCG moved to strike the trueup to actuals portion of the 2019 MPD Annual Update filing to the extent that true-up proposes a change in the formula rate from a direct assignment of MPD's post-retirement benefits other than pensions ("PBOPs") to an allocation of company-wide PBOPs (which MCG argued would be a retroactive change to the formula rate of Emera Maine (now known as Versant Power), otherwise required to effect only prospectively). On June 26, 2019, Versant Power

³⁶ *Constellation Mystic Power*, 164 FERC ¶ 61,022 (July 13, 2018) ("*July Mystic COS Agreement Order*"), *reh'g requested*.

answered MCG's motion to strike. This matter remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **MPD 2018 Annual Informational Filing Settlement Agreement (ER15-1429-012)**

On July 1, 2020, the FERC accepted the uncontested Joint Offer of Settlement between Emera Maine (now known as Versant Power), MPUC and the MCG³⁷ to resolve all the issues set for hearing by the FERC in its *2018 Challenge Order*.³⁸ As previously reported, Chief Judge Cintron authorized Emera Maine to implement the settlement rates as of February 1, 2020, pending the outcome of the FERC's consideration of the Settlement Agreement.³⁹ Reporting on this proceeding is now concluded.

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

Rehearing remains pending of the FERC's October 6, 2017 order rejecting the TOs' June 5, 2017 filing in this proceeding.⁴⁰ As previously reported, the June 5 filing was designed to reinstate TOs' transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*⁴¹ decision. In its *Order Rejecting Filing*, the FERC required the TOs to continue collecting their ROEs currently on file, subject to a future FERC order.⁴² The FERC explained that it will "order such refunds or surcharges as necessary to replace the rates set in the now-vacated order with the rates that the Commission ultimately determines to be just and reasonable in its order on remand" so as to "put the parties in the position that they would have been in but for [its] error." For the time being, so as not to "significantly complicate the process of putting into effect whatever ROEs the Commission establishes on remand" or create "unnecessary and detrimental variability in rates," the FERC has temporarily left in place the ROEs set in *Opinion 531-A*, pending an order on remand.⁴³ On November 6, the TOs requested rehearing of the *Order Rejecting Filing*. On December 4, 2017, the FERC issued a tolling order providing it additional time to consider the TOs' request for rehearing of the *Order Rejecting Filing*, which remains pending. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **EE CSOs During Scarcity Conditions (ER20-1967)**

On June 2, 2020, ISO-NE and NEPOOL jointly filed changes to address an implementation issue regarding the treatment of energy efficiency resources ("EE") during Capacity Scarcity Conditions ("EE Changes"). Specifically, EE Capacity Supply Obligations ("CSOs") will be removed from the denominator of the balancing ratio

³⁷ *Emera Maine*, 172 FERC ¶ 61,001 (July 1, 2020) ("*2018 Challenge Settlement Order*").

³⁸ *Emera Maine*, 167 FERC ¶ 61,090 (Apr. 30, 2019) ("*2018 Challenge Order*") (granting, in part, the formal challenge filed on Dec. 31, 2018 by the MCG (the "*2018 Challenge*") to Emera Maine's May 15, 2018 annual informational filing and setting the remaining issues for hearing and settlement judge procedures). The 2018 Challenge sought certain cost reductions/ exclusions to be effective June 1, 2018 following unsuccessful efforts to obtain the relief sought directly from Emera Maine MPD through informal resolution procedures in accordance with the Protocols. In granting in part the 2018 Challenge, the FERC found that Emera Maine's formula rate should be corrected for the current rate year and directed Emera Maine to submit a compliance filing revising its 2018-2019 formula rate charges to correct certain acknowledged errors, exclusion of certain costs for land associated with a project not in service, the exclusion of certain costs for distribution equipment from transmission rates, and the flowback of excess accumulated deferred income tax ("ADIT"). As to the remaining issues, addressing Administrative and General ("A&G") expenses, merger-related prior losses, exclusion of costs attributed to Line 6901, and exclusion of land rights cost, the FERC found that the 2018 Annual Update raised issues of material fact that could not be resolved based on the record and set those issues for hearing and settlement judge procedures, resolved in this Settlement.

³⁹ *Emera Maine*, 170 FERC ¶ 63,028 (Mar. 18, 2020) ("*Settlement Rates Order*").

⁴⁰ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*"), *reh'g requested*.

⁴¹ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

⁴² *Order Rejecting Filing* at P 1.

⁴³ *Id.* at P 36.

outside of measure hours, so that EE will be absent from both the numerator and the denominator of the ratio in those hours. The EE Changes will eliminate the undercollection problem and associated mutual insurance pool charges, and will more appropriately allocate Pay For Performance (“PFP”) proceeds, all while more fully honoring the FERC’s directive in the *2014 PFP Order* to calculate performance payments for EE only when scarcity conditions occur during measure hours. The EE Changes were supported by the Participants Committee at its April 2, 2020 meeting (Consent Agenda Item #4). ISO-NE requested an effective date of August 1, 2020 for the EE Changes.

Comments on the EE Changes were due on or before June 23, 2020 and were filed by AEE and NESCOE, each of which supported the EE Changes. Doc-less motions to intervene were filed by Calpine, Dominion, Eversource, National Grid, NRG, and the MA DPU. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request: Settlement Only Resources Definition -- GMP’s Searsburg facility (ER20-1755)**

On May 4, Green Mountain Power (“GMP”) requested a limited waiver from the revised definition of Settlement Only Resources⁴⁴ as applied to GMP’s Searsburg wind power facility⁴⁵ because the vintage and unique physical characteristics of the Searsburg facility’s wind turbines will make compliance with the revised definition of a Settlement Only Resource infeasible.⁴⁶ Comments on GMP’s waiver request were due on or before May 22, 2020; none were filed. NEPOOL filed a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **ESI Alternatives (ER20-1567)**

This proceeding was initiated by ISO-NE’s April 15, 2020 filing of Tariff revisions to incorporate comprehensive, long-term market enhancements to address the fuel security challenges facing the New England region (“Energy Security Improvements” or “ESI”).⁴⁷ The revisions included NEPOOL-supported alternatives to certain aspects of the enhancements proposed by ISO-NE, which ISO-NE and NEPOOL agreed would be considered on equal legal footing with ISO-NE’s favored alternative. ISO-NE asked that the FERC issue an order and accept the changes effective no later than November 1, 2020, conditioned on ISO-NE’s filing of an appropriate market power mitigation proposal supported by a Market Power Assessment by the fourth quarter of 2021. The ESI Proposals were considered at the April 2 Participants Committee meeting. ISO-NE’s ESI proposal with three amendments proposed by NESCOE was approved by NEPOOL and is the NEPOOL Alternative. ISO-NE’s ESI proposal without the amendments (the “ISO-NE Proposal”) was not supported. Comments on this filing are due on or before May 15, 2020. On April 24, NEPOOL submitted comments to provide NEPOOL’s support for the NEPOOL Alternative.

Comments and protests were filed by Avangrid, API, Calpine/Vistra, Cogentrix, Dominion, Excelerate, Exelon, FirstLight, IECG, MA AG/NH OCA, MMWEC, NECOES/ENE, NESCOE, Repsol, NEPGA, NRG, PIOs, ISO-NE IMM, Potomac Economics, CT DEEP, MPUC, VT PUC, AEE, EPSA, National Hydropower Assoc., and the National Gas

⁴⁴ See ER20-1582 below.

⁴⁵ The Searsburg facility is comprised of eleven Zond Z-40 turbines, each of which is rated at 550 kW; the overall project has a nameplate rating of 6MW. However, due to the age and physical characteristics of the turbines (the facility went online in July 1997, and reached its projected design lifetime of 20 years in July 2017), the Searsburg facility has a 20-25 percent capacity factor and produces on average 1.2 to 1.5 MW annually.

⁴⁶ Searsburg’s SCADA system does not have the ability to set an active power limit for the wind facility, and the GMP control room does not have any turbine-level control capability. In addition, because the facility’s Zond Z-40 turbines are among the last turbines of this model still in operation in the country, updated or modified control systems or spare parts for Searsburg’s legacy Zond turbines are not available, and GMP states that it is unable to acquire turbine software capable of allowing Searsburg to set up an active power limit. The power output of the facility can only be limited by manually taking individual turbines offline, if a technician is available, or alternatively, shutting down the entire plant remotely by tripping the substation breaker, potentially damaging the wind turbines. Over the coming years, as each of Searsburg’s turbines becomes inoperable, GMP will decommission the turbine.

⁴⁷ This filing was submitted in response to the requirements of the *Mystic Waiver Order*, which directed ISO-NE, in part, to submit permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns. See *ISO New England Inc.*, 164 FERC ¶ 61,003 (July 2, 2018), *reh’g requested (“Mystic Waiver Order”)*.

Supply Association (“NGSA”). On June 1 NEPOOL and NESCOE filed answers to some of the pleadings submitted. Doc-less interventions were filed by Acadia Center, Brookfield RTM, CT OCC, CT AG, CLF, ENE, Environmental Defense Fund, Eversource, National Grid, NextEra, NRDC/Sustainable FERC Project, PSEG, Repsol, Shell, UCS, Vistra, AWEA, APPA, EPSA, Helix Maine, Public Citizen, Sierra Club, and Vote Solar.

Since the last Report, on June 5, [Calpine/Vistra](#) and [NEPGA](#) answered [NESCOE's May 15 protest](#). On June 10, FirstLight answered [NEPOOL's](#) and [NESCOE's](#) answers. ISO-NE submitted its answer to various pleadings on June 16. On June 22, NESCOE filed a second answer, to the June 5 answers by [NEPGA](#) and [Calpine/Vistra](#). [NESCOE](#), and the [MA AG](#) answered [ISO-NE's Jun 16 answer](#) on June 30, And, finally, NEPOOL answered [ISO-NE's out-of-time answer](#) on July 1.

This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Inventoried Energy Program (Chapter 2B) Remand (ER19-1428)**

On June 18, 2020, following voluntary remand from the DC Circuit of challenges to the FERC's notice that the Inventoried Energy Program (“IEP”) became effective by operation of law, the FERC issued an order accepting the IEP, eff. May 28, 2019.⁴⁸ In accepting the IEP, the FERC agreed with ISO-NE that “the current market design contains a “misaligned incentives” problem, such that fuel secure resources may not be sufficiently incented to make additional investments in energy supply arrangements, which may have adverse efficiency and reliability consequences under the existing market rules” and found that the IEP “is a reasonable short-term solution to compensating, in a technology-neutral manner, resources that provide fuel security.”⁴⁹ The FERC stated that the IEP “will help ISO-NE address winter energy security in light of the misaligned incentives in the market, while ISO-NE finishes developing a long-term market solution.”⁵⁰

As previously reported, the IEP⁵¹ took effect by operation of law, with an effective date of May 28, 2019, pursuant to a [notice](#) issued August 6, 2019 (“Chapter 2B Notice”). In the Chapter 2B Notice, the FERC indicated that it could not act on ISO-NE’s March 25, 2019 filing on or before its August 5, 2019 deadline “because of a lack of quorum” (Commissioners McNamee and LaFleur not participating). As required under Section 205 of the FPA, Chairman Chatterjee and Commissioners Glick, McNamee and now-former Commissioner LaFleur posted written statements on August 8, 2019 explaining their views with respect to the Chapter 2B changes. Requests for rehearing of the Chapter 2B Notice were due on or before September 4, 2019⁵² and were filed by the MA AG, Clean Energy Advocates, NECOS/ENE, NESCOE, MPUC, NH PUC/NH OCA. Those requests, which challenged the Chapter 2B Notice on substantive and procedural grounds, were similarly denied by operation of law.⁵³ On October 7, the FERC provided notice that the “Commission took no

⁴⁸ *ISO New England Inc.*, 171 FERC ¶ 61,235 (June 18, 2020) (“*IEP Remand Order*”).

⁴⁹ *Id.* at PP 32-33.

⁵⁰ *Id.* at P 34.

⁵¹ ISO-NE’s “Inventoried Energy Program” (a/k/a its “Chapter 2B Proposal”) for the Winters of 2023-2024 and 2024-2025 (FCA14 and FCA15 Capacity Commitment Periods) “will provide incremental compensation to resources that maintain inventoried energy during cold periods when winter energy security is most stressed” and “fulfills a commitment ... to identify an interim solution that could complement efforts currently underway to develop a long-term, market-based solution to the region’s energy security challenges.” The Chapter 2B Proposal was not supported by the Participants Committee when considered at its March 13 meeting.

⁵² The inability of the FERC to act on an ISO-NE filing had happened previously but Congress has since stepped in to allow such non-action by the FERC to be challenged on rehearing and appeal. Specifically, the “Fair Ratepayer Accountability, Transparency, and Efficiency Standards Act” was included as part of “America’s Water Infrastructure Act of 2018” (Oct. 23, 2018), the result of which will be to treat the Chapter 2B Notice for purposes of rehearing to be an order issued by the FERC accepting the changes.

⁵³ The MA AG’s rehearing request was denied by operation of law on Sept. 30, 2019; the requests filed by Clean Energy Advocates, Maine PUC, NECOS, NESCOE and NH PUC/NH OCA, Oct. 4, 2019.

action on the requests for rehearing within 30 days of their filing ... and that the requests for rehearing were denied by operation of law.” As summarized in previous Reports, petitions for review of those notices were filed with the DC Circuit (Case No. 19-1224). On April 14, 2020, the FERC filed a motion for voluntary remand with the DC Circuit to allow the FERC to issue an order addressing the filing since it then had a quorum in this proceeding. The DC Circuit granted the motion on April 21, 2020.

Challenges to the *IEP Remand Order* are due on or before July 20, 2020. If you have questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Waiver Request: Vineyard Wind FCA13 Participation (ER19-570)**

Still pending FERC action is Vineyard Wind’s December 14, 2018 petition for a waiver of the ISO-NE Tariff provisions necessary to allow Vineyard Wind to participate in FCA13 as an RTR. As previously reported, Vineyard Wind’s request for RTR designation was earlier rejected by ISO-NE on the basis that the resource is to be located in federal waters. Under the CASPR Conforming Changes, Vineyard Wind would not have been precluded from utilizing the RTR exemption. Consistent with the discussion in the CASPR Conforming Changes filing, Vineyard Wind asked that the proration requirement that would be triggered by Vineyard Wind’s participation in FCA13 as an RTR be limited for FCA13 to it and any other similarly-situated entities (i.e. new offshore wind resources located in federal waters seeking RTR treatment); Vineyard Wind claimed that there would have been no impact on resources qualified to use the RTR exemption in FCA13. ISO-NE filed comments not opposing the Waiver Request, but requested FERC action by January 29, 2019 if the waiver was to be effective for FCA13. NEPGA protested the Waiver Request. Answers to NEPGA’s protest were filed by Vineyard Wind and NESCOE. On January 15, the Massachusetts Department of Energy Resources (“MA DOER”) intervened out-of-time and submitted comments supporting the Waiver Request. Doc-less interventions were filed by NEPOOL, Avangrid, Dominion, ENE, National Grid, and NextEra. Despite several last minute requests to do so, including a Vineyard Wind emergency motion for immediate stay of FCA13 or, in the alternative, a requirement that FCA13 be re-run following FERC action, the FERC took no action ahead of FCA13 and FCA13 was run without Vineyard Wind receiving RTR treatment. As noted, this matter remains pending before the FERC, with no activity since the last Report. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Order 841 Compliance Filings (Electric Storage in RTO/ISO Markets) (ER19-470)**

As previously reported, the FERC conditionally accepted on November 22, 2019, subject to an additional compliance filing, New England’s *Order 841*⁵⁴ compliance filing.⁵⁵ For the majority of the revisions, the effective date was December 3, 2019; the effective date for the revisions to Section II.21, Schedule 9 (Regional Network Service), and Schedule 21 (Local Service) of the OATT was December 1, 2019; the effective date for the remainder of the changes will be January 1, 2024.⁵⁶

Order 841 Compliance Filing II (ER19-470-004). On February 10, 2020, ISO-NE and NEPOOL jointly filed Tariff revisions in response to the *Order 841 Initial Compliance Filing Order*. The revisions included: (i) a provision that addresses the state of charge and duration characteristics of an energy storage facility in the Day-Ahead Energy Market;⁵⁷ (ii) metering and accounting practices for electric storage resources, including

⁵⁴ See *Elec. Storage Participation in Mkts. Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018) (“*Order 841*”).

⁵⁵ *ISO New England Inc.*, 169 FEC ¶ 61,140 (Nov. 22, 2019) (“*Order 841 Initial Compliance Filing Order*”).

⁵⁶ The *Order 841* revisions that became effective on Dec. 3, 2019 were filed in ER19-470-000; the revisions to § II.21, Schedule 9 and Schedule 21 became effective on Dec. 1, 2019 as requested in ER19-470-002; the remainder of the changes will become effective on Jan. 1, 2024 as requested in ER19-470-001.

