

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of March 2, 2016**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated February 4, 2016 was circulated. New matters/proceedings since the last Report are preceded by an asterisk ‘\*’. Page numbers precede the matter description.

<b>I. Complaints/Section 206 Proceedings</b>	
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* 1	Dominion Energy Manchester Street FCA10 Complaint (EL16-38)	Feb 5 Feb 12-22 Feb 25	Dominion files Complaint NEPOOL, Entergy, NESCOE, National Grid, NRG intervene ISO-NE answers Complaint
1	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Feb 9  Feb 12  Feb 25	Settlement Judge Dring issues status report; 2nd settlement conf. scheduled for Mar 24 Chief Judge Cintron issues order continuing settlement judge procedures FERC issues tolling order providing it additional time to consider VEC request for clarification of Dec 28 order
2	206 Proceeding: Zonal Sloped Demand Curves (EL16-15)	Feb 22	Dominion intervenes out-of-time
3	206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)	Feb 23  Feb 24 Feb 26 Mar 2	Trial Judge Baten issues order setting procedural rules for conduct of hearings NHT requests adoption of protective order Judge Baten issues order adopting protective order Intervenors’ file direct and answering testimony (with summaries), exhibits and work papers
3	Base ROE Complaints (2012 and 2014) Consolidated (EL13-33 and EL14-86)	Feb 8  Feb 9	Parties file joint supplemental exhibit list; supplemental exhibits of TOs, CAPs, and FERC Staff; transcript corrections Trial Judge Sterner issues order accepting transcript corrections

<b>II. Rate, ICR, FCA, Cost Recovery Filings</b>	
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* 6	FCA10 Results Filing (ER16-1041)	Feb 29 Mar 2	ISO files results of tenth FCA; comment date Apr 14 Exelon intervenes
5	ICR, HQICCs and Related Values - 2019/20 Power Year (ER16-307)	Feb 8  Feb 26	NRG requests rehearing of Jan 8 order accepting 2019/20 ICR, HQICC, and LSR Values NESCOE answers NRG request for rehearing
6	Eversource CCRP Cost Treatment Proposal (ER16-116)	Feb 16	Eversource files response to deficiency letter; comment date Mar 9

<b>III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests</b>	
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* 8	DARD Pump Parameter Changes (ER16-954)	Feb 17 Feb 18 Feb 26- Mar 2	ISO-NE and NEPOOL jointly file changes; comment date Mar 9 ISO-NE submits errata filing; comment date Mar 10 Entergy, Exelon intervene
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* 8	Transmission Outage Scheduling Revisions (ER16-937)	Feb 12	ISO-NE and NEPOOL jointly file changes deleting “Major Transmission Outage” terminology and modifying the Long-Term economic evaluation requirements for transmission outages submitted to ISO-NE at least 90 days in advance of the start of the outage; comment date Mar 4
		Feb 17-25	National Grid, Exelon intervene
* 9	FRM Offer Cap, Elimination of Price Netting (ER16-921)	Feb 10	ISO-NE and NEPOOL jointly file changes adjusting the FRM offer cap and eliminating the need to net the FCA price from the FRM price for a Forward Reserve Resource
		Feb 11- Mar 1	ConEd, Dominion, Energy, EPSA, Eversource, GDF Suez, National Grid, NRG, Public Citizen intervene
		Mar	NEPGA/EPSC file comments supporting the changes
9	New DNE Dispatch Changes Effective Date (ER16-870)	Feb 19-23	NEPOOL, Exelon, NRG intervene
9	FCM Resource Retirement Reforms (ER16-551)	Feb 5-8 Feb 12 Feb 29	Dominion, GEN Group, NEPGA, NRG, PSEG file protests FERC issues deficiency letter; ISO-NE response due Feb 29 ISO-NE files responses to Feb 12 deficiency letter; new requested effective date - Mar 1; comment date Mar 21
		Mar 1	NEPGA submits initial protest of ISO-NE Feb 29 response and request for emergency FERC action
11	Jump Ball Filing: Winter Reliability Program (ER15-2208)	Feb 24	FERC denies Entergy request for rehearing of Sep 11 <i>Winter 2015-18 Reliability Program Order</i>