⁵⁷ See proposed § III.1.10.6(d) -- “In clearing the Day-Ahead Energy Market, the ISO will account for maximum run time, maximum charge time, state of charge, maximum state of charge, and minimum state of charge through bidding parameters or other means, as

direct metering requirements and certainty that electric storage resources will not pay twice for the same charging energy; and (ii) a provision which provides that an electric storage facility will “not be precluded from providing retail services so long as it is able to fulfill its wholesale Energy Market and [FCM] obligations”. The filing explained why no additional Tariff language was needed to apply transmission charges to an electric storage resource when it is charging for later resale in the wholesale markets and not providing a service. The Tariff Revisions were unanimously supported by the Participants Committee at its February 6 meeting (Agenda Item #5). Comments on this filing were due on or before March 2, 2020; none were filed. The *Order 841 Compliance II* filing remains pending before the FERC.

If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Requests for rehearing and/or clarification of the *Fuel Security Retention Proposal Order*⁵⁸ remain pending before the FERC. As previously reported, the *Fuel Security Retention Proposal Order* accepted ISO-NE’s Proposal⁵⁹ in all respects, despite the various protests and alternative proposals filed. There was a concurring decision from Commissioner Glick, and a partial dissent from Chairman Chatterjee on the FCA price treatment issue. Challenges to the *Fuel Security Retention Proposal Order* were filed by NEPGA, NRG, Verso, Vistra/Dynegy Marketing & Trade, MPUC, and PIOs.⁶⁰ On February 1, 2019, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending. If you have further questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On July 2, 2018, the FERC issued an order⁶¹ that (i) denied ISO-NE’s request for waiver of certain Tariff provisions that would have permitted ISO-NE to retain Mystic 8 & 9 for fuel security purposes (ER18-1509); and (ii) instituted an FPA Section 206 proceeding (EL18-182) (having preliminarily found that the ISO-NE Tariff may be

required by the Commission in Order No. 841.” This language reflects ISO-NE’s pending challenge to the *Order 841 Initial Compliance Filing Order* on this point and will be subject to additional revision following disposition of that challenge.

⁵⁸ *ISO New England Inc.*, 165 FERC ¶ 61,202 (Dec. 3, 2018), *reh’g requested* (“*Fuel Security Retention Proposal Order*”). In accepting the ISO-NE Proposal, the FERC, among other things: (i) found ISO-NE’s trigger and assumptions for the fuel security reliability review for retention of resources be reasonable, but required ISO-NE at the end of each winter to “to submit an informational filing comparing the study assumptions and triggers from the modeling analysis to actual conditions experienced in the winter of 2018/19; (ii) found cost allocation on a regional basis to Real-Time Load Obligation just and reasonable and consistent with precedent regarding the past Winter Reliability Programs; (iii) found that entering retained resources into the FCAs as price takers would be just and reasonable to ensure that they clear and are counted towards resource adequacy so that customers do not pay twice for the resource; and (iv) found that it was appropriate to include FCAs 13, 14 and 15 in the term. The FERC agreed that it is necessary to implement a longer-term market solution as soon as possible, and required ISO-NE to file its longer-term market solution no later than June 1, 2019. The FERC declined to provide guidance on what the long-term solution(s) should be.

⁵⁹ As previously reported, ISO-NE filed, in response to the *Mystic Waiver Order*, “interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns”. ISO-NE proposed three sets of provisions to expand its authority on a short-term basis to enter into out-of-market arrangements in order to provide greater assurance of fuel security during winter months in New England (collectively, the “*Fuel Security Retention Proposal*”). ISO-NE stated that the interim provisions would sunset after FCA15, with a longer-term market solution to be filed by July 1, 2019, as directed in the *Mystic Waiver Order*. In addition, the ISO-NE transmittal letter described (i) the generally-applicable fuel security reliability review standard that will be used to determine whether a retiring generating resource is needed for fuel security reliability reasons; (ii) the proposed cost allocation methodology (Real-Time Load Obligation, though ISO-NE indicated an ability to implement NEPOOL’s alternative allocation methodology if determined appropriate by the FERC); and (iii) the proposed treatment in the FCA of a retiring generator needed for fuel security reasons that elects to remain in service. The ISO-NE Fuel Security Changes were considered but not supported by the Participants Committee at its August 24, 2018 meeting. There was, however, super-majority support for (1) the Appendix L Proposal with some important adjustments to make that proposal more responsive to the FERC’s guidance in the *Mystic Waiver Order* and other FERC precedent, and (2) the PP-10 Revisions, also with important adjustments (together, the “*NEPOOL Alternative*”).

⁶⁰ “PIOs” for purposes of this proceeding are Sierra Club, NRDC, Sustainable FERC Project, and Acadia Center.

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

unjust and unreasonable in that it fails to address specific regional fuel security concerns identified in the record that could result in reliability violations as soon as year 2022). The *Mystic Waiver Order* required ISO-NE, on or before August 31, 2018 to either: (a) submit interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement (“COS Agreement”) to address demonstrated fuel security concerns (and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns “Chapter 3 Proposal”); or (b) show cause as to why the Tariff remains just and reasonable in the short- and long-term such that one or both of Tariff revisions filings is not necessary.

Addressing the waiver element, the FERC found the waiver request “an inappropriate vehicle for allowing Mystic 8 and 9 to submit a [COS Agreement] in response to the identified fuel security need” and further that the request “would not only suspend tariff provisions but also alter the existing conditions upon which a market participant could enter into a [COS Agreement] (for a transmission constraint that impacts reliability) and allow for an entirely new basis (for fuel security concerns that impact reliability) to enter into such an agreement.” The FERC concluded that “[s]uch new processes may not be effectuated by a waiver of the ISO-NE Tariff; they must be filed as proposed tariff provisions under FPA section 205(d).”⁶² Even if it were inclined to apply its waiver criteria, the FERC stated that it would still have denied the waiver request as “not sufficiently limited in scope.”⁶³

Although it denied the waiver request, the FERC was persuaded that the record supported “the conclusion that, due largely to fuel security concerns, the retirement of Mystic 8 and 9 may cause ISO-NE to violate NERC reliability criteria.” Finding ISO-NE’s methodology and assumptions in the Operational Fuel-Security Analysis (“OFSA”) and Mystic Retirement Studies reasonable, the FERC directed the filing of both interim and permanent Tariff revisions to address fuel security concerns (or a filing showing why such revisions are not necessary).⁶⁴ The FERC directed ISO-NE to consider the possibility that a resource owner may need to decide, prior to receiving approval of a COS Agreement, whether to unconditionally retire, and provided examples of how to address that possibility.⁶⁵ The FERC also directed ISO-NE include with any proposed Tariff revisions a mechanism that addresses how cost-of-service-retained resources would be treated in the FCM⁶⁶ and an *ex ante* cost allocation proposal that appropriately identifies beneficiaries and adheres to FERC cost causation precedent.⁶⁷

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

- ◆ **NEPGA** (requesting that the FERC grant clarification that it directed, or on rehearing direct, ISO-NE to adopt a mechanism that prohibits the re-pricing of Fuel Security Resources in the FCA at \$0/kW-mo. or at any other uncompetitive offer price);
- ◆ **Connecticut Parties**⁶⁸ (requesting that the FERC clarify that (i) the discussion in the *Mystic Waiver Order* of pricing treatment in the FCM for fuel security reliability resources is not a final determination nor is it intended to establish FERC policy; (ii) the FERC did not intend to prejudge whether entering those resources in the FCM as price takers would be just and reasonable; and (iii) that ISO-NE may confirm its submitted position that price taking treatment for these resources would, in fact, be a just and reasonable outcome. Failing such clarification, Connecticut Parties request rehearing, asserting that the record fails to support a determination that resources retained for reliability to address fuel security concerns must be entered into the FCM at a price greater than zero);

⁶² *Id.* at P 47.

⁶³ *Id.* at P 48.

⁶⁴ *Id.* at P 55.

⁶⁵ *Id.* at PP 56-57.

⁶⁶ *Id.* at P 57.

⁶⁷ *Id.* at P 58.

⁶⁸ “Connecticut Parties” are CT PURA and CT DEEP.

- ◆ **ENECOS** (asserting that the *Mystic Waiver Order* (i) misplaces reliance on ISO-NE “assertions concerning ‘fuel security,’ which do not in fact establish a basis in evidence or logic for initiating” a Section 206(a) proceeding; (ii) impermissibly relies on extra-record material that the FERC did not actually review and that intervenors were afforded no meaningful opportunity to challenge; and (iii) speculation concerning potential future modifications to the FCM bidding rules as to retiring generation retained for fuel security misunderstands the problem it seeks to address, and prejudices the already truncated opportunities for stakeholder input in this proceeding), ENECOS suggest that the FERC should grant rehearing, vacate its show cause directive, strike its dictum concerning potential treatment of FCM bidding for retiring generation retained for “fuel security,” and direct ISO-NE to proceed either in accordance with its Tariff or under FPA Section 205 to address, with appropriate evidentiary support, whatever concerns it believes to exist concerning “fuel security”);
- ◆ **MA AG** (asserting that the decision to institute a Section 206 proceeding was insufficiently supported by sole reliance on highly contested OFSA and Mystic Retirement Studies; and the FERC should reconsider the timeline for the permanent tariff solution and set the deadline for implementation no later than February 2020);
- ◆ **MPUC** (challenging the Order’s (i) adoption of ISO-NE’s methodology and assumptions in the OFSA and Mystic Retirement Studies without undertaking any independent analysis; (ii) failure to address arguments and analysis challenging assumptions in the OFSA and Mystic Retirement Studies; (iii) failure to address the MPUC argument that the Mystic Retirement Studies adopted a completely new standard for determining a reliability problem three years in advance; (iv) unreasonably discounting of the ability of Pay-for-Performance to provide sufficient incentives to Market Participants to ensure their performance under stressed system conditions; and (v) failure to direct ISO-NE to undertake a Transmission Security Analysis consistent with the provisions in the Tariff);
- ◆ **New England EDCs**⁶⁹ (requesting clarification that (i) the central purpose of ISO-NE’s July 1, 2019 filing is to assure that New England adds needed new infrastructure to address the fuel supply shortfalls and associated threats to electric reliability that ISO-NE identified in its OFSA and (ii) that, in developing the July 1, 2019 filing, ISO-NE is to evaluate Tariff revisions (such as those the EDCs described in their request), through which ISO-NE customers would pay for the costs of natural gas pipeline capacity additions via rates under the ISO-NE Tariff);
- ◆ **PIOs**⁷⁰ (asserting that (i) the FERC failed to respond to or provide a reasoned explanation for rejecting the arguments submitted by numerous parties that key assumptions underlying and the results of the ISO-NE analyses were flawed; and (ii) the FERC’s determination that ISO-NE’s analyses were reasonable is not supported by substantial evidence in the record); and
- ◆ **AWEA/NGSA** (asserting that the FERC erred (i) in finding that ISO-NE’s OFSA and subsequent impact analysis of fuel security was reasonable without further examination and (ii) in its preliminary finding that a short-term out-of-market solution to keep Mystic 8 & 9 in operation is needed to address fuel security issues).

On August 13, 2018, CT Parties opposed the NEPGA motion for clarification. On August 14, NEPOOL filed a limited response to Indicated New England EDCs, requesting that the FERC “reject the relief sought in [their motion] to the extent that relief would bypass or predetermine the outcome of the stakeholder process, without prejudice to [them] refiling their proposal, if appropriate, following its full consideration in the stakeholder process.” Answers to the Indicated New England EDCs were also filed by the MA AG, NEPGA, NextEra, and CLF/NRDC/Sierra Club/Sustainable FERC Project. On August 29, the Indicated New England EDCs answered the August 14/16 answers. On August 27, 2018, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending.

⁶⁹ The “EDCs” are the National Grid companies (Mass. Elec. Co., Nantucket Elec. Co., and Narragansett Elec. Co.) and Eversource Energy Service Co. (on behalf of its electric distribution companies – CL&P, NSTAR and PSNH).

⁷⁰ “PIOs” are the Sierra Club, Natural Resources Defense Council (“NRDC”), and Sustainable FERC Project.

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

- **CASPR (ER18-619)**

Rehearing of the FERC's order accepting ISO-NE's Competitive Auctions with Sponsored Policy Resources ("CASPR") revisions,⁷¹ summarized in more detail in prior Reports, remains pending. Those requests were filed by (i) *NextEra/NRG* (which challenged the RTR Exemption Phase Out); (ii) *ENECOS*⁷² (challenging the FERC's findings with respect to the definition of Sponsored Policy Resource and the allocation of CASPR side payment costs to municipal utilities); (iii) *Clean Energy Advocates*⁷³ (which challenged the CASPR construct in its entirety, asserting that state-sponsored resources should not be subject to the MOPR); and (iv) *Public Citizen* (which also challenged the CASPR construct in its entirety and the *CASPR Order's* failure to define "investor confidence"). On April 24, 2018, ISO-NE answered Clean Energy Advocates' answer. On May 7, 2018, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending. If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On April 1, 2020, the FERC issued its long-awaited order on compliance and remand, accepting ISO-NE's January 23, 2017 compliance filing and finding that the bid results from the 2013/14 Winter Reliability Program were just and reasonable.⁷⁴ The FERC also provided the further reasoning requested by the DC Circuit for this finding.⁷⁵ As had been reported for some time, the FERC directed ISO-NE in its August 8, 2016 remand order⁷⁶ to request from Program participants the basis for their bids, including the process used to formulate the bids, and to file with the FERC a compilation of that information, an IMM analysis of that information, and ISO-NE's recommendation as to the reasonableness of the bids, so that the FERC could further consider the question of whether the Bid Results were just and reasonable.⁷⁷ ISO-NE submitted its compliance filing on January 23, 2017, reporting the IMM's conclusion that "the auction was not structurally competitive and a 'small proportion' of the total cost of the program may be the result of the exercise of market power" but that the "vast majority of supply was offered at prices that appear reasonable and that, for a number of reasons, it is difficult to assess the impact of market power on cost." Based on the IMM and additional analysis, ISO-NE recommended that "there is insufficient demonstration of market power to warrant modification of program." Both TransCanada and the MA AG protested ISO-NE's conclusion and

⁷¹ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*"), *reh'g requested*.

⁷² The Eastern New England Consumer-Owned Systems ("*ENECOS*") are: Braintree Electric Light Department, Georgetown Municipal Light Department, Groveland Electric Light Department, Littleton Electric Light & Water Department, Middleton Electric Light Department, Middleborough Gas & Electric Department, Norwood Light & Broadband Department, Pascoag (Rhode Island) Utility District, Rowley Municipal Lighting Plant, Taunton Municipal Lighting Plant, and Wallingford (Connecticut) Department of Public Utilities. Wellesley Municipal Light Plant, which intervened in this proceeding as one of the *ENECOS*, did not join in the *ENECOS'* request for rehearing.

⁷³ For purposes of this proceeding, "*Clean Energy Advocates*" are, collectively, the NRDC, Sierra Club, Sustainable FERC Project, CLF, and RENEW Northeast, Inc.

⁷⁴ *ISO New England Inc.*, 171 FERC ¶ 61,003 (Apr. 1, 2020) ("*2013/14 Winter Reliability Program Order on Compliance and Remand*"), *reh'g requested*.

⁷⁵ *See Id.* at PP 54-96.

⁷⁶ *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("*2013/14 Winter Reliability Program Remand Order*"). As previously reported, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable), and directing the FERC to either offer a reasoned justification for the order in ER13-2266 or revise its disposition to ensure that the Program rates are just and reasonable. *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

⁷⁷ *2013/14 Winter Reliability Program Remand Order* at P 17.

recommendation that modification of the program was unwarranted, but the FERC did not find convincing either challenge.

Request for Rehearing (ER13-2266-005). On May 1, TransCanada requested rehearing of the *2013/14 Winter Reliability Program Order on Compliance and Remand*. In its request for rehearing, TransCanada argued that the Order (i) erred when it found the bid results just and reasonable; (ii) violated FPA Section 205, the rule against retroactive ratemaking and the filed rate doctrine by approving the bid results under a market-based rate paradigm; and (iii) was arbitrary and capricious, not based on reasoned decision-making and contrary to, and without foundation in, substantial evidence in the record. On June 1, 2020, the FERC issued a tolling order affording it additional time to consider TransCanada's request for rehearing, which remains pending.

If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **CIP IROL Cost Recovery Rules (ER20-739)**

On June 25, 2020, IROL-Critical Facility Owners⁷⁸ requested rehearing of the *CIP IROL Cost Recovery Order*.⁷⁹ As previously reported, the *CIP IROL Cost Recovery Order* accepted Schedule 17, which sets forth a mechanism to facilitate the recovery of critical infrastructure protection ("CIP") costs by facilities that ISO-NE identifies as critical to the derivation of Interconnection Reliability Operating Limits ("IROL"). Importantly, in accepting Schedule 17, the FERC found that "Schedule 17 permits recovery only of CIP costs incurred on or after the effective date of a section 205 filing made by an IROL-Critical Facility Owner to recover such costs".⁸⁰ It is this determination that is at the heart of IROL-Critical Facility Owners' request for rehearing, which argues that, as a result, the *CIP IROL Cost Recovery Order* ultimately establishes a rate that is unjust, unreasonable, and inconsistent with the clear cost recovery right Congress established in FPA section 219. On July 10, NESCOE answered the IROL-Critical Facility Owners' request for rehearing. The IROL-Critical Facility Owners' request for rehearing is pending, with FERC action required on or before July 27, 2020, or the requests will be deemed denied by operation of law. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **ISO-NE Order 845 Compliance Filing (ER19-1951)**

As previously reported, the FERC conditionally accepted, subject to a further compliance filing due on or before July 17, 2020, proposed revisions to the Large Generator Interconnection Procedures ("LGIP") and Agreement ("LGIA") in Schedule 22 of the ISO-NE OATT jointly filed on May 22, 2019 by ISO-NE and the PTO AC ("Filing Parties") in response to the requirements of *Order 845* ("*Order 845 Compliance Filing*").⁸¹ While the Order largely accepted the *Order 845 Compliance Filing*, the FERC identified a number of ways in which the *Order 845 Compliance Filing* only partially or did not comply at all with *Order 845*.⁸² The *Order 845*

⁷⁸ "IROL-Critical Facility Owners" are Calpine, Cogentrix, Cross-Sound Cable, FirstLight, NextEra, NRG, and Vistra.

⁷⁹ *ISO New England Inc.*, 171 FERC ¶ 61,160 (May 26, 2020) ("*CIP IROL Cost Recovery Order*").

⁸⁰ *Id.* at PP 1, 27. "Section 2.2(A) of proposed Schedule 17 would permit IROL-Critical Facility Owners to make FPA section 205 filings to recover costs incurred by the IROL Critical Facility Owner *during the period in which the subject facility is designated as an IROL-Critical Facility*. While the parties dispute the meaning of the italicized language, that language is appropriately read in conjunction with the requirement that IROL-Critical Facility Owners submit individual FPA section 205 filings to recover such costs ... Thus, we find that, read in context with the remainder of section 2.2(A), the italicized language would allow IROL-Critical Facility Owners to recover only those costs incurred on or after the effective date of the relevant individual FPA section 205 filing."

⁸¹ *ISO New England Inc. and Participating Transmission Owners Admin. Comm.*, 170 FERC ¶ 61,209 (Mar. 19, 2020) ("*Order 845 Compliance Filing Order*").

⁸² As described more fully in previous Reports, the changes directed must include additional justification for proposed changes or revisions that make no modification to the *pro forma* LGIA/LGIP in the following areas: Stand-Alone Network Upgrades definition,

Compliance Filing changes were conditionally accepted effective May 19, 2020, subject to submission of a compliance filing with the directed changes due on or before July 17, 2020. Changes in response to the *Order 845 Compliance Filing Order* were considered and supported by the Participants Committee at its June 4 meeting (Agenda Item #7). If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **FAP Enhancements and Clean-Up Changes (ER20-2145)**

On June 24, 2020, ISO-NE and the NEPOOL jointly filed enhancements and clean-up changes to the Financial Assurance Policy (“FAP”). Among other things, the filing includes: (i) updates and enhancements to the credit insurance provisions; (ii) updates to the form letter of credit and related provisions; and (iii) miscellaneous revisions, including a change to the retention period for financial assurance after membership termination and a conforming change in the FCM Charge Rate calculation (collectively, the “FAP Changes”). A September 10, 2020 effective date was requested. The FAP Changes were unanimously supported by the Participants Committee at its June 23 meeting (Agenda Item #2). Comments on this filing are due on or before July 15. Thus far, doc-less interventions have been submitted by Calpine, Eversource, National Grid, NRG, and Financial Marketers Coalition. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (pnbelval@daypitney.com; 860-275-0381).

- **Billing Policy Enhancements and Clean-Up Changes (ER20-1862)**

On May 20, 2020, ISO-NE and the NEPOOL jointly filed enhancements and clean-up changes to the Billing Policy. Among other things, the filing: (i) updates the definition of Non-Hourly Charges (to include any pass-through charges where ISO-NE acts as agent (including communications related charges, OASIS- related charges, and fees related to the Shortfall Funding Arrangement); (ii) changes the timing of Statements for Non-Hourly Charges (from the first Monday after the tenth of each calendar month to the first Monday after the ninth of each calendar month); (iii) reflects the issuance (rather than the sending) of Invoices and Remittance Advices; (iv) changes the timing for payment instructions; (v) limits distributions from late payment accounts (to only those Market Participants not in a Payment Default at the time of a distribution); and (vi) limits the frequency for the use of pre-payments (to five in any rolling 365-day period), limiting the risk that prepayment provisions are being used to deflate financial assurance obligations. A July 27, 2020 effective date was requested. The changes were unanimously supported by the Participants Committee at its May 7 meeting (Agenda Item #6). Comments on this filing were due on or before June 10, 2020. Plant-E Corp. submitted comments protesting the change that would limit for all the frequency for the use of pre-payments (Plant-E suggests, alternatively, that the limitation not be imposed on Market Participants, like it, that are unable because of their formation in a non-US jurisdiction to use a BlackRock account as part of its additional financial assurance arrangements). Answers to Plant-E’s protest were filed by NEPOOL and ISO-NE. Doc-less interventions were submitted by Calpine and National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (pnbelval@daypitney.com; 860-275-0381).

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-NEP: NSTAR LSA (ER20-1692)**

On June 10, 2020, the FERC accepted a Local Service Agreement (“LSA”) between New England Power Company (“NEP”) and NSTAR that provides for the provision of Local Network Service and Firm Local Point-To-

Interconnection Customer’s ability to exercise the option to build; Option to Build Cost Recovery; Determination of Contingent Facilities; requesting interconnection service below generating facility capacity; Provisional Interconnection Service; definition of Surplus Interconnection Service; Surplus Interconnection Service process;

Point Service over NEP's Local Service transmission facilities to NSTAR Electric following the expiration of the prior Service Agreement for Network Integration Transmission Service Agreement that expired on March 30, 2020.⁸³ The FERC accepted the LSA, effective as of March 30, 2020, as requested. The June 10 order was not challenged and is final and unappealable. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 20A-NEP: NEP-Brookfield RTM Phase I/II HVDC-TF Service Agreement (ER20-1626)**

On June 4, 2020, the FERC accepted a new Phase I/II HVDC-TF Service Agreement between NEP and Brookfield Renewable Trading and Marketing LP ("Brookfield RTM").⁸⁴ The Service Agreement will allow the continuation without interruption of firm point-to-point transmission service that is currently being provided under Schedule 20A. NEP stated that the Agreement conforms generally to the *pro forma* Schedule 20A service agreement, but contains provisions related to NEP's contractual rights allowing it to sell service over the Phase I/II HVDC transmission facilities ("Phase I/II HVDC-TF") through October 31, 2020, and that permit Brookfield to exercise its transmission customer rollover service rights through August 31, 2025 as specified in the NEP-Brookfield Service Agreement. The Service Agreement was accepted effective as of September 1, 2020, as requested. The June 4 order was not challenged and is final and unappealable. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 21-VP: 2019 Annual Update Settlement Agreement (ER15-1434-004)**

On March 19, 2020, Emera Maine submitted a joint offer of settlement between itself and the MPUC to resolve all issues raised by the MPUC in response to Emera Maine's 2019 annual charges update filed, as previously reported, on June 10, 2019 (the "Emera 2019 Annual Update Settlement Agreement"). Under Part V of Attachment P, "Interested Parties shall have the opportunity to conduct discovery seeking any information relevant to implementation of the [Attachment P] Rate Formula. . . ." and follow a dispute resolution procedure set forth there. In accordance with those provisions, the MPUC identified certain disputes with the 2019 Annual Update, all of which are resolved by the Emera 2019 Annual Update Settlement Agreement. Comments on the Emera 2019 Annual Update Settlement Agreement were due on or before April 9, 2020; 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).

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

The MPS Merger Cost Recovery Settlement, filed by Emera Maine on May 8, 2018 to resolve all issues pending before the FERC in the consolidated proceedings set for hearing in the *MPS Merger-Related Costs*

⁸³ *New England Power Co.*, Docket No. ER20-1692 (June 10, 2020) (unpublished letter order).

⁸⁴ *New England Power Co.*, Docket No. ER20-1626 (June 4, 2020) (unpublished letter order).

Order,⁸⁵ and certified by Settlement Judge Dring⁸⁶ to the Commission,⁸⁷ remains pending before the FERC. As previously reported, under the Settlement, permitted cost recovery over a period from June 1, 2018 to May 31, 2021 will be \$390,000 under Attachment P of the BHD OATT and \$260,000 under the MPD OATT. If you have any questions concerning these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-VP 2020 Annual Informational Filing (ER15-1434)**

On June 15, 2020, Versant Power submitted its annual informational filing to update its local transmission service charges under Schedule 21-VP. Included in this filing was a populated version of Attachment P that sets forth the rates that went into effect on June 1, 2020. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 30, 2020, NSTAR supplemented its June 1 annual informational filing with additional information regarding its Construction-Work-In-Progress (“CWIP”) in accordance with Section 4.1(i) and (ix) of Schedule 21-NSTAR (“CWIP Supplement”). The CWIP Supplement was provided primarily on a project-specific basis, and included NSTAR’s 2019 long-range construction forecast. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-CMP Annual Info. Filing (ER09-938)**

On June 30, 2020, CMP submitted its annual update to the formula rates contained in Schedule 21-CMP. CMP indicated that the informational filing reflected actual cost data for the 2019 calendar year plus estimated cost data for the 2020 calendar year associated with CMP’s forecasted transmission plant additions and MPRP CWIP as well as the annual true-up and associated interest. CMP referred to Section 10.2 of Schedule 21-CMP for specific procedures for review and challenges to the informational report. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

⁸⁵ *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.

⁸⁶ 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.

⁸⁷ *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)**

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

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A*⁸⁸ and *531-B*⁸⁹ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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

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

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

- **Capital Projects Report - 2020 Q1 (ER20-1824)**

On June 18, 2020, the FERC accepted ISO-NE's Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2020 (the "Report").⁹⁰ 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 included the following new projects: (i) FCM Nested Zones (\$825,000); (ii) nGEM value added development (\$792,000); (iii) Generation Survey System (\$439,600); (iv) inter-control center communications protocol network buildout over shared telecommunications network (\$310,000); (v) forward reserve market infrastructure conversion (\$205,000); and (vi) information technology policy compliance software update (\$80,000). Projects with a significant changes were (i) 2020 issue resolution phase I (\$255,000 budget increase); and (ii) 2020 issue resolution phase II (\$280,000 budget decrease). Unless the June 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **IMM 2019 Annual Markets Report (ZZ20-4)**

On May 26, the IMM filed its 2019 Annual Markets Report, which covers the 2019 calendar year period.⁹¹ The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for many years in a row, that the New England Market operated competitively in 2019. In contrast to 2018, there were no periods in the Real-Time Energy Market when a relative shortage of energy and reserves resulted in scarcity pricing (due to a combination of surplus supply capacity, mild summer weather and the lack of sustained cold temperatures during the winter). There was a further improvement in the structural competitiveness of the Real-Time Energy Market, with fewer hours with pivotal suppliers in Real-Time compared with the prior four

⁸⁸ *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁸⁹ *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

⁹⁰ *ISO New England Inc.*, Docket No. ER20-1824 (June 18, 2020) (unpublished letter order).

⁹¹ Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

years. The number of energy market supply offers mitigated for market power remained very low, totaling just 0.02% of all supply offers. For the sixth consecutive year, the forward capacity auction procured surplus capacity, and clearing prices were the result of a competitive auction.” Other highlights included:

- ▶ 2019 Total wholesale costs (\$9.8 billion) were \$2.3 billion lower than 2018, with 85% of the overall decrease driven by lower energy costs.
- ▶ 2019 Energy costs totaled \$4.1 billion, down \$1.9 billion or 32% from 2018, with the decrease driven by lower natural gas prices, which averaged \$3.26/MMBtu, down 34% from 2018 prices.
- ▶ Electricity demand in the third quarter of the year decreased by 6%, or by 1,011 MW per hour, and drove a 4% year-over-year decrease in demand. On a weather-normalized basis, demand was again down slightly, continuing a longer-term downward trend due to the increase in utility-backed energy efficiency programs and behind-the-meter photovoltaic generation.

In light of its review, the IMM made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2020. These recommendations were discussed in more detail at the Markets Committee’s June 10, 2020 Meeting.

- **ISO-NE FERC Form 3Q (2020/Q1) (not docketed)**

On May 28, 2020, ISO-NE submitted its 2020/Q1 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

- **ISO-NE 2019 FERC Form 714 (not docketed)**

On June 1, 2020, ISO-NE submitted its Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2019. Through its Form 714 filing, ISO-NE reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. These filings are not noticed for comment.

IX. Membership Filings

- **July 2020 Membership Filing (ER20-2277)**

On June 30, 2020, NEPOOL requested that the FERC accept the memberships of: Hampshire Power (Supplier Sector); Invenia Technical Computing Corp. (“Invenia”) (Supplier Sector); and Power Ledger Pty. Ltd. (GIS-Only Participant). Comments on this filing are due on or before July 21, 2020.

- **Invenia Additional Conditions Informational Filing (ER20-2001)**

On June 5, 2020, pursuant to Section II.A.1(b) of the FAP, ISO-NE submitted an informational filing identifying the additional condition (supplemental financial assurance) required of Invenia for participation in the New England Markets. The additional condition was supported, and made a condition of Invenia’s membership, by the Participants Committee at its June 4 meeting. A doc-less intervention was submitted by Public Citizen. This informational filing is pending before the FERC.

- **June 2020 Membership Filing (ER20-1943)**

On May 31, 2020, NEPOOL requested that the FERC accept (i) the memberships of: Actual Energy (Supplier Sector); Borrego Solar Systems, Inc. (AR Sector, DG Sub-Sector); Paper Birch Energy, LLC [Related Person to CS Berlin Ops/Berlin Station (Generation Sector Group Seat)]; Priogen Power LLC (Supplier Sector); and Standard Normal Energy LLC (Supplier Sector); (ii) the termination of the Participant status of: Royal Bank of Canada (Supplier Sector) (May 1, 2020); Wallingford Energy II, LLC [Related Person to Jericho Power (AR Sector; RG Sub-Sector)] (May 1, 2020); Agera Energy LLC (Supplier Sector) (June 1, 2020); and (iii) the name changes of: Versant Power (f/k/a Emera Maine) and IPKeys Power Partners, Inc. (f/k/a IPKeys Power Partners LLC). The membership of Borrego Solar System fully activates the AR Sector’s DG Sub-Sector. Accordingly, the AR Sector Voting Share, as well as each of the other five Sector’s Voting Share (before any re-allocation of unused Provisional Member Voting Share), will be 16.5%. Comments on this filing were due on or before June 22, 2020; none were filed. This matter is pending before the FERC.

- **May 2020 Membership Filing (ER20-1694)**

On June 11, 2020, the FERC accepted the membership of RPA Energy Inc. d/b/a/ Green Choice Energy (Supplier Sector) and termination of the Participant status of Empire Generating Co, LLC [Related Person of Kleen Energy Systems (Generation Sector)].⁹² Unless the June 11 order is challenged, this proceeding will be concluded.

- **Suspension Notices (not docketed)**

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

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Jun 2/4	Manchester Methane	still suspended
Jun 2/4	Chris Anthony	still suspended

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

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

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

- **Joint Staff White Paper on Notices of Penalty for Violations of CIP Standards (AD19-18)**

Still pending is the FERC’s White Paper, prepared jointly with NERC staff and issued on August 27, 2019, that sets out a proposed new format for NERC Notices of Penalty (“NOP”) involving violations of CIP Reliability Standards. The FERC explained that the revised format is intended to improve the balance between security and transparency in the filing of NOPs. Specifically, NERC CIP NOP submissions would consist of a proposed public cover letter that discloses the name of the violator, the Reliability Standard(s) violated (but not the Requirement), and the penalty amount. NERC would submit the remainder of the CIP NOP filing containing details on the nature of the violation, mitigation activity, and potential vulnerabilities to cyber systems as a nonpublic attachment, along with a request for the designation of such information as CEII.

Public comment on the proposal was sought with respect to the following: (i) the potential security benefits from the new proposed format; (ii) potential security concerns that could arise from the new format; (iii) any other implementation difficulties or concerns that should be considered; and (iv) whether the proposed

⁹² *New England Power Pool Participants Comm.*, Docket No. ER20-1694 (June 11, 2020) (unpublished letter order).

format provides sufficient transparency to the public. Other suggested approaches to CIP NOP submissions were welcomed. No changes to the CIP NOP filing format will be made prior to consideration of public comment on the White Paper. Comments were filed by over 80 parties. This matter is pending before the FERC.