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

* 12	Generator Interconnection Revisions (ER16-946)	Feb 16	ISO and PTO AC jointly file changes to revisions to OATT Schedules 22, 23 and 25 to incorporate certain interconnection process improvements; comment date Mar 8
		Feb 18- Mar 2	NEPOOL, NESCOE, Entergy, Exelon, RENEW Northeast intervene
12	RSP Timing Changes (ER16-819)	Feb 11-19	Exelon, Eversource intervene
12	CTS Conforming Changes (ER15-2641)	Feb 5	FERC accepts changes, eff. Dec 15, 2015

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

*No Activity to Report*

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

* 13	Schedule 22: New England Wind LGIA (ER16-1024)	Feb 29	ISO and National Grid file non-conforming LGIA to replace 2007 LGIA governing interconnection of New England Wind’s 28.5 MW Hoosac Project in MA; comment date Mar 21
* 13	Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)	Feb 26 Feb 29 Mar 1	Eversource companies file to recover FERC-jurisdictional transmission merger-related costs incurred as the result of the Apr 10, 2012 NU/NSTAR merger; comment date Mar 18 Eversource submits information filing to inform parties in various other dockets of Section 205 filing in this proceeding Eversource submits partial tariff records in Word format, replacing pdf format filed on Feb 29

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|------|---|--------|--|
| * 13 | Schedule 21-NEP: CV South Street Landing Reimbursement Agreement (ER16-986) | Feb 22 | Narragansett (National Grid) files Cost Reimbursement Agreement; comment date Mar 14 |
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**VII. NEPOOL Agreement/Participants Agreement Amendments**

*No Activity to Report*

**VIII. Regional Reports**

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|------|--|----------------------------|--|
| * 14 | Capital Projects Report - 2015 Q4 (ER16-928) | Feb 11<br>Feb 23<br>Feb 25 | ISO files Q4 Report; comment date Mar 3<br>NEPOOL intervenes<br>NEPOOL files comments supporting Q4 Report |
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**IX. Membership Filings**

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|------|--|------------------|---|
| * 15 | March 2016 Membership Filing (ER16-1031)   | Feb 29           | Membership: EDF Energy Services; Terminations: Guzman Energy, Westerly Hospital Companies; comment date Mar 21  |
| 15   | February 2016 Membership Filing (ER16-836) | Feb 26           | FERC accepts (i) the membership of GBE Power Inc.; (ii) the terminations of: Glacial Energy of New England, Parkview Adventist Medical Center, and Vermont Marble; and (iii) the name change of: Constellation Energy Power Choice, LLC   |
| 15   | January 2016 Membership Filing (ER16-670)  | Feb 18           | FERC accepts (i) the Jan 1 memberships of Solea Energy and Archer Energy (Supplier Sector); (ii) the terminations of: Gulf Oil (Supplier Sector), Tyngsboro Spindle and Beacon Power (AR Sector), and Hawkes Meadow Energy (Related Person of Wallingford Energy, Generation Sector); and (iii) the name change of: Uniper Global Commodities North America LLC |
| * 15 | Suspension Notice (not docketed)           | Feb 22<br>Feb 23 | Gallop Power Greenville suspended from New England Markets<br>ISO-NE files notice of Gallop Power Greenville suspension   |

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

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|----|--|---------------------------|--|
| 16 | Revised Reliability Standard: MOD-031-2 (RD16-1)       | Feb 18                    | FERC approves revised Standard; eff. Oct 1, 2016   |
| 16 | New Reliability Standard: BAL-002-2 (RM16-7)           | Feb 12                    | NERC submits supplemental information clarifying how BAL-002-2 will work in conjunction with the successor provisions to TOP-007-0   |
| 16 | Order 822: Revised CIP Reliability Standards (RM15-14) | Feb 4<br>Feb 22<br>Feb 25 | Trade Associations request extension of time for implementation of the CIP version 5 Standards for entities with High and Medium Impact BES Cyber Systems from Apr 1, 2016 to Jul 1, 2016<br>FRS and Isologic request rehearing of Order 822<br>FERC grants Trade Associations' request; new implementation date Jul 1, 2016 |
| 17 | NOPR: New Reliability Standard: TPL-007-1 (RM15-11)    | Mar 1                     | Technical conference held  |