- **Complaint re: CIP-014-2 (Physical Security) (EL20-21)**

On June 9, 2020, the FERC denied the Complaint, filed January 30, 2020 by Michael Mabee, a private citizen (“Complainant”),⁹³ that alleged that Critical Infrastructure Protection (“CIP”) Reliability Standard (CIP-014-2) (Physical Security) is inadequate and asked the FERC to issue an order directing NERC to correct the deficiencies.⁹⁴ The FERC found that Complainant did not establish that CIP-014-2 is inadequate or unenforced.⁹⁵ Unless the June 9, 2020 order is challenged this proceeding will be concluded.

- **Revised Reliability Standard: PRC-024-3 (RD20-7)**

On July 9, 2020, the FERC approved NERC’s proposed changes to Reliability Standard PRC-024-3 (Frequency and Voltage Protection Settings for Generating Resources) (“Revised PRC-024”).⁹⁶ Revised PRC-024 clarifies voltage and frequency protection settings requirements, including the types of protection subject to the requirements and incorporates language used by inverter manufacturers and solar development owners in order to ensure inverter-based resources respond to grid disturbances in a manner that contributes to the reliable operation of the Bulk-Power System. Revised PRC-024 become effective (and the currently effective version will be retired) on September 1, 2022 (the first day of the first calendar quarter that is 24 months following FERC approval). Unless the July 9 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standards: FAC-002-3; IRO-010-3; MOD-031-3; MOD-033-2; NUC-001-4; PRC-006-4; TOP-003-4 (RD20-4)**

Still pending before the FERC are the proposed changes, filed on February 21, 2020, to the following Reliability Standards: FAC-002-3 (Facility Interconnection Studies); IRO-010-3 (Reliability Coordinator Data Specification and Collection); MOD-031-3 (Demand and Energy Data); MOD-033-2 (Steady-State and Dynamic System Model Validation); NUC-001-4 (Nuclear Plant Interface Coordination); PRC-006-4 (Automatic Underfrequency Load Shedding); and TOP-003-4 (Operational Reliability Data) (“Revised Standards”). The changes remove references to Load Serving Entity (which is no longer an applicable entity), add Underfrequency Load Shedding (“UFLS”)-Only Distribution Provider to PRC-006-3 as an applicable entity, and make consistent across the Standards the use of the term “Planning Coordinator”. NERC asked that revised Reliability Standards become effective (and the currently effective versions be retired) on the first day of the first calendar quarter that is three months following FERC approval. Comments on the Revised Standards were due on or before March 23, 2020; none were filed. American Municipal Power (“AMP”) submitted a doc-less intervention. This matter remains pending before the FERC.

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

On February 20, 2020, the FERC directed NERC to submit, on or before March 23, 2020, an informational filing describing the activity of two NERC CIP standard drafting projects pertaining to virtualization and cloud computing services.⁹⁷ Specifically, NERC was directed to submit a schedule for Project 2016-02 (Modifications to

⁹³ Specifically, the Complainant alleged that (1) CIP-014-2 is inadequate in that there is no requirement that an entity’s risk assessment or physical security plan be reviewed by anyone with any physical security expertise and no regulator determination as to the effectiveness of any entity’s physical security plan and (2) enforcement of CIP-014-2 seems nonexistent (asserting that in the past seven years, there’s only been four citations (for administrative violations) for violations of CIP-014-2).

⁹⁴ *Complaint of Michael Mabee Related to Critical Infrastructure Rel. Stand.*, 171 FERC ¶ 61,205 (June 9, 2019).

⁹⁵ *Id.* at P 10.

⁹⁶ *N. Am. Elec. Rel. Corp.*, Docket No. RD20-7 (July 9, 2020) (unpublished letter order).

⁹⁷ *N. Am. Elec. Rel. Corp.*, 170 FERC ¶ 61,109 (Feb. 20, 2020).

CIP Standards) and Project 2019-02 (BES Cyber System Information Access Management) (collectively, the “NERC Projects”), that would include the current status of the project, interim target dates, and the anticipated filing date for new or modified Reliability Standards. NERC submitted that filing on March 19, 2020. Comments were submitted by a private citizen (Barry Jones) and VMware, Inc. on April 21 and 27, respectively. In addition, the FERC directed NERC to file on an information basis quarterly status updates, until such time as new or modified Reliability Standards are filed with the FERC. Since the last Report, NERC filed its second informational filing on June 19, 2020. With respect to Project 2016-02, NERC reported that it “continues to target a December 2021 filing to the Commission.” With respect to Project 2019-02, NERC reported that it “now anticipates filing the proposed Reliability Standards with the Commission in December 2020 (deferred from the original target date of September 2020).”

- **Revised Reliability Standard: CIP-002-6 (RM20-17)**

On June 12, 2020, NERC filed for approval a revised Reliability Standard -- CIP-002-6 (Cyber Security – BES Cyber System Categorization), and associated implementation plan, VRFs and VSLs (together, the “CIP-002 Changes”). NERC stated that the CIP-002 Changes improve upon the currently effective standard by clarifying the criterion for Transmission Owner Control Centers and tailoring the language to better reflect the risk posed by these Control Centers if unavailable or compromised. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

On February 20, 2020, the FERC issued a notice of inquiry 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 (“NOI”).⁹⁸ On March 25, 2020, Joint Associations⁹⁹ 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 ISO/RTO Council (“IRC”), Accenture, Amazon Web Services, 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. As noted, further reply comments are due on or before July 31, 2020.

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

On January 23, 2020, the FERC issued a NOPR¹⁰⁰ proposing to approve the retirement of 74 of the 77 Reliability Standard requirements requested to be retired by NERC in these two dockets¹⁰¹ in connection with the

⁹⁸ *Virtualization and Cloud Computing Services*, 170 FERC ¶ 61,110 (Feb. 20, 2020).

⁹⁹ “Joint Associations” are for purposes of this proceeding: EEI, APPA, NRECA, and LPPC.

¹⁰⁰ *Electric Reliability Organization Proposal to Retire Requirements in Rel. Standards Under the NERC Standards Efficiency Review*, 170 FERC ¶ 61,032 (Jan. 23, 2020).

¹⁰¹ As previously reported, NERC filed in **RM19-17** for approval (i) the retirement of individual requirements in the following four Reliability Standards: FAC-008-4 (Facility Ratings); INT-006-5 (Evaluation of Interchange Transactions); INT-009-3 (Implementation of Interchange); and PRC-004-6 (Protection System Misoperation Identification and Correction); and (ii) the retirement, in their entirety, of the following 10 Reliability Standards: 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-001-1a (Available Transmission System Capability); MOD-004-1 (Capacity Benefit Margin); MOD-008-1 (Transmission Readability Margin Calculation Methodology); MOD-020-0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operators and Reliability Coordinators); MOD-028-2 (Area Interchange Methodology); MOD-029-2a (Rated System Path Methodology); and MOD-030-3 (Flowgate Methodology). NERC filed in **RM19-16** for approval of the retirement of individual requirements in the following three Reliability Standards: IRO-002-7 (Reliability Coordination – Monitoring and Analysis); TOP-001-5 (Transmission Operations); and VAR-001-6 (Voltage and Reactive Control).

first phase of work under NERC's Standards Efficiency Review¹⁰² ("*Retirements NOPR*"). The FERC explained in the *Retirements NOPR* that the requirements to be retired "(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."¹⁰³ The FERC also proposes to approve the associated VRFs, VSLs, implementation plan, and effective dates proposed by NERC. With respect to the remaining three requirements that NERC seeks to retire, the FERC seeks more information on two -- the retirement of FCA-008-3, Requirements R7 and R8 (with the FERC's final determination to be based on the comments received) -- and proposes to remand one -- VAR-001-6 -- in order to retain R2, which it found neither redundant nor unnecessary for reliability. Comments on the *Retirements NOPR* were due on or before April 6, 2020.¹⁰⁴ Comments were filed by J. Applebaum, Bonneville Power Administration ("BPA"), NERC, and the Western Area Power Administration ("WAPA").

NERC Notice of Withdrawal of VAR-001-6. On May 14, 2020, NERC withdrew its proposed changes to VAR-001-6.

- **Report of Comparisons of Budgeted to Actual Costs for 2019 for NERC and the Regional Entities (RR20-3)**

On May 29, 2020, NERC filed comparisons of actual to budgeted costs for 2019 for NERC and the seven Regional Entities operating in 2019, including NPCC. The Report includes comparisons of actual funding received and costs incurred, with explanations of significant actual cost-to-budget variances, audited financial statements, and tables showing metrics concerning NERC and Regional Entity administrative costs in their 2019 budgets and actual results. Comments on this filing were due on or before June 19, 2020; none were filed. This matter is pending before the FERC.

- **Secure Evidence Locker Development Funding (RR19-8)**

On June 8, NERC asked for FERC approval to spend up to \$3.8 million to fund the development of the Electric Reliability Organization ("ERO") Enterprise Secure Evidence Locker ("ERO SEL") in 2020. NERC proposed to fund the Secure Evidence Locker through a combination of operating contingency reserves (\$1.8 million) and debt financing (\$2.0 million). The need to develop and fund the ERO SEL in 2020 is a function of ongoing NERC Compliance Monitoring and Enforcement Program ("CMEP") standardization efforts and was not accounted for when NERC submitted its 2020 budget for FERC approval in August 2019. No protests or comments were filed. The FERC approved the expenditure on June 22, 2020.¹⁰⁵

XI. Misc. - of Regional Interest

- **203 Application: CMP/NECEC (EC20-24)**

On March 13, 2020, the FERC authorized CMP to transfer to NECEC Transmission LLC 7 TSAs, executed on June 13, 2018, that provide the rates, terms, and conditions under which transmission service will be provided over the New England Clean Energy Connect ("*NECEC*") Transmission Line to the participants that are funding construction of the Line.¹⁰⁶ Pursuant to the March 13 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.

¹⁰² The Standards Efficiency Review initiative, which began in 2017, 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.

¹⁰³ *Id.* at P 1.

¹⁰⁴ The *Retirements NOPR* was published in the *Fed. Reg.* on Feb. 6, 2020 (Vol. 85, No. 25) pp. 6,831-6,838.

¹⁰⁵ *N. Am. Elec. Rel. Corp.*, Docket No. RR19-8-001 (June 22, 2020) (unpublished letter order).

¹⁰⁶ *Central Maine Power Co.*, 170 FERC 62,145 (Mar. 13, 2020).

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

As previously reported, the FERC, on April 16, 2020, issued an order granting, in part, and denying, in part, the requests for rehearing and clarification of the *Dec 2019 PJM MOPR Order*, and directed PJM to submit a further compliance filing within 45 days.¹⁰⁷ Requests for rehearing and/or clarification of the *April 2020 PJM MOPR Rehearing Order* were filed by the PJM IMM, Energy Harbor, Exelon, Northern Virginia Electric Cooperative, NRECA, Pennsylvania Public Utility Commission, and Vistra and are pending before the FERC. In accordance with its past practice, the FERC issued a tolling order on June 15, 2020 affording it additional time to consider the requests for rehearing, which remain pending.

In this case, several petitions for Federal Court review of the FERC's April 2020 *PJM MOPR Rehearing Order* have already been filed, including appeals by Allegheny Electric Cooperative, APPA/AMP, Calpine, Clean Energy Associations, Dominion, DC PSC, Energy Harbor, Exelon, Illinois Commerce Commission, New Jersey Division of Rate Counsel/Office of the People's Counsel for the District of Columbia/Maryland Office of People's Counsel/Delaware Division of the Public Advocate, Ohio Public Utilities Commission, Old Dominion Electric Cooperative, the North Carolina Electric Membership Corporation, PSEG, and NRECA. Those appeals are pending before the DC Circuit, and based on the recent decision in *Allegheny Def. Project v. FERC* are ripe for review.

Background – Dec 2019 PJM MOPR Order. As previously reported, in a December 19, 2019 order (approved 2-1),¹⁰⁸ the FERC **found** that “any resource, new *or existing*, that receives, or is entitled to receive, a State Subsidy, and does not qualify for [an exemption], should be subject to the [Minimum Offer Price Rule (“MOPR”)]”¹⁰⁹ and **directed** PJM to submit a replacement rate that “extends the MOPR to include both new and existing resources, internal and external, that receive, or are entitled to receive, certain out-of-market payments, with certain exemptions.”¹¹⁰ The FERC directed PJM to include five exemptions: (1) a Self-Supply Exemption [PP 12; 202-204]; (2) a Demand Response, Energy Efficiency, and Capacity Storage Resources Exemption [PP 13; 208-209]; (3) a RPS Exemption [PP 14; 173-174]; (4) a Competitive Exemption [PP 15; 161]; and (5) a Unit-Specific Exemption [PP 16; 214-216].¹¹¹ The FERC established the replacement rate under section 206 of the FPA, but declined to order refunds (which it otherwise had the discretion to do).¹¹² The FERC directed PJM to submit a compliance filing consistent with its guidance on or before March 18, 2020 (90 days from the date of the *Dec 2019 PJM MOPR Order*). In the compliance filing, PJM was directed to also

¹⁰⁷ *PJM Interconnection, L.L.C. and Calpine Corp. et al. v. PJM*, 171 FERC ¶ 61,035 (Apr. 16, 2020) (“*April 2020 PJM MOPR Rehearing Order*”).

¹⁰⁸ *PJM Interconnection, L.L.C. and Calpine Corp. et al.*, 169 FERC ¶ 61,239 (Dec. 19, 2019) (“*Dec 2019 PJM MOPR Order*”), *reh’g and clarification granted, in part, and denied, in part*, 171 FERC ¶ 61,035 (Apr. 16, 2020).

¹⁰⁹ *Id.* at P 9 (emphasis added).

¹¹⁰ *Id.* at P 2 (“[g]oing forward, the default offer price floor for applicable new resources will be the Net Cost of New Entry (“Net CONE”) for their resource class; the default offer price floor for applicable existing resources will be the Net Avoidable Cost Rate (“Net ACR”) for their resource class”).

¹¹¹ *Id.* (“The replacement rate will include three categorical exemptions to reflect reliance on prior Commission decisions: (1) existing self-supply resources, (2) existing demand response, energy efficiency, and storage resources, and (3) existing renewable resources participating in RPS programs. The replacement rate will also include a fourth exemption, the Competitive Exemption, for new and existing resources that are not subsidized and thus do not generally require review to protect ‘the integrity and effectiveness of the capacity market.’ To preserve flexibility, PJM will also permit new and existing suppliers that do not qualify for a categorical exemption to justify a competitive offer below the applicable default offer price floor through a Unit-Specific Exemption.”)

¹¹² *Id.* at P 3. The FERC had previously established a refund effective date of March 21, 2016, the date of the original Calpine Complaint in EL16-49.

provide revised dates and timelines for the 2019 Base Residual Auction (“BRA”) and related incremental auctions, along with revised dates and timelines for the May 2020 BRA and related incremental auctions.¹¹³

The *Dec 2019 PJM MOPR Order* was the latest milestone in the FERC’s consideration of out-of-market support affecting the PJM capacity market.¹¹⁴ The FERC found in a *June 2018 PJM MOPR Order*¹¹⁵ that “the integrity and effectiveness of the capacity market administered by [PJM] have become untenably threatened by out-of-market payments provided or required by certain states for the purpose of supporting the entry or continued operation of preferred generation resources,” determined that the PJM Tariff was unjust and unreasonable, rejected the PJM MOPR Filing, granted in part Calpine’s Complaint, and *sua sponte* initiated a new FPA section 206 proceeding (EL18-178) in which it conducted a paper hearing to resolve proposed alternatives, whether put forth in the *June 2018 PJM MOPR Order* or otherwise,¹¹⁶ addressing “price-suppressive” effects of out-of-market support for certain resources.

The *Dec 2019 PJM MOPR Order* affirmed the FERC’s prior finding that “[a]n expanded MOPR with few or no exceptions, should protect PJM’s capacity market from the price-suppressive effects of resources receiving out-of-market support by ensuring that such resources are not able to offer below a competitive price.”¹¹⁷ The expanded MOPR¹¹⁸ only applies to “State-Subsidized Resources” (Resources that receive, or are entitled to receive, State Subsidies).¹¹⁹ The FERC considers a “State Subsidy” to be:

a direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is (1) a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state, or an electric cooperative formed pursuant to state law, and that (2) is derived from or connected to the procurement of

¹¹³ *Id.* at P 4. As previously reported, the FERC directed PJM not to run the BRA in August 2019 as it had proposed to do (see *Calpine et al. v. PJM*, 168 FERC ¶ 61,051 (July 25, 2019)).

¹¹⁴ The *PJM 2019 MOPR Order* addressed a paper hearing that arose from two separate, but related proceedings. The first, EL16-49, was initiated by a complaint originally filed by Calpine, joined by additional generation entities (“Calpine Complaint”) on March 21, 2016, and later amended on January 9, 2017. The Calpine Complaint argued that PJM’s MOPR was unjust and unreasonable because it did not address the impact of existing resources receiving out-of-market payments on the capacity market, and proposed interim tariff revisions that would extend the MOPR to a limited set of existing resources. The Calpine Complaint also requested the FERC to direct PJM to conduct a stakeholder process to develop and submit a long-term solution. The second proceeding was PJM’s filing of its proposed revisions to its Tariff, pursuant to section 205 of the FPA in ER18-1314 (“PJM MOPR Filing”). The PJM MOPR Filing consisted of two alternate proposals designed to address the price impacts of state out-of-market support for certain resources. The first approach, preferred by PJM but not supported by its stakeholders, consisted of a two-stage annual auction, with capacity commitments first determined in stage one of the auction and the clearing price set separately in stage two (“Capacity Repricing”). The second alternative approach, proposed in the event that the FERC determined that Capacity Repricing was unjust and unreasonable, would have revised PJM’s MOPR to mitigate capacity offers from both new and existing resources, subject to certain proposed exemptions (“MOPR-Ex”). A summary of the development and FERC consideration of PJM’s capacity market is set out in the Order.

¹¹⁵ *Calpine Corp. et al.*, 163 FERC ¶ 61,236 (June 29, 2018) (“*June 2018 PJM MOPR Order*”), *clarif. and/or reh’g dismissed*, 171 FERC ¶ 61,036 (Apr. 21, 2020).

¹¹⁶ The proposed alternative approach would have (i) modified PJM’s MOPR such that it would apply to new and existing resources that receive out-of-market payments, regardless of resource type, but would include few to no exemptions; and (ii) in order to accommodate state policy decisions and allow resources that receive out-of-market support to remain online, established an option in PJM’s Tariff that would allow, on a resource-specific basis, resources receiving out-of-market support to choose to be removed from the PJM capacity market, along with a commensurate amount of load, for some period of time. That option, which is similar in concept to the Fixed Resource Requirement (“FRR”) that currently exists in PJM’s Tariff, is referred to as the “FRR Alternative.” Unlike the existing FRR construct, the FRR Alternative would apply only to resources receiving out-of-market support.

¹¹⁷ *Dec 2019 PJM MOPR Order* at P 5.

¹¹⁸ The FERC adopted an expanded MOPR rather than PJM’s Resource Carve-Out (“RCO”) and Extended RCO proposals. The FERC determined that those proposals would unacceptably distort the markets, inhibiting incentives for competitive investment in the PJM market over the long term. PJM’s longstanding FRR Alternative remains unchanged in the PJM tariff. See *Id.* at P 6.

¹¹⁹ Resources with federal subsidies will not be subject to the MOPR. See *Id.* at P 10.

(a) electricity or electric generation capacity sold at wholesale in interstate commerce, or (b) an attribute of the generation process for electricity or electric generation capacity sold at wholesale in interstate commerce, or (3) will support the construction, development, or operation of a new or existing capacity resource, or (4) could have the effect of allowing a resource to clear in any PJM capacity auction.¹²⁰

The FERC declined to adopt a materiality threshold for the level of State Subsidies or the size of State-Subsidized Resources. State-Subsidized Resources “that intend to offer below the default offer price floor for a given resource type, and do not qualify for [one of the four] categorical exemption[s], must support their offers through a Unit-Specific Exemption.”¹²¹ While the FERC acknowledged that the extension of the MOPR may prevent certain existing resources that states have recently chosen to subsidize from clearing PJM’s capacity auctions, it noted that states may continue to support their preferred resource types in pursuit of state policy goals and make decisions about preferred generation resources, with “resources that states choose to support, and whose offers may fail to clear the capacity market under the revised MOPR directed in this order, ... still ... permitted to sell energy and ancillary services in the relevant PJM markets.”¹²² The *Order*, the FERC highlighted, “addresses the growing impact of State-Subsidized Resources because those subsidies reject the premise of the capacity market and circumvent competitive outcomes.”¹²³

The *Dec 2019 PJM MOPR Order* was accompanied by a 28-page dissent of Commissioner Glick (“Glick Dissent”), who explained why he believes the Order to be “illegal, illogical, and truly bad public policy.”¹²⁴ Commissioner Glick further suggested that it “may well be that a mandatory capacity market is no longer a sensible approach to resource adequacy at a time when states are increasingly exercising their authority under the FPA to shape the generation mix. Indeed, the conclusion that I draw from the record in front of us is not that there is an urgent need to mitigate the effects of state public policies, but rather that we should be taking a hard look at whether a mandatory capacity market remains a just and reasonable resource adequacy construct in today’s rapidly evolving electricity sector.”¹²⁵

Requests for Rehearing and Clarification of Dec 2019 PJM MOPR Order Denied, In Part, and Granted In Part. As reported above, on April 16, 2020, the FERC issued an order granting, in part, and denying, in part, the requests for rehearing and clarification¹²⁶ of the *Dec 2019 PJM MOPR Order*, and directed PJM to submit a further compliance filing within 45 days.

¹²⁰ *Id.* at P 9. Renewable Energy Credits (“RECs”) procured as part of a state-mandated or state-sponsored procurement process are State Subsidies. *Id.* at P 176. Demand response, energy efficiency, and capacity storage resources that participate in the PJM capacity market are considered to be capacity resources for purposes of this definition. *Id.* at P 9.

¹²¹ *Id.* (“A threshold based on resource size will not prevent a collection of smaller resources from having a significant cumulative impact on competitive outcomes. In addition, if a State Subsidy is small enough for a capacity resource to perform economically without it, then the State-Subsidized Resource should be able to secure a Unit-Specific Exemption.”)

¹²² *Id.* at P 7.

¹²³ *Id.* at P 17.

¹²⁴ Glick Dissent at P 1.

¹²⁵ *Id.* at P 62.

¹²⁶ Requests for rehearing and/or clarification (“Requests”) of the *Dec 2019 PJM MOPR Order* were filed by over 50 parties, including: PJM IMM, AEP/Duke, AES, Buckeye Power, Calpine, Clean Energy Advocates, CPower, Dominion, EDF Renewables, Exelon, FirstEnergy Utility Companies, First Energy Solutions, Hershey Co., J-POWER, Longroad Development, PSEG, Vistra, Allegheny Electric Coop., East Kentucky Power Coop. (“EKPC”), IL Municipal Electric Agency, North Carolina Electric Membership Corp., Old Dominion Elec. Coop. (“ODEC”), the S. MD Elec. Coop, the Organization of PJM States (“OPSI”), DC PSC, IL ICC, MD PSC, NJ BPU, OH PUC, PA PUC, VA State Corporation Commission, WV PSC, DE Public Advocate, DC AG, IL AG, MD AG, NJ Div. of Rate Counsel/People’s Counsel for DC/MD People’s Counsel, OH Consumers’ Counsel, PJM Consumer Representatives, Advanced Energy Buyers Group, Advanced Energy Economy (“AEE”), APPA/AMP/Public Power Assoc. of NJ, AWEA, ELCON, EPSA and the PJM Power Providers Group, NEI, NRECA/EKPC, and Public Citizen. An answer to PJM IMM’s request for clarification was filed by the Talen PJM Companies. Answers were also filed by the PJM IMM, Longroad

Also, as previously reported, several parties, including the New Jersey Division of Rate Counsel (“NJ Rate Counsel”) EKPC, ODEC, and NRECA, appealed the *Dec 2019 PJM MOPR Order*. They each explained that they sought judicial review in case the DC Circuit’s action in *Allegheny Defense Project v. FERC*¹²⁷ should work to advance the time period for those wishing to seek judicial review of the *Dec 2019 PJM MOPR Order*, but asked the DC Circuit to hold its appeal in abeyance until a decision on *Allegheny Defense Project v. FERC* is issued. For further information on these proceedings, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Opinion 569-A: FERC’s Base ROE Methodology (EL14-12; EL15-45)**

In an Opinion which could impact the resolution of New England Base ROE cases, the FERC refined, in ruling on a MISO ROE proceeding, its methodology for setting the ROE that electric utilities earn on electric transmission investments.¹²⁸ The refinements to the FERC’s methodology include:

- The use of the Risk Premium model instead of only relying on the DCF model and CAPM under both prongs of FPA Section 206. The FERC stated that “the defects of the Risk Premium model do not outweigh the benefits of model diversity and reduced volatility resulting from the averaging of more models.”
- 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.
- 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 *Opinion 569*. By raising the threshold to 200%, the FERC believes it will reduce the risk that rational results are inappropriately excluded. Continued application of the natural break analysis will allow the exclusion of ROEs that are truly irrational or anomalously high.
- Calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*. The FERC found that the quartile approach, which excluded the bottom eighth and top eighth of the overall zone of reasonableness, was inappropriate because it ignores some “potentially lawful ROEs” when determining which ranges of ROEs should be considered presumptively just and reasonable.

A more detail summary and background of Opinion 569-A prepared by NEPOOL counsel was posted with the materials for and discussed at the May 19, 2020 Transmission Committee meeting. EEI, FirstEnergy, Louisiana PSC, and MISO Complaint-Aligned Parties requested rehearing and/or clarification of *Opinion 569-A*. Petitions to the Federal Courts for review of *Opinion 569-A* have thus far been filed with the DC Circuit by FirstEnergy and the MISO TOs (see Section XV below).

Development and Old Dominion Electric Cooperative. EEI filed a motion for reconsideration. On February 18, 2020, the PJM IMM filed a second request for clarification and The National Association of State Energy Officials filed a letter to the Commissioners. On February 25, Old Dominion answered EEI’s request for reconsideration. On February 28, the MD PSC answered the IMM’s second request for clarification.

¹²⁷ *Allegheny Def. Project v. FERC*, Case No. 17-1098 (D.C. Cir. Dec. 5, 2019).

¹²⁸ *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*”).

- **D&E Agreement Cancellation: CL&P-NTE CT (ER20-2327)**

On July 6, CL&P filed a notice of cancellation of its Design, Engineering and Procurement Agreement (the “D&E Agreement”) between itself and NTE Connecticut, LLC (“NTE CT”). The D&E Agreement, which set forth the terms and conditions under which CL&P would undertake certain preliminary design and engineering activities on the Interconnection Facilities that were identified in ISO-NE’s studies, prior to execution of a Standard Large Generator Interconnection Agreement (“LGIA”), expired when an LGIA was signed on June 16, 2020. CL&P requested that the notice of cancellation be accepted for filing as of Jun 1, 2020. Comments, if any, on this filing are due on or before July 27, 2020. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **NITSA Termination Versant Power/Houlton Water Company (ER20-1914)**

On May 28, 2020, Versant Power filed a notice of termination of the Network Integration Transmission Service Agreement (“NITSA”) between itself and Houlton Water Company (“Houlton”) (accepted in ER20-1445), which expired by its terms on May 15, 2020, the date Houlton directly interconnected its electric system with that of New Brunswick Power. A May 15, 2020 effective date was requested for the termination notice. Comments on the notice were due on or before June 18, 2020; none were filed. The notice is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **NSTAR Transmission Service Agreement Cancellations (ER20-1896)**

On May 26, 2020, NSTAR filed notice of cancellation of various transmission service agreements no longer active but not yet previously cancelled. A July 25, 2020 effective date was requested for the cancellation notices. Comments on the notice were due on or before June 16, 2020; none were filed. The notice is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: CL&P-Gravel Pit Solar (ER20-1871)**

On July 10, the FERC accepted the Agreement for Design, Engineering and Construction services (the “D&E Agreement”) between itself and Gravel Pit Solar LLC (“Gravel Pit Solar”).¹²⁹ As previously reported, the D&E Agreement sets forth the terms and conditions under which CL&P will undertake preliminary design and engineering activities (related to line work and switching station that is required to interconnect the project to the transmission system.) related to a large generating facility that is being developed by Gravel Pit Solar (ISO-NE Queue Position 892) and will be subject to an LGIA that is being completed. The D&E Agreement was accepted for filing as of the date of filing, or May 21, 2020, as requested. Unless the July 10 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **System Upgrade Reimbursement Agreement Cancellation: NEP/ Deerfield Wind (ER20-1814)**

On July 9, 2020, the FERC accepted New England Power’s (“NEP”) notice of cancellation of its System Upgrade Reimbursement Agreement with Deerfield Wind, LLC (“Deerfield”), effective July 13, 2020.¹³⁰ The Reimbursement Agreement was superseded by a Related Facilities Agreement (“RFA”) accepted by the FERC in late December, 2019.¹³¹ Unless the July 9 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

¹²⁹ *The Conn. Light & Power Co.*, Docket No. ER20-1871 (July 10, 2020) (unpublished letter order).

¹³⁰ *New England Power Co.*, Docket No. ER20-1814 (July 9, 2020) (unpublished letter order).

¹³¹ *New England Power Co.*, Docket No. ER20-214 (Dec. 5, 2019) (unpublished letter order).

- **VTransco/VEC ShPA and O&M Agreements (ER20-1679)**

On June 25, 2020, the FERC accepted a Shared Structure Participation Agreement (“ShPA”) and an Operating and Maintenance Agreement (“O&M Agreement”) between Vermont Transco LLC (“VTransco”) and Vermont Electric Cooperative, Inc. (“VEC”).¹³² As previously reported, VTransco reported that the ShPA and O&M Agreement were part of a transaction between VTransco and VEC that involves the cancellation of a Bill-Back Agreement and an Operating and Maintenance Agreement,¹³³ and the entering into of a Purchase and Sale Agreement (“PSA”), dated as of April 30, 2020. The ShPA establishes the allocation of costs associated with the design, construction, repair, replacement, general maintenance, operation, and preventative maintenance of facilities on VTransco’s structures shared with VEC, where those facilities are used either exclusively by VEC or in common with VTransco. The purpose of the ShPA is to calculate and allocate those costs that are not recovered through a regional transmission tariff on file with the FERC. The O&M Agreement establishes VTransco’s and VEC’s operational control of the facilities on the shared structures. The Agreements were accepted effective as of May 1, 2020, as requested. Unless the June 25 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).

- **Phase II VT DMNRC Support Agreement Order 864-Related Filing (ER20-1480)**

On April 1, Vermont Electric Power Company (“VELCO”), as an agent of the Joint Owners, submitted a filing (following consultation with FERC staff) that described why no changes were required to the Phase II Vermont Dedicated Metallic Neutral Return Conductor (“DMNRC”) Support Agreement¹³⁴ as a result of *Order 864*. Comments on this filing were due April 22 and were filed by GMP, which supported the filing and agreed with VELCO that no *Order 864* compliance filing is necessary. The IRH Management Committee, Eversource and National Grid intervened doc-lessly. 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).

XII. Misc. - Administrative & Rulemaking Proceedings

- **Carbon Pricing in RTO/ISO Markets Tech Conf (Sep 30, 2020) (AD20-14)**

On June 17, 2020, the FERC issued a notice that it would convene a Commissioner-led technical conference on September 30, 2020. The purpose of the conference will be to discuss considerations related to state adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with FERC-jurisdictional organized wholesale electricity markets. Supplemental notices will be issued prior to the conference with further details regarding the agenda, how to register to participate, and the format (including whether the technical conference will be held in-person or electronically).

The September 30 conference is a response to (i) the April 14, 2020 request by Interest Parties,¹³⁵ who asserted that a technical conference “would be helpful to the Commission and stakeholders in the electric energy industry in deciding how best to move forward at the state and regional levels on these issues and in the relevant

¹³² *Vermont Transco LLC*, Docket No. ER20-1679 (June 25, 2020) (unpublished letter order).

¹³³ Both the Bill-Back Agreement and the original Operating and Maintenance Agreement were entered into between VTransco’s predecessor, VELCO, and VEC’s predecessor, Citizens Communication Company. VTransco submitted a separate Notice of Cancellation of the Bill-Back Agreement and the original Operating and Maintenance Agreement, effective April 30, 2020, in ER20-1685.

¹³⁴ The DMNRC was installed on VETCO’s Phase I facilities to provide a neutral return for Phase I and Phase II at a total construction cost of approximately \$2.6 million. Pursuant to the Agreement, the Joint Owners recover their total cost of service by making the DMNRC available to NHH who in turn makes the DMNRC available to the Participants pursuant to, and for the term of, the Phase II New Hampshire Transmission Facilities Support Agreement.

¹³⁵ “Interested Parties” are AEE, the American Council on Renewable Energy, the American Wind Energy Association, Brookfield Renewable, Calpine, CPV, EPSA, the Independent Power Producers of New York (“IPPNY”), LS Power Associates (“LS Power”), the Natural Gas Supply Association (“NGSA”), NextEra, PJM Power Providers Group, R Street Institute, and Vistra Energy Corp.

organized markets” complementing “state, regional, and national discussions currently taking place” as well as to (ii) the more than 30 sets of comments on the request that were filed.

- **Hybrid Resources Technical Conference Tech Conf (Jul 23, 2020) (AD20-9)**

On April 7, 2020, the FERC issued a notice that staff will convene a technical conference on July 23, 2020 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”). For purposes of this inquiry, the focus will be on a generation resource and an electric storage resource paired together as a hybrid resource. Commissioners may participate in the technical conference. The FERC issued a supplemental notice on June 15, 2020 indicating that the conference will be held electronically. An additional supplemental notice will be issued prior to the technical conference with further details regarding the agenda and organization, as well as details for accessing the conference.