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

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|------|--|--------|---|
| * 20 | 203 Application: Essential Power (EC16-82)   | Feb 29 | Essential Power and Nautilus Generation request FERC authorization for the sale of Essential to Nautilus; comment date Mar 21 |
| 20   | 203 Application: ReEnergy Sterling (EC16-58) | Feb 25 | ReEnergy Sterling submits additional information regarding purchaser (Empire Tire) in response to Staff request               |

20	203 Application: Narragansett/ Entergy RISE (EC16-50)	Feb 12	FERC approves National Grid acquisition of RISE interconnection facilities
21	203 Application: Calpine/Granite Ridge (EC16-19)	Feb 5 Feb 11	Calpine consummates acquisition of Granite Ridge Calpine files notice of Feb 5 consummation
21	203 Application: Passadumkeag Wind Park (SunEdison/ Quantum) (EC15-217)	Feb 26	Passadumkeag notifies the FERC that the previously-authorized transaction has not been, nor will it be, consummated
21	Cost Sharing Agreements re: Greater Boston Area Transmission Solution Plan (ER16-878 et al.)	Feb 17	National Grid intervenes
22	Emera MPD OATT Changes (ER15-1429; EL16-13)	Feb 5 Feb 23	Chief Judge Cintron issues order continuing settlement judge procedures FERC accepts MPD OATT sections filed Jan 4
23	FERC Enforcement Action: Show Cause Order – Coaltrain et al. (IN16-4)	Feb 5 Feb 17	Respondents elect prompt assessment of a penalty and a “de novo trial” in federal district court OE Staff responds to Respondents’ election, indicating that a federal trial is not guaranteed and they would not oppose a request by Respondents to revoke their election if made before an order addressing responses to the Coaltrain Show Cause Order is issued
24	Etracom & M. Rosenberg (IN16-2)	Feb 16	Etracom and Rosenberg answer <i>Etracom Show Cause Order</i> , denying OE Staff’s allegations and urging the FERC to terminate this proceeding; OE Staff reply due Mar 17

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

25	Price Formation in RTO/ISO Energy and Ancillary Services Markets (AD14-14)	Feb 17	PJM files its report on price formation issues
* 25	NOI: Primary Frequency Response - Need for Reforms Related to Provision and Compensation (RM16-6)	Feb 18	FERC issues NOI regarding the need for reforms to its rules and regulations regarding the provision and compensation of primary frequency response; comment date Apr 25
26	NOPR: Reactive Power Requirements for Wind Generators (RM16-1)	Feb 5 Feb 19 Feb 26	NEPOOL submits supplemental comments Midwest Energy submits comments Six Cities submits reply comments

**XIII. Natural Gas Proceedings**

* 29	Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)	Feb 19 Feb 25- Mar 2	Algonquin requests approval of tariff modifications that provide an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by EDCs that are participating in state-regulated electric reliability programs Parties intervene; comments supporting filing filed by New England LDCs, National Grid Gas Delivery Cos., Eversource; protests filed by CLF, GDF Suez; Repsol requests technical conference
29	Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)	Feb 10-11 Feb 22	Prehearing conferences held in each proceeding Empire requests rehearing of its order