- **Credit Reforms in Organized Wholesale Markets (AD20-6)**

Energy Trading Institute’s¹³⁶ December 16, 2019 request that the FERC hold a technical conference and conduct a rulemaking to update the requirements adopted in *Order 741*¹³⁷ and Section 35.47 of the FERC’s regulations addressing credit and risk management in the markets operated by RTO/ISOs remains pending. As previously reported, ETI, citing a recent filing by NYISO (which it protested),¹³⁸ and stating that several expedited initiatives related to RTO/ISO credit policies are underway, suggested that it would be helpful for the FERC to consolidate any “filings with this proceeding and hold the technical conference ETI is requesting by March 30, 2020 so the ISOs, RTOs and their stakeholders consider those discussions in any initiatives they have underway.” ETI suggested in its request that RTO/ISO credit support requirements be standardized, and that the requested technical conference and rulemaking explore various ways to identify and mitigate counterparty risk (including know-you-customer (“KYC”) tools and participant suspensions or bans) and enhance risk management infrastructure/processes within the organized markets. Doc-less interventions have been filed by, among others, PJM, the PJM IMM, SPP, CAISO, Tenaska, Avangrid, and Roscommon Analytics. On January 24, the IRC, including ISO-NE, submitted comments and proposed, as an alternative approach to the one suggested by ETI, that the FERC not commence a rulemaking or schedule a technical conference at this time and instead allow individual RTO/ISOs to address their respective credit and risk management issues, permit sufficient time for experience with the evolving rules to be gained, and then consider the best path forward to facilitate a dialogue on best practices and potential points of alignment among the RTO/ISO. ETI responded to those comments on February 10, 2020.

The FERC issued a notice of ETI’s request for technical conference and petition for rulemaking on February 11, 2020, setting March 12, 2020 as the deadline for comments thereon. Comments were submitted by a number

¹³⁶ In its request, The Energy Trading Institute (“ETI”) describes itself generally as “represent[ing] a diverse group of energy market participants, all with substantial interests in wholesale electricity transactions in Commission-jurisdictional markets. ETI members provide important services to a wide variety of wholesale energy market participants. They act as intermediaries between producers and consumers of electric energy that have mismatched quantity, timing, and contract type needs. In addition, they provide liquidity by engaging in energy related commercial transactions with a variety of market entities including, but not limited to, generation owners, project developers, load-serving entities, and investors. ETI members advocate for markets that are open, transparent, competitive and fair - all necessary attributes for markets ultimately to benefit electricity consumers.”

¹³⁷ *Credit Reforms in Organized Wholesale Elec. Mkts.*, 75 Fed. Reg. 65942 (2010), FERC Stats. & Regs. ¶ 31,317 (2010) (“*Order 741*”); *order on reh’g*, 76 Fed. Reg. 10492 (2011), FERC Stats. & Regs. ¶ 31,320 (2011) (“*Order 741-A*”); *order on reh’g*, 135 FERC ¶ 61,242 (2011) (“*Order 741-B*”); 18 C.F.R. § 35.47.

¹³⁸ See Proposed Tariff Amendments to Enhance Credit Reporting Requirements and Remedies, *New York Indep. Sys. Operator, Inc.*, Docket No. ER20-483 (filed Nov. 26, 2019).

of parties, including APPA, CAISO, the Committee of Chief Risk Officers (“CCRO”), DC Energy, EEI, EPSA, Indicated PJM Transmission Owners,¹³⁹ and an independent consultant.¹⁴⁰ This matter remains pending before the FERC.

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

On January 8, 2018, the FERC initiated a Grid Resilience in RTO/ISOs proceeding (AD18-7)¹⁴¹ and terminated the DOE NOPR rulemaking proceeding (RM18-1).¹⁴² In terminating the DOE NOPR proceeding, the FERC concluded that the Proposed Rule and comments received did not support FERC action under Section 206 of the FPA, but did suggest the need for further examination by the FERC and market participants of the risks that the bulk power system faces and possible ways to address those risks in the changing electric markets. On February 7, Foundation for Resilient Societies (“FRS”) requested rehearing of the January 8 order terminating the DOE NOPR proceeding. The FERC issued a tolling order on March 8, 2018 affording it additional time to consider the FRS request for rehearing, which remains pending.

Grid Resilience Administrative Proceeding (AD18-7). AD18-7 was initiated to evaluate the resilience of the bulk power system in RTO/ISO regions. The FERC directed each RTO/ISO to submit information on certain resilience issues and concerns, and committed to use the information submitted to evaluate whether additional FERC action regarding resilience is appropriate. RTO submissions were due on or before March 9, 2018.

ISO-NE Response. In its response, ISO-NE identified fuel security¹⁴³ as the most significant resilience challenge facing the New England region. ISO-NE reported that it has established a process to discuss market-based solutions to address this risk, and indicated that it believed it will need through the second quarter of 2019 to develop a solution and test its robustness through the stakeholder process. In the meantime, ISO-NE indicated that it would continue to independently assess the level of fuel-security risk to reliable system operation and, if circumstances dictate, would take, with FERC approval when required, actions it determines to be necessary to address near-term reliability risks. ISO-NE’s response was broken into three parts: (i) an introduction to fuel-security risk; (ii) background on how ISO-NE’s work in transmission planning, markets, and operations support the New England bulk power system’s resilience; and (iii) answers to the specific questions posed in the January 8 order.

Industry Comments. Following a 30-day extension issued on March 20, 2018, reply comments were due on or before May 9, 2018. NEPOOL’s comments, which were approved at the May 4 meeting, were filed May 7, and were among over 100 sets of initial comments filed. A summary of the comments that seemed most relevant to New England and NEPOOL was circulated to the Participants Committee on May 15 and is posted on the

¹³⁹ “Indicated PJM Transmission Owners” are Exelon Corp. (“Exelon”), American Electric Power Service Corp. (“AEP”), Dominion Energy Services, Inc. (“Dominion”), PPL Electric Utilities Corp. (“PPL”), the FirstEnergy Utility Companies. (“FirstEnergy”), East Kentucky Power Coop. (“EKPC”), Duke Energy Corp. (“Duke”), Duquesne Light Co. (“Duquesne”), and the PSEG Companies (“PSEG”).

¹⁴⁰ W. Scott Miller, III, Whitehall Bay Energy Services, LLC.

¹⁴¹ *Grid Rel. and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018), *reh’g requested*.

¹⁴² As previously reported, the FERC opened the DOE NOPR proceeding in response to a September 28, 2017 proposal by Energy Secretary Rick Perry, issued under a rarely-used authority under §403(a) of the Department of Energy (“DOE”) Organization Act, that would have required RTO/ISOs to develop and implement market rules for the full recovery of costs and a fair rate of return for “eligible units” that (i) are able to provide essential energy and ancillary reliability services, (ii) have a 90-day fuel supply on site in the event of supply disruptions caused by emergencies, extreme weather, or natural or man-made disasters, (iii) are compliant with all applicable environmental regulations, and (iv) are not subject to cost-of-service rate regulation by any State or local authority. More than 450 comments were submitted in response to the DOE NOPR, raising and discussing an exceptionally broad spectrum of process, legal, and substantive arguments. A summary of those initial comments was circulated under separate cover and can be found with the posted materials for the November 3, 2017 Participants Committee meeting. Reply comments and answers to those comments were filed by over 100 parties.

¹⁴³ ISO-NE defined fuel security as “the assurance that power plants will have or be able to obtain the fuel they need to run, particularly in winter – especially against the backdrop of coal, oil, and nuclear unit retirements, constrained fuel infrastructure, and the difficulty in permitting and operating dual-fuel generating capability.”

[NEPOOL website](#). On May 23, NEPOOL submitted a limited response to four sets of comments, opposing the suggestions made in those pleadings to the extent that the suggestions would not permit full use of the Participant Processes. Supplemental comments and answers were also filed by FirstEnergy, MISO South Regulators, NEI, and EDF. Exelon and American Petroleum Institute filed reply comments. FirstEnergy included in this proceeding its motion for emergency action also filed in ER18-1509 (ISO-NE Waiver Filing: Mystic 8 & 9), which Eversource answered (in both proceedings). Reply comments were filed by APPA and AMP and the Nuclear Energy Institute (“NEI”) moved to lodge presentations by the National Infrastructure Advisory Council. On December 6, the Harvard Electricity Law Initiative filed a comment suggesting that, as a matter of law, “Commission McNamee cannot be an impartial adjudicator in these proceedings” and “any proceeding about rates for ‘fuel-secure’ generators” and should recuse himself. Similarly, on December 18, “Clean Energy Advocates”¹⁴⁴ requested Commissioner McNamee recuse himself from these proceedings. These matters remain pending before the FERC.

FirstEnergy DOE Application for Section 202(c) Order. In a related but separate matter, FirstEnergy Solutions (“FirstEnergy”) asked the Department of Energy (“DOE”) in late March to issue an emergency order to provide cost recovery to coal and nuclear plants in PJM, saying market conditions there are a “threat to energy security and reliability”. FirstEnergy made the appeal under Section 202(c) of the FPA, which allows the DOE to issue emergency orders to keep plants operating, but has previously been exercised only in response to natural disasters. Action on that 2018 request is pending.

- **Increasing Market and Planning Efficiency Through Improved Software Tech Conf (Jun 23-25, 2020) (AD10-12)**

On June 23-25, the FERC held its 11th annual technical conference addressing increasing Real-Time and Day-Ahead market efficiency through improved software. FERC Staff facilitated a discussion to explore research and operational advances with respect to market modeling that appear to have significant promise for potential efficiency improvements. Speaker materials have not yet been posted in eLibrary.

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

On March 20, 2020, the FERC issued a NOPR¹⁴⁵ proposing to revise its existing transmission incentives policy and corresponding regulations.¹⁴⁶ The proposed revisions include 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.**

¹⁴⁴ For purposes of these proceedings, “Clean Energy Advocates” are NRDC, Sierra Club and UCS.

¹⁴⁵ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 (Mar. 20, 2020) (“*Electric Transmission Incentives NOPR*”).

¹⁴⁶ 18 CFR 35.35 (2020).

- ◆ **RTO-Participation Incentive.** A 100-basis-point increase for transmitting utilities that turn over their wholesale facilities to an RTO, ISO, or Transmission Organization, and available regardless of whether participation 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.

A more detailed summary of the NOPR was distributed to the Transmission Committee and discussed at its March 25, 2020 meeting. Over 80 sets of comments on the proposed revisions were filed on or before the July 1, 2020¹⁴⁷ 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. The NOPR is now pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NOPR: QF Rates and Requirements; Implementation Issues under PURPA (RM19-15)**

In an action that could have significant impacts on the development and financing of renewable resources, the FERC, on September 19, 2019, proposed rules to reform its long-standing regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”).¹⁴⁸ Those regulations address the obligation of electric utilities to purchase power produced by “qualifying facilities” or “QFs” at rates that must be “just and reasonable to the electric consumers of the electric utility and in the public interest, and not discriminate against” those QFs.¹⁴⁹

The *QF NOPR* seeks public comment on draft rule changes “to rebalance the benefits and obligations of the [FERC’s] PURPA Regulations in light of the changes in circumstances since the PURPA Regulations were promulgated.”¹⁵⁰ The *QF NOPR* proposes the following changes that would revise how and when prices for QF power may be established and would reduce the circumstances under which a utility’s mandatory purchase obligation would be triggered:

- Provide states the flexibility to establish QF energy rates at the purchasing utility’s avoided costs at the time of energy *delivery*, rather than allowing the QFs to elect to *fix* the energy rate for an extended term at the time the utility becomes compelled to purchase the QF’s energy.
- Specify that an avoided cost rate for QF energy can be based on *market factors* (including locational market prices, indices, trading hubs, or competitive solicitation processes) or, at the state’s discretion, can continue to be set as they are under current PURPA Regulations.
- Reduce in states with a retail choice program an electric utility’s obligation to purchase from QFs to the extent that the utility’s provider of last resort (“POLR”) supply obligation has been reduced by the state’s

¹⁴⁷ The *Electric Transmission Incentives NOPR* was published in the *Fed. Reg.* on Apr. 2, 2020 (Vol. 85, No. 64) pp. 18,784-18,810. Requests for extension of time to file comments were filed by American Manufacturers, APPA/TAPS, and State Entities; WIRES and EEI each opposed the requested extensions. No extension of time to file comments was granted.

¹⁴⁸ 16 U.S.C. § 2601 et seq. (2018). PURPA was enacted to help lessen the dependence on fossil fuels and promote the development of power generation from non-utility power producers.

¹⁴⁹ 16 U.S.C. § 824a–3; PURPA, Sec. 210(a)-(b).

¹⁵⁰ *Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Notice of Proposed Rulemaking, 168 FERC ¶ 61,184 (2019) (“*QF NOPR*”).

program. If POLR supplies are obtained through solicitations having a specific contract term, the term of any PURPA purchase contract should match the term of the POLR supply contract.

- Decrease from 20 MW to 1 MW the maximum size of QFs that would be entitled to require utilities located in areas with demonstrably competitive markets (RTO/ISOs) to purchase their power. If QF facilities qualify as cogeneration, the 20 MW cap would not change.
- Replace the “one-mile rule” for determining whether generation facilities under common ownership should be considered to be part of a single facility (to be eligible for favorable QF treatment, a small power production facility must be 80 MW or less). Some have argued that the current one-mile rule has been gamed to permit QF certification of projects that if combined would otherwise exceed the 80 MW cap. The impact of this change, if made, would primarily affect projects in non-RTO/ISO markets (e.g., the bilateral markets of the southern and western United States).
- Clarify that a utility’s mandatory purchase obligation under PURPA does not arise until the QF can demonstrate commercial viability and financial commitment pursuant to objective and reasonable state-defined criteria.
- Allow for interested stakeholders to protest the self-certification of a QF.

Comments on the proposed rule changes were due on or before December 3, 2019.¹⁵¹ More than 130 sets of comments were submitted, including comments from Bloom Energy, Borrego Solar, ConEd, Covanta, CT PURA, MA AG, MA DPU, and AEE. Several Congressmen have sent comments supporting comments submitted by others. Chairman Chatterjee acknowledged each of the comments received from Congressmen. Late filed comments were submitted by the American Dams, California PUC, TerraForm and the Arizona Corporation Commission. Since the last Report, US Representative Sean Casten (D-IL) submitted comments opposing FERC action. SEIA submitted supplemental comments. This matter remains pending before the FERC.

- **Orders 864/864-A: Public Util. Trans. ADIT Rate Changes (RM19-5)**

On November 21, 2019, the FERC issued its final rule (“*Order 864*”)¹⁵² requiring 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 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. The FERC did not adopt its proposals in the ADIT NOPR¹⁵³ that were applicable to public utilities with stated rates. *Order 864* became effective January 27, 2020. Requests for rehearing were filed by APPA and Exelon.

Order 864-A. On April 16, the FERC denied the requests for rehearing and granted APP’s request for clarification in part.¹⁵⁴ Specifically, the FERC clarified that public utilities with transmission stated rates that have a FERC-approved ratemaking method for addressing excess and deficient ADIT return the appropriate amount of excess ADIT resulting from the Tax Cuts and Jobs Act to customers through their transmission stated rates. For public utilities with transmission stated rates that lack a FERC-approved ratemaking method, the ratemaking

¹⁵¹ The *QF NOPR* was published in the *Fed. Reg.* on Oct. 4, 2019 (Vol. 84, No. 193) pp. 53,246-53,275.

¹⁵² *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 869, 169 FERC ¶ 61,139 (Nov. 21, 2019), *reh’g denied and clarification granted in part*, 171 FERC ¶ 61,033 (Apr. 16, 2020).

¹⁵³ *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, 165 FERC ¶ 61,117 (Nov. 15, 2018) (“*ADIT NOPR*”).

¹⁵⁴ *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*”).

method used to make provision for excess and deficient ADIT will be subject to case-by-case determination in a later rate proceeding.¹⁵⁵

New England TO Compliance Filings - Extensions of Time to File. VTransco (Feb 3), National Grid (Feb 10), Eversource (Feb 18), UI (Feb 20), VT Electric Transmission Co. (“VETCO”) (Feb 25), and New Hampshire Transmission (“NHT”) (Feb 26) each requested that their deadline for submitting a compliance filing be extended until July 31, 2020—the date of the TOs’ next annual informational filing for regional formula rates. Each of those requests has been granted. Since the last Report, CMP had its deadline extended to Jul 15, 2020.

New England Compliance Filings – The following New England compliance filings have been submitted:

Date Filed	Docket	Transmission Provider	Date Accepted
Jun 29, 2020	ER20-2219	New England Power	pending
Jun 23, 2020	ER20-2133	Versant Power	pending
May 18, 2020	ER20-1839	VETCO	Pending
Feb 26, 2020	ER20-1089	New England Elec. Trans. Corp.	pending
Feb 26, 2020	ER20-1088	New England Hydro Trans. Elec. Co.	pending
Feb 26, 2020	ER20-1087	New England Hydro Trans. Corp.	pending

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

In *Order 841*¹⁵⁶ (see RM16-23 below), the FERC initiated a new proceeding in order to continue to explore the proposed distributed energy resource (“DER”) aggregation reforms it was considering in the *Storage NOPR*.¹⁵⁷ All comments filed in response to the *Storage NOPR* will be incorporated by reference into Docket No. RM18-9 and further comments regarding the proposed distributed energy resource aggregation reforms, including comments regarding the April 10-11 technical conference in AD18-10,¹⁵⁸ were also to be filed in RM18-9. On June 26, 2018, over 50 parties submitted post-technical conference comments in this proceeding, including comments from ISO-NE, Calpine, Direct, Eversource, Ictec, NRG, Utility Services, EEI, EPRI, EPSA, NARUC, NRECA, and SEI. On February 11, 2019, a group of 18 US Senators submitted a letter urging the FERC to adopt a final rule that enable all DERs the opportunity to participate in the RTO/ISO markets and requesting an update no later than March 1, 2019. Reply comments and answers were submitted by the Arkansas PUC, AEE, AEMA, and the Missouri PUC. APPA/NRECA submitted supplemental comments.

On September 5, 2019, the FERC requested that each of the RTO/ISOs provide responses to data requests seeking information on their policies and procedures that affect DER interconnections. The RTO/ISO responses were due and were filed on October 7, 2019. Comments on the responses were filed by 8 parties, including comments addressing ISO-NE’s responses by MA DPU, MA DOER and MA AG (collectively, “Massachusetts”), MMWEC, AEE, EEI and NRECA. This matter is pending before the FERC.

¹⁵⁵ *Order 864-A* at PP 18-19

¹⁵⁶ *Elec. Storage Participation in Mkts. Operated by Regional Trans. Orgs. and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018), reh’g and/or clarif. requested (“*Order 841*”).

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

¹⁵⁸ On April 10-11, 2018, the FERC held a technical conference to gather additional information to help the FERC determine what action to take on DER aggregation reforms proposed in the *Storage NOPR* and to explore issues related to the potential effects of DERs on the bulk power system. Technical conference materials are posted on the FERC’s eLibrary. Interested persons were invited to file post-technical conference comments on the topics concerning the Commission’s DER aggregation proposal discussed during the technical conference, including on follow-up questions from FERC Staff related to the panels. Comments related to DER aggregation were to be filed in RM18-9; comments on the potential effects of DERs on the bulk power system, in AD18-10.

- **Order 860/860-A: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)**

As previously reported, *Order 860*,¹⁵⁹ issued three years after the FERC's *Data Collection NOPR*,¹⁶⁰ (i) revises the FERC's MBR regulations by establishing a relational database of ownership and affiliate information for MBR Sellers (which, among other uses, will be used to create asset appendices and indicative screens), (ii) reduces the scope of information that must be provided in MBR filings, modifies the information required in, and format of, a MBR Seller's asset appendix, (iii) changes the process and timing of the requirements to advise the FERC of changes in status and affiliate information, and (iv) eliminates the requirement adopted in *Order 816* that MBR Sellers submit corporate organization charts. In addition, the FERC stated that it will *not* adopt the *Data Collection NOPR* proposal to collect Connected Entity data from MBR Sellers and entities trading virtuals or holding FTRs. The FERC will post on its website high-level instructions that describe the mechanics of the relational database submission process and how to prepare filings that incorporate information that is submitted to the relational database. As recently extended (*see below*), *Order 860* will become effective April 1, 2021, and submitters will have until close of business on August 2, 2021 to make their initial baseline submissions. Submitters will be required to obtain in Spring 2021 FERC-generated IDs for reportable entities that do not have CIDs or LEIs, as well as Asset IDs for reportable generation assets without an EIA code so that every ultimate upstream affiliate or other reportable entity has a FERC-assigned company identifiers ("CID"), Legal Entity Identifier,¹⁶¹ or FERC-generated ID and that all reportable generation assets have an code from the Energy Information Agency ("EIA") Form EIA-860 database or a FERC-assigned Asset ID. Requests for rehearing and/or clarification of *Order 860* were denied,¹⁶² other than TAPS' request that the FERC clarify that the public will be able to access the relational database. On that point, the FERC clarified "that we will make available services through which the public will be able to access organizational charts, asset appendices, and other reports, as well as have access to the same historical data as Sellers, including all market-based rate information submitted into the database. We also clarify that the database will retain information submitted by Sellers and that historical data can be accessed by the public."

MBR Database. On January 10, 2020, the FERC issued a notice that updated versions of the XML, XSD, and MBR Data Dictionary are available on the FERC's [website](#) and that the test environment for the MBR Database is now available and can be accessed on the [MBR Database webpage](#).

Effective Date Extended by 6 Months. On May 6, 2020, EEI requested a four-month extension of implementation of *Order 860*. EPSA supported that request on May 13, 2020. On May 20, the FERC issued a notice extending the effective and associated implementation dates of *Order 860* by six months. The new *Order 860* effective date will be April 1, 2021, and the deadline for baseline submissions to and including August 2, 2021. First change in status filings under these new timelines will be due August 31, 2021.

- **Order 676-I: NAESB WEQ Standards v. 003.2 - Incorporation by Reference into FERC Regs (RM05-5-027)**

On February 4, 2020, the FERC issued *Order 676-I*,¹⁶³ which incorporates by reference into its regulations, with certain enumerated exceptions, the latest version (Version 003.2) of certain Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric

¹⁵⁹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 168 FERC ¶ 61,039 (July 18, 2019) ("*Order 860*"), *order on reh'g and clarif.*, 170 FERC ¶ 61,129 (Feb. 20, 2020).

¹⁶⁰ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

¹⁶¹ An LEI is a unique 20-digit alpha-numeric code assigned to a single entity. They are issued by the Local Operating Units of the Global LEI System.

¹⁶² *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, Order No. 860-A, 170 FERC ¶ 61,129 (Feb. 20, 2020) ("*Order 860-A*").

¹⁶³ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-I, 170 FERC ¶ 61,062 (Feb. 4, 2020) ("*Order 676-I*"), *reh'g and/or clarif. pending*.

Quadrant (“WEQ”) of the North American Energy Standards Board (“NAESB”).¹⁶⁴ The Version 003.2 Standards included NAESB’s Version 003.1 revisions, which were the subject of an earlier NOPR.¹⁶⁵ The FERC declined to adopt the proposal to remove the incorporation by reference of the WEQ-006 Manual Time Error Correction Business Practice Standards as adopted by NAESB. *Order 676-I* will become effective April 27, 2020.¹⁶⁶ Requests for clarification and/or rehearing of *Order 676-I* were filed by EEI and Southern Companies. On April 6, the FERC issued a tolling order affording it additional time to consider those requests, which remain pending before the FERC.

Compliance dates: Public utilities must make a compliance filing to comply with the requirements of *Order 676-I* through eTariff no later than July 27, 2020. The FERC will set an effective date for the proposed tariff changes in the order(s) on the compliance filings, but no earlier than October 27, 2020.

- **Waiver of Tariff Requirements (PL20-7)**

On May 21, 2020, the FERC issued a Proposed Policy Statement that would clarify its policy regarding requests for waiver of tariff provisions.¹⁶⁷ The *Proposed Policy Statement* sets forth the approach the FERC would take going forward to ensure compliance with the filed rate doctrine and the rule against retroactive making. The proposed policy will both clarify and modify waiver standards, and in some instances, make it harder to obtain waivers.

Specifically, the FERC proposed the following guidance on filing procedures to implement its new approach for granting waivers of tariff provisions and to no longer grant retroactive waivers except as consistent with the *Proposed Policy Statement*:

1. *Style Requests as Requests for Remedial Relief.* Filings seeking relief in connection with actions or omissions that have already occurred prior to the date relief is sought from the FERC would be characterized as a request for remedial relief (rather than as a request for a waiver). In response to such a request, the FERC will focus on what remedy, if any, is required to cure acknowledged or alleged deviations from a filed tariff. “Waiver” is to be limited to (a) requests for prospective relief when a requested future deviation from the filed tariff has not yet occurred at the time a request is filed; or (b) petitions for remedial relief when a tariff expressly authorizes regulated entities to seek a remedial waiver from the FERC for past non-compliance with the filed tariff.
2. *Form of Filing.* When the entity requesting remedial relief is the entity that acted (or believes it may have acted) in a manner inconsistent with the tariff, such requests should be filed as petitions for declaratory order under Rule 207 of the FERC’s Rules of Practice and Procedure. When the filing entity alleges a different entity has acted in a manner inconsistent with the tariff, such requests should be filed as complaints under Rule 206. Given the filing fees associated with petitions for declaratory order, the industry was encouraged to directly address this aspect of the proposal.
3. *Expressly Request FERC Action pursuant to FPA section 309 or NGA section 16.4.* These provisions have been found to afford the FERC the latitude to remedy past non-compliance

¹⁶⁴ *Standards for Business Practices and Communication Protocols for Public Utilities*, 167 FERC ¶ 61,127 (May 16, 2019) (“*NAESB WEQ v. 003.2 Standards NOPR*”).

¹⁶⁵ *Standards for Business Practices and Communication Protocols for Public Utilities*, 156 FERC ¶ 61,055 (July 21, 2016), (“*WEQ v. 003.1 NOPR*”).

¹⁶⁶ *Order 676-I* was published *Fed. Reg.* on Feb. 25, 2020 (Vol. 85, No. 37) pp. 10,571-10,586.

¹⁶⁷ *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156 (May 21, 2020) (“*Proposed Policy Statement*”).

“provided the agency’s action conforms with the purposes and policies of Congress and does not contravene any terms of the Act.”

The FERC acknowledged that this Policy would represent a change from its past approach, particularly in situations where inadvertent failures to comply with ministerial tariff requirements have not been protested. The FERC suggested a few ways tariffs may be modified to avoid what may appear by comparison to be harsh outcomes, including expressly stating in the tariff that a failure to comply with a certain deadline may be waived by order of the FERC or by allowing various kinds of errors to be cured within a reasonable period of time after a default has occurred or an error has been discovered, but is difficult to imagine how feasible or how well these options might work in practice.

The FERC proposed to incorporate its current four-part analysis¹⁶⁸ in considering both requests for prospective waiver and petitions for remedial relief, but cautioned that it would apply that analysis only in those limited circumstances where the request for remedial relief would not violate the filed rate doctrine or the rule against retroactive ratemaking due to adequate prior notice, or the requested relief is within the FERC’s authority to grant under FPA section 309 or NGA section 16.

Finally, the FERC proposed requiring a stronger showing when a petitioner is seeking remedial relief for its own failure to comply with a tariff – petitions will be more compelling when the failure to comply was due to something more than inadvertent error or administrative oversight. Petitions for remedial relief will generally be denied when a protestor credibly contends, or the FERC independently determines, that the requested remedial relief will result in undesirable consequences (e.g. harm to third parties).

With respect to prospective requests to waive the 60-day prior notice requirement under FPA section 205(d) (or the 30-day prior notice requirement under NGA section 4(d)), which the FERC has discretion to waive “for good cause shown,” the FERC proposes to leave in effect its policy of generally granting such waivers,¹⁶⁹ to the extent that entities seek an effective date no earlier than the day *after* the date a rate change is submitted to the FERC.

Comments on the Proposed Policy Statement were due on or before June 18, 2020 and were filed by the IRC, AEE, APPA, AWEA/SEIA, EEI, EPSA, Indicated Generators,¹⁷⁰ INGAA, Kansas Electric Power Coop. (“KEPC”), NGA, NGSA, NRECA, Public Citizen, Sunflower Electric Power, and TAPS. Reply comments were filed by APPA, Joint Trade Associations,¹⁷¹ KEPC, and the Sustainable FERC Project. The proposed Policy Statement is pending before the FERC.

- **FERC’s ROE Policy for Natural Gas and Oil Pipelines (PL19-4)**

On May 21, 2020, the FERC issued a Policy Statement that applies to natural gas and oil pipelines, with certain exceptions to account for the statutory, operational, organizational and competitive differences among the electric, natural gas and oil pipeline industries, the FERC’s ROE methodology adopted in *Opinion No. 569-A*.¹⁷² Specifically, the FERC revised its policy and will determine natural gas and oil pipeline ROEs by

¹⁶⁸ Under current practice, the FERC grants tariff provision waivers where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.

¹⁶⁹ See *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, order on reh’g, 61 FERC ¶ 61,089 (1992) (“*Central Hudson*”). Factors that will generally support a waiver of prior notice include: (1) uncontested filings that do not change rates; (2) filings that reduce rates and charges; and (3) filings that increase rates as prescribed by a previously accepted contract or settlement on file with the FERC.

¹⁷⁰ “Indicated Generators” are Vistra, NRG, FirstLight, Cogentrix, and LS Power.

¹⁷¹ “Joint Trade Associations” are AEE, AWEA, EEI, EPSA, INGAA, NGSA, NRECA and SEIA.

¹⁷² *Inquiry Regarding the Commission’s Policy for Determining Return on Equity*, 171 FERC ¶ 61,155 (May 21, 2020) (“*Natural Gas and Oil Pipeline ROE Policy Statement*”).

averaging the results of the DCF and CAPM, but will not use the risk premium model discussed in *Opinion 569/569-A* (“Risk Premium”).¹⁷³ In addition, the FERC clarified its policies governing the formation of proxy groups and the treatment of outliers in proceedings addressing natural gas and oil pipeline ROEs. Finally, the FERC encouraged oil pipelines to file revised FERC Form No. 6, page 700s for 2019 reflecting the revised ROE policy. This Policy Statement became effective May 27, 2020.¹⁷⁴

Since the last Report, Complainant-Aligned Parties¹⁷⁵ answered the New England TO’s May 10 supplemental comments. On June 15, 2020, Joint Parties¹⁷⁶ submitted supplemental comments arguing that the FERC should use the midpoint, rather than the median, as the measure of central tendency for public utilities that file individually to establish a ROE. Joint Parties’ comments were opposed by Six Cities.¹⁷⁷ WIRES submitted supplemental comments on June 18, 2020 requesting that the FERC take further action in this proceeding to “resolve the uncertainty surrounding its base ROE methodology and establish a policy consistent with the recommendations made in these comments” (recommending a framework that employs all four of the previously proposed ROE models, including the Expected Earnings model, along with certain modifications, to ensure that ROEs attract capital investment in needed transmission infrastructure). On June 24, EEI and WIRES requested the FERC issue a NOI regarding the FERC’s policy for determining base ROE applicable to the electric industry as a whole.

- **NOI: Electric Transmission Incentives Policy (PL19-3)**

As reported above, the FERC issued its *Electric Transmission Incentives NOPR* on March 20, 2020, based in part on the record developed earlier in this proceeding. Reporting on developments with respect to the FERC’s Electric Transmission Incentives Policy will be addressed in future Reports in RM20-10.

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

On April 19, 2018, the FERC announced its intention to revisit its approach under its 1999 Certificate Policy Statement to determine whether a proposed jurisdictional natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in NGA Section 7. Specifically, the NOI¹⁷⁸ seeks comments from interested parties on four broad issue categories: (1) project need, including whether precedent agreements are still the best demonstration of need; (2) exercise of eminent domain; (3) environmental impact evaluation (including climate change and upstream and downstream greenhouse gas emissions); and (4) the efficiency and effectiveness of the FERC certificate process. Pursuant to a May 23 order extending the comment deadline by 30 days,¹⁷⁹ comments were due on

¹⁷³ As previously reported, the FERC issued a notice of inquiry on March 21, 2019 seeking information and views to help the FERC explore whether, and if so how, it should modify its policies concerning the determination of ROE to be used in designing jurisdictional rates charged by public utilities.¹⁷³ The FERC also sought comment on whether any changes to its policies concerning public utility ROEs should be applied to interstate natural gas and oil pipelines. This NOI followed *Emera Maine*, which reversed *Opinion 531*, and seeks to engage interests beyond those represented in the *Emera Maine* proceeding (see EL11-66 *et al.* in Section I above).

¹⁷⁴ The *Natural Gas and Oil Pipeline ROE Policy Statement* was published *Fed. Reg.* on May 27, 2020 (Vol. 85, No. 102) pp. 31,760-31,773.

¹⁷⁵ For this purpose, “Complainant-Aligned Parties” are: Connecticut Public Utilities Regulatory Authority, Connecticut Office of the Attorney General, Connecticut Department of Energy and Environmental Protection, Connecticut Office of Consumer Counsel, Massachusetts Office of the Attorney General, Massachusetts Department of Public Utilities, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative.