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

*No Activity to Report*

**XV. Federal Courts**



* 33	FCA9 Results Filing (16-1068**)	Feb 24	UWUA Local 464 and Robert Clark filed a petition for review of the FERC's orders on the FCA9 Results Filing
		Feb 26	Clerk issues order directing, with deadlines for, initial submissions
* 33	New Entry Pricing Rule Complaint Appeal (16-1042**)	Feb 8	Exelon appeals FERC's order denying Exelon/Calpine's New Entry Pricing Rule Complaint
		Feb 10	Clerk issues order regarding appearances and initial submissions; Exelon requests this proceeding be consolidated with 15-1071
		Mar 1	Court grants Exelon's motion to consolidate this proceeding with 15-1071; parties instructed to file motions to govern further proceedings in the consolidated cases on or before Mar 28
33	NEPGA Peak Energy Rent (PER) Complaint (16-1024)	Feb 18	NEPGA files Docketing Statement Form, Statement of Issues, and procedural motions, including a request to consolidate this appeal with 16-1023
		Feb 24	Court grants NEPGA's motion to consolidate with 16-1023
34	FCM Jump Ball and Compliance Proceedings (16-1023)	Feb 18	NEPGA files Docketing Statement Form, Statement of Issues, and procedural motions
		Feb 24	Court grants NEPGA's motion to consolidate with 16-1024
34	Base ROE Complaints (2012 and 2014) (15-1212)	Feb 16	Parties file 2nd 90-day status report
35	Base ROE Complaint (2011) (15-1118, 15-1119, 15-1121**) (consolidated)	Feb 12	FERC files Respondent Brief
36	FCM Administrative Pricing Rules Complaint (15-1071**)	Mar 1	Court grants Exelon's motion to consolidate this proceeding with 16-1042; parties instructed to file motions to govern further proceedings in the consolidated cases on or before Mar 28
36	2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))	Feb 17	Court issues mandate (official remand) to FERC
38	Hughes v. Talen Energy Marketing (Supreme Court, 14-614/14-623 consol.)	Feb 24	Oral argument held
41	Entergy Nuclear Fitzpatrick, LLC et al v. Zibelman et al (NY PSC Commissioners) (NDNY 5:15-cv-00230-DNH-TWD)	Feb 19	Court re-schedules Feb 23 telephone conference to Apr 20, 2016

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

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

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

**DATE:** March 2, 2016

**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”), state regulatory commissions, and the Federal Courts and legislatures through March 2, 2016. If you have questions, please contact us.<sup>1</sup>

**I. Complaints/Section 206 Proceedings**

- **Dominion Energy Manchester Street FCA10 Complaint (EL16-38)**

On February 5, 2016, Dominion Resources Services, Inc., on behalf of Dominion Energy Marketing, Inc. (“DEM”) and Dominion Energy Manchester Street, Inc. (collectively, “Dominion”) filed a Complaint requesting that the FERC find that the ISO violated its Tariff in preventing new incremental capacity at Manchester Street Station (“Manchester Street”) from participating in FCA10 and direct the ISO to award the incremental capacity a Capacity Supply Obligation (“CSO”) for the FCA10 Capacity Commitment Period at the higher of the New Capacity Offer approved for the incremental MWs or the FCA10 Capacity Clearing Price for the Southeastern New England (“SENE”) Capacity Zone, if it is apparent that the incremental capacity would have cleared the auction. Dominion explained that the ISO prevented incremental capacity from Manchester Street from participating because Dominion failed to submit a “composite offer” between the new capacity and the existing capacity at the same Manchester Street Unit. Dominion challenged the ISO-NE position that the Manchester Street-related composite offer was required. The ISO answered the Manchester Street Complaint on February 25 (urging the FERC to deny the Complaint or, should it direct New Generating Capacity Resources CSOs as if they had been awarded in FCA10, also direct that the payment for those resources should be limited to the Capacity Clearing Price for the 2019-2020 Capacity Commitment Period only). Doc-less interventions were filed by NEPOOL, Entergy National Grid, NESCOE, and NRG. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC instituted this Section 206 proceeding on December 28, 2015, finding that the ISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff “lacks adequate transparency and challenge procedures with regard to the formula rates” for Regional Network Service (“RNS”) and Local Network Service (“LNS”).<sup>2</sup> The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of

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

<sup>2</sup> *ISO New England Inc. Participating Transmission Owners Admin. Comm. et al.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh’g requested*.

the RNS and LNS rates”.<sup>3</sup> Accordingly, the FERC established hearing and settlement judge procedures to develop just and reasonable formula rate protocols to be included in the ISO-NE Tariff and to examine the justness and reasonableness of the RNS and LNS rates. The FERC encouraged the parties to make every effort to settle this matter before hearing procedures are commenced.<sup>4</sup> Hearings will be held in abeyance pending the outcome of settlement judge procedures.<sup>5</sup> The FERC-established refund date is January 4, 2016.<sup>6</sup> Interventions were due February 3, 2016 and were filed by NEPOOL, the ISO, Braintree, Chicopee, Champlain VT, CT AG, CT DEEP, CT OCC, CT PURA, CMEEC, Fitchburg, Green Mountain, Liberty Utilities, MA AG, MA DPU, Maine Office of Public Advocate (“MOPA”), Middleborough, MMWEC, MPUC, Nat’l Grid, NESCOE, NHEC, NH OCA, Norwood, Public Citizen, Reading, RI PUC, Taunton VEC, VELCO, VPSA, VT DPS, Wallingford, and APPA.

**Request for Rehearing.** On January 27, Vermont Electric Cooperative (“VEC”) requested rehearing of the December 28 order. Specifically, VEC asserted that, because VEC is not a public utility, the FERC has no power under Section 206 of the Federal Power Act (“FPA”) to institute a proceeding against it. In addition, VEC asserted that by directing an investigation of VEC’s LNS rate, the FERC also exceeded its authority, as VEC’s LNS rate is not a pass through rate that is administered or charged by the ISO. On February 25, the FERC issued a tolling order affording it additional time to consider the VEC request for rehearing, which remains pending before the FERC.

**Settlement Judge Procedures.** On January 11, Chief Judge Cintron designated Judge John P. Dring as the Settlement Judge and scheduled a first settlement conference, which was held January 19. On January 22, Judge Dring issued an order scheduling a second settlement conference for March 24. Since the last Report, Judge Dring issued a status report indicating that “the parties are making progress toward settlement,” and recommending that settlement procedures be continued. And, on February 12, Chief Judge Cintron issued an order continuing settlement judge procedures.

- **206 Proceeding: Zonal Sloped Demand Curves (EL16-15)**

On December 28, 2015, the FERC instituted a Section 206 proceeding finding that the ISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff “applies vertical demand curves within constrained zones, which does not sufficiently address concerns such as price volatility and a susceptibility to the exercise of market power as part of the Forward Capacity Market (“FCM”) rules.”<sup>7</sup> The FERC directed the ISO to submit Tariff revisions “that provide for inclusion of zonal sloped demand curves in its FCM rules, to be implemented beginning with FCA 11.”<sup>8</sup> Finding that “concerns with continued use of vertical demand curves weigh more heavily than they did a year ago”,<sup>9</sup> and that “the general challenges cited by ISO-NE [explaining the delay in developing zonal sloped demand curves] do not justify further delay”,<sup>10</sup> the FERC directed that Tariff changes be filed, following a request for extension granted, by **April 15, 2016**.<sup>11</sup> Interventions in EL16-15 were

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<sup>3</sup> *Id.* at P 8.

<sup>4</sup> *Id.* at P 11.

<sup>5</sup> *Id.*

<sup>6</sup> The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

<sup>7</sup> *ISO New England Inc. et al.*, 153 FERC ¶ 61,338 (Dec. 28, 2015).

<sup>8</sup> *Id.* at P 11.

<sup>9</sup> *Id.* at P 15.

<sup>10</sup> *Id.* at P 14.

<sup>11</sup> *Id.* at P 16. The original compliance filing date, March 31, 2016, was slightly accelerated from the tentative schedule identified by the ISO in its Oct. 30, 2015 informational report in ER14-1639. That Report summarized a schedule contemplating Participants Committee consideration of a zonal demand curve proposal at the NPC’s April 2016 meeting, with a FERC filing shortly thereafter. See Dec. 2, 2015 Litigation Report, Section VIII, Demand Curve



due January 19. Interventions were filed by the ISO, NEPOOL, Calpine, Champlain VT, CT DEEP, CT OCC, CT PURA, Dominion (out-of-time), EPSA, Essential Power, Exelon, MA AG, MPUC, National Grid, NEPGA, NESCOE, NH OCA, Public Citizen, TransCanada, and the American Petroleum Institute (“API”), American Public Power Association (“APPA”). On January 27, NEPOOL, the ISO and NESCOE jointly requested an extension of time, to April 15, 2016, to file changes in response to the December 28 order in this proceeding. That request was granted on February 3. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)**

The hearing process in this proceeding is underway. As previously reported, after settlement judge proceedings were terminated, Chief Judge Cintron designated ALJ Philip Baten as the trial judge in this proceeding, and, ultimately, established Track II procedural time standards for the hearing. As previously reported, on January 8, 2016, Judge Baten issued an order setting the procedural schedule for the hearing process, with hearing set to commence July 19, 2016 and an initial decision due November 1, 2016. NHT filed, on February 2, its initial direct testimony, exhibits and work papers. Since the last Report, orders setting the rules for the conduct of hearings and adopting a protective order for use in this proceeding (as requested by NextEra) were issued on February 23 and 26, respectively. Intervenors’ direct and answering testimony (with summaries), exhibits and work papers were filed March 2, 2016.

**Background.** On August 12, 2015, the FERC issued an order accepting the TOs’ July 31, 2014 informational rate filing but, in response to a protest by “Public Representatives”,<sup>12</sup> instituted a Section 206 proceeding in Docket EL15-85 to examine whether the recovery by New Hampshire Transmission (“NHT”) of SeaLink project development costs through the RNS formula rate is just and reasonable.<sup>13</sup> The FERC encouraged the parties to make every effort to settle their dispute before hearings were commenced, and held the hearings in abeyance pending the outcome of settlement judge procedures.<sup>14</sup> The FERC-established refund effective date is August 19, 2015.<sup>15</sup> On December 11, Public Representatives requested the following two clarification of the *August 12 Order*: (i) that, in establishing the August 19, 2015 refund effective date, the FERC “did not intend to preclude the ability to order refunds for past periods if it is found that a formula rate has been misapplied”; and (ii) that, in establishing an FPA Section 206 proceeding, the FERC did not intend to relieve NHT of its obligation to demonstrate that its Sealink planning costs “are properly recoverable under the formula rate on file with the [FERC].” On December 14, NHT filed a response taking no position on whether the FERC should provide the requested clarifications, but should it, stating no objection to the FERC making the clarifications requested. Public Representatives’ request for clarifications is pending before the FERC. If there are questions on these proceedings, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **Base ROE Complaints (2012 and 2014) Consolidated (EL13-33 and EL14-86)**

As previously reported, the FERC, in response to second (EL13-33<sup>16</sup>) and third (EL14-86<sup>17</sup>) complaints regarding the TOs’ 11.14% return on equity (“Base ROE”), issued orders establishing trial-type,

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Changes Progress Reports (ER14-1639) at p. 17. The compliance filing date was subsequently extended to April 15, 2016, to allow for a vote at the April 8, 2015 NPC meeting.

<sup>12</sup> “Public Representatives” are the MA AG, CT OCC, CT PURA, the RI PUC, the Attorney General of the State of Rhode Island (“RI AG”), the Maine Public Advocate (“MOPA”) and the Vermont Department of Public Service (“VT DPS”).

<sup>13</sup> *ISO New England Inc. Participating Transmission Owners Admin. Comm. and New Hampshire Transmission, LLC*, 152 FERC ¶ 61,121 (Aug. 12, 2015) (“*August 12 Order*”).

<sup>14</sup> *Id.* at P 20.

<sup>15</sup> The notice of this proceeding was published in the *Fed. Reg.* on Aug. 19, 2015 (Vol. 80, No. 160) p. 50,271.

<sup>16</sup> The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition (“NICC”, and together, the “2012 Complainants”), challenged the TOs’ 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.



evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;<sup>18</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>19</sup> and, because of “common issues of law and fact”, consolidated the two proceedings for purposes of hearing and decision, with the FERC finding it “appropriate for the parties to litigate a separate ROE for each refund period.”<sup>20</sup> The TOs requested rehearing of both orders. On May 14, the FERC denied rehearing of both orders.<sup>21</sup> On July 13, the TOs appealed those orders to the DC Circuit Court of Appeals (see Section XIV below).

**Hearings.** The hearings in this matter began June 25, 2015 and were completed on July 2, 2015. Just prior to the commencement of the hearing, pursuant to an unopposed motion of the TOs, Judge Sterner adopted a proposed protective order to permit the exchange and use during hearing of certain confidential materials provided by Thomson Reuters. Joint Transcript Corrections and a Final Index of Exhibits were submitted on July 13, 2015. Judge Sterner adopted the transcript corrections on July 15. On July 29, 2015, a Joint Procedural History was submitted, as were initial briefs by the Complainant-Aligned Parties, TOs, EMCOS and FERC Staff. On August 26, 2015, Reply Briefs were submitted