¹⁷⁶ “Joint Parties” are: AEP, Avista, Evergy Companies, Entergy Services, Exelon, FirstEnergy, Portland Gen. Elec., PG&E, Corporation, Puget Sound Energy, PacifiCorp, Idaho Power, PSEG, So. Cal. Edison, and San Diego Gas & Elec.

¹⁷⁷ “Six Cities” are the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

¹⁷⁸ The NOI was published in the *Fed. Reg.* on Apr. 26, 2018 (Vol. 83, No. 80) pp. 18,020-18,032.

¹⁷⁹ *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,138 (May 23, 2018).

or before July 25, 2018. Literally thousands of individual and mass-mailed comments were filed. This matter remains pending before the FERC.

XIII. Natural Gas Proceedings

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

- **Natural Gas-Related Enforcement Actions**

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

BP (IN13-15). On July 11, 2016, the FERC issued *Opinion 549*¹⁸⁰ affirming Judge Cintron's August 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, "BP") violated Section 1c.1 of the Commission's regulations ("Anti-Manipulation Rule") and NGA Section 4A.¹⁸¹ Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP's Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel ("HSC") trading point in order to benefit correspondingly long position at the Henry Hub trading point. The FERC agreed, finding that the "record shows that BP's trading practices during the Investigative Period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions."¹⁸² Accordingly, the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in "unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index." The \$20.16 million civil penalty was at the top of the FERC's Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP's violation of a FERC order within 5 years of the scheme. BP's penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP's request for rehearing of the order establishing a hearing in this proceeding.¹⁸³ BP was directed to pay the civil penalty and disgorgement amount within 60 days of the *BP Penalties Order*. On August 10, 2016 BP requested rehearing of the *BP Penalties Order*. On September 8, 2018, the FERC issued a tolling order, affording it additional time to consider BP's request for rehearing of the *BP Penalties Order*, which remains pending.

On September 7, 2016, BP submitted a motion for modification of the *BP Penalties Order's* disgorgement directive because it cannot comply with the disgorgement directive as ordered. BP explained that the entity to which disgorgement was to be directed, the Texas Low Income Home Energy Assistance Program ("LIHEAP"), is not set up to receive or disburse amounts received from any person other than the Texas Legislature. In response, on September 12, 2016, the FERC stayed the disgorgement directive (until an order on BP's pending request for rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.¹⁸⁴

BP moved, on December 11, 2017, to lodge, to reopen the proceeding, and to dismiss, or in the alternative, for reconsideration based on changes in the law it asserted are dispositive and that have occurred since BP filed its request for rehearing of the *BP Penalties Order*. FERC Staff asked for, and was granted, additional

¹⁸⁰ *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹⁸¹ *BP America Inc.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹⁸² *BP Penalties Order* at P 3.

¹⁸³ *BP America Inc.*, 147 FERC ¶ 61,130 (May 15, 2014) ("*BP Hearing Order*"), *reh'g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

¹⁸⁴ *BP America Inc.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*").

time, to January 25, 2018, to file its Answer to BP's December 11 motion. FERC Staff filed its answer on January 25, 2018, and revised that answer on January 31. On February 9, BP replied to FERC Staff's revised answer. This matter remains pending before the FERC.

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁸⁵ 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 2012.¹⁸⁶

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

- **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
- ▶ Application for a certificate of public convenience and necessity pending

- **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

¹⁸⁵ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁸⁶ The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company's related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

requests for rehearing.¹⁸⁷ 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*.¹⁸⁸ 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,¹⁸⁹ 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, 2017.¹⁹⁰ The Allegheny Defense Project and Sierra Club (collectively, “Allegheny”) requested rehearing of the *Northern Access Certificate Order*.
- ▶ Despite the FERC’s *Northern Access Certificate Order*, the project remained halted pending the outcome of National Fuel’s fight with the NY DEC’s April denial of a Clean Water Act permit. NY DEC found National Fuel’s application for a water quality certification under Section 401 of the Clean Water Act, as well as for stream and wetlands disturbance permits, failed to comply with water regulations aimed at protecting wetlands and wildlife and that the pipeline failed to explore construction alternatives. National Fuel appealed the NY DEC’s decision to the 2nd Circuit on the grounds that the denial was improper.¹⁹¹ 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,¹⁹² provided a “more clearly articulate[d] basis for denial.”

¹⁸⁷ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁸⁸ *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).

¹⁸⁹ 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).

¹⁹⁰ *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*”).

¹⁹¹ *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

¹⁹² 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).

- ▶ On August 27, 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.¹⁹³

XIV. State Proceedings & Federal Legislative Proceedings

- **Executive Order on Securing the United States Bulk-Power System**

On May 1, 2020, President Trump signed an Executive Order that authorizes U.S. Secretary of Energy Dan Brouillette to work with the Cabinet and energy industry to secure America’s Bulk-Power System (“BPS”). The Executive Order prohibits Federal agencies and U.S. persons from “acquiring, transferring, or installing BPS equipment in which any foreign country or foreign national has any interest and the transaction poses an unacceptable risk to national security or the security and safety of American citizens. Evolving threats facing our critical infrastructure have only served to highlight the supply chain risks faced by all sectors, including energy, and the need to ensure the availability of secure components from American companies and other trusted sources.” The Secretary of Energy is accordingly authorized to (i) establish and publish criteria for recognizing particular equipment and vendors as “pre-qualified” (pre-qualified vendor list); (ii) identify any now-prohibited equipment already in use, allowing the government to develop strategies and work with asset owners to identify, isolate, monitor, and replace this equipment as appropriate; and (iii) work closely with the Departments of Commerce, Defense, Homeland Security, Interior; the Director of National Intelligence; and other appropriate Federal agencies to carry out the authorities and responsibilities outlined in the Executive Order. A Task Force led by Secretary Brouillette will develop energy infrastructure procurement policies to ensure national security considerations are fully integrated into government energy security and cybersecurity policymaking. The Task Force will consult with the energy industry through the Electricity and Oil and Natural Gas Subsector Coordinating Councils to further its efforts on securing the BPS. A copy of the Executive Order may be accessed [here](#).

XV. Federal Courts

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

- **ISO-NE’s Inventoried Energy Program (Chapter 2B) Proposal (19-1224***; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428¹⁹⁴**
Petitioners: ENECOS (Belmont et al.) (19-1224); MA AG (19-1247); NH PUC/NH OCA (19-1252); Sierra Club/UCS (19-1253)

At the unopposed request of the FERC, the Court issued an order suspending the briefing schedule and remanded the record back to the FERC. In the request to suspend the briefing schedule and remand the record, the FERC stated that it “now has a quorum of Commissioners who can participate in the review of the ISO New England tariff filing,” that remand “could obviate the need for a subsequent appeal by Petitioners”, and it “anticipates issuing an order on remand within 90 days of this Court’s order remanding the agency record and an order addressing the merits of any subsequent requests for rehearing within 180 days of the close of the 30-day

¹⁹³ 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).

¹⁹⁴ 162 FERC ¶ 61,127 (Feb. 15, 2018) (“*Order 841*”); 167 FERC ¶ 61,154 (May 16, 2019) (“*Order 841-A*”).

period for applying for rehearing". (As reported in Section III above, the FERC issued the *IEP Remand Order* on June 18, 2020.) The Court directed the FERC to file status reports at 90-day intervals beginning July 20, 2022 and the parties to file motions to govern further proceedings in these consolidated cases within 30 days of the completion of the remand proceedings.

- **Order 841 (Electric Storage Participation in RTO/ISO Markets) (19-1142, 19-1147) (consol.)**
Underlying FERC Proceeding: RM16-23; AD16-¹⁹⁵
Petitioners: NARUC, APPA et al.

On July 10, 2020, the DC Circuit denied the petitions filed by NARUC and APPA et al.¹⁹⁶ for review of *Orders 841* and *841-A* (Electric Storage Participation in RTO/ISO Markets).¹⁹⁷ Writing for the Court, Judge Wilkins summarized the case and the Court's ruling as follows:

In this consolidated action, the Court must once again referee the [FPA]'s jurisdictional line separating the [FERC]'s jurisdiction over the federal wholesale market and States' jurisdiction over facilities used in local distribution. This time, Petitioners argue FERC is off-sides in Order No. 841 by prohibiting States from barring electric storage resources on their distribution and retail systems from participating in federal markets. We find no foul here, so we deny the Petitions.

In explaining its reasoning, the Court did acknowledge that "Petitioners are likely correct that litigation will follow" as States try to navigate the line between Federal and State jurisdiction and should they challenge, as they will be free to do, the application of *Order 841* to their own state regulations or imposed conditions. But, "[b]ecause the challenged Orders do nothing more than regulate matters concerning federal transactions — and reiterate ordinary principles of federal preemption — they do not facially exceed FERC's jurisdiction under the [FPA]." Having failed "to show that Order Nos. 841 and 841-A run afoul of the Federal Power Act's jurisdictional bifurcation or that they are otherwise arbitrary and capricious we therefore deny the petitions."

Unless the Petitioners choose to file a petition for rehearing *en banc*, which would be due on or before July 24, 2020, this matter will be concluded.

Other Federal Court Activity of Interest

- **Allegheny Defense Project v. FERC (19-1098)**
Underlying FERC Proceeding: CP15-138¹⁹⁸
Petitioner: Allegheny Defense Project

On June 30, in a decision¹⁹⁹ that will likely have a profound effect on current and future proceedings before the FERC, the DC Circuit ruled that the Natural Gas Act ("NGA") does not allow FERC to delay appellate review of its substantive orders through its common practice of issuing tolling²⁰⁰ orders. The decision at the very

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

¹⁹⁶ "APPA et al." are APPA, NRECA, EEI, and AMP.

¹⁹⁷ *NARUC v FERC*, ___ F.3d ___, 2020 WL 3886199 (D.C. Cir. Jul. 10, 2020).

¹⁹⁸ *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).

¹⁹⁹ *Allegheny Def. Project v. FERC*, Case No. 17-1098 (D.C. Cir. June 30, 2020).

²⁰⁰ A tolling order is a brief order issued within 30 days of receiving an application for rehearing that does not address the merits of the rehearing request, but rather explicitly "grants" rehearing for the purpose of giving the agency more time to consider the arguments. FERC then treats the tolling order as indefinitely suspending the 30-day statutory deadline in order to afford more time to fully address the rehearing request. FERC has for decades routinely issued tolling orders in response to identical language in both the NGA and the FPA that requires any party seeking to challenge a FERC order on appeal to first request a rehearing before FERC, and FERC to act within 30 days after receiving any such requests. If FERC does not act within that time, the rehearing request is deemed denied and the FERC order is final and ripe for appeal.

least modifies—if not wholly overrules—a long-unbroken line of cases that rejected as premature appeals from FERC orders while applications for rehearing were pending. While the case was decided under the NGA,²⁰¹ there is little doubt that the court's rejection of FERC's long-standing tolling policy will impact proceedings arising under the FPA as well.

Since the decision was issued, the FERC asked the Court for a stay of issuance of the mandate in this case for 90 days (the Court had ordered that the mandate be issued on July 7, 2020). The FERC argued that the stay would permit the FERC time to assess how to implement the Court's decision and would also allow the federal government to consider whether to file a petition for writ of certiorari in the Supreme Court. Petitioners opposed the FERC's motion, and as of the date of this Report, the mandate has not yet issued. Also of note, On July 2, 2020, Chairman Chatterjee and Commissioner Glick issued a joint statement asking Congress to consider providing FERC with additional time to act on rehearing requests.

- **FERC orders on PG&E Bankruptcy (19-71615) (9th Cir.)**
Underlying FERC Proceeding: EL19-35, EL19-36²⁰²
Petitioner: PG&E

On June 26, PG&E appealed the FERC's orders finding that it has concurrent jurisdiction with the bankruptcy courts to review and address the disposition of wholesale power contracts sought to be rejected through its bankruptcy. On July 11, PG&E moved to suspend the briefing schedule pending the Court's decision on whether to authorize direct appeal of a decision by the Bankruptcy Court in the Northern District of California. In a declaratory judgment, the Bankruptcy Court came to a completely different conclusion than the FERC and held that it has "original and exclusive jurisdiction over . . . [PG&E's] rights to assume or reject executory contracts under 11 U.S.C. § 365" and that the FERC "does not have concurrent jurisdiction, or any jurisdiction, over the determination of whether any rejections of power purchase contracts by [PG&E] should be authorized."²⁰³ Because of the opposite conclusions, PG&E suggested that, should the Ninth Circuit allow the direct appeal of the Bankruptcy Court decision, the two appeals should proceed together. The PG&E motion was granted on August 1. On February 24, 2020, PG&E submitted a motion to further expedite oral argument in this case so that the case can be resolved by June 30, 2020, if possible. In response to that motion, the Court issued an order directing the case be calendared on a priority basis and assigned to the next available panel, but not by June 30, 2020. Remote hearings are scheduled for August 14.

Since the last Report, the Court ordered the parties to submit supplemental briefs by July 8, 2020 addressing the impact on this appeal of the confirmation of PG&E's bankruptcy plan. (PG&E has since successfully emerged from bankruptcy). While the parties agreed in their July 9 briefs that the case is moot given PG&E's voluntary assumption of its contracts in its reorganization plan, there was disagreement over whether the FERC's orders should be vacated. Final resolution is pending before the 9th Circuit.

²⁰¹ In this case, the Petitioners challenged the FERC's use of a tolling order in response to their applications for rehearing of a FERC order that issued a certificate of public convenience and necessity to the Atlantic Sunrise Project. Those rehearing applications were pending for nine months before the FERC ruled on them. When the appeals were filed, the FERC and others sought to use the pending rehearing requests as the basis for dismissing the petitions as "incurably premature." Since the applications for rehearing did not stay the FERC's issuance of the certificate, the petitioners also sought a stay from the FERC, which FERC did not act on for almost seven months. While the rehearings and requests for stay were still before the FERC, the pipeline sponsors of the Atlantic Sunrise Project proceeded to condemn land and begin construction activities. By the time the first panel of the court heard oral arguments on the petitions for review, the project had been built and in service for two months.

²⁰² *NextEra Energy, Inc. v. PG&E*, 166 FERC ¶ 61,049 (Jan. 25, 2019); *Exelon Corp. v. PG&E*, 166 FERC ¶ 61,053 (Jan. 28, 2019); *Order Denying Rehearing*, 167 FERC ¶ 61,096 (May 1, 2019).

²⁰³ Declaratory Judgment at 1-2, *PG&E v. FERC*, (Bankr. N.D. Cal. June 7, 2019).

- **PennEast Project (18-1128)**

Underlying FERC Proceeding: CP15-558²⁰⁴

Petitioners: NJ DEP, DE and Raritan Canal Commission, NJ Div. of Rate Counsel

Abeyance continues of the appeal before the DC Circuit of the FERC's orders granting certificates of public convenience and necessity to PennEast Pipeline Company, LLC ("PennEast")²⁰⁵ for the construction and operation of a new 116-mile natural gas pipeline from Luzerne County, Pennsylvania, to Mercer County, New Jersey, along with three laterals extending off the mainline, a compression station, and appurtenant above ground facilities ("PennEast Project"). The cases are being held in abeyance "pending final disposition of any post-dispositional proceedings [] before the United States Supreme Court resulting from the Third Circuit's decision in No. 19-1191 (In re: PennEast Pipeline Company, LLC (3rd Cir. Sep. 10, 2019)), or other action that resolves the obstacle PennEast poses". That decision held that the Eleventh Amendment barred condemnation cases brought by PennEast in federal district court in New Jersey to gain access to property owned by the State or its agencies, thus calling into question the viability of PennEast's proposed project route, and the certificates issued in the underlying case. Until the Third Circuit case is resolved, which is in the midst of proceedings before the Supreme Court, the DC Circuit will not take up this case. Since the last Report, on June 29, 2020, a Joint Status Report was filed, noting developments since the May 4, 2020 Status Report, and reporting that none of the events "constitute any of the conditions that [the DC Circuit] enumerated in its October 1, 2019 Order as triggering an obligation to file a motion governing future proceedings."

- **Opinion 569/569-A: FERC's Base ROE Methodology (16-1325, 20-1227, 20-####)**

Underlying FERC Proceeding: EL14-12; EL15-45²⁰⁶

Petitioners: MISO TOs, FirstEnergy, Transource Energy

The MISO Transmission Owners (TOs), FirstEnergy and Transource 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. Motions to govern future proceedings in the MISO TOs' case are now due August 10, 2020. The FirstEnergy case was assigned case number 20-1227. Initial submissions are due July 30, 2020; dispositive motions and a certified index to the record, August 14, 2020. The Transource case was filed on July 10, 2020. These cases have not been consolidated.

²⁰⁴ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh'g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

²⁰⁵ PennEast is a joint venture owned by Red Oak Enterprise Holdings, Inc., a subsidiary of AGL Resources Inc.; NJR Pipeline Company, a subsidiary of New Jersey Resources; SJI Midstream, LLC, a subsidiary of South Jersey Industries; UGI PennEast, LLC, a subsidiary of UGI Energy Services, LLC; and Spectra Energy Partners, LP.

²⁰⁶ *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).

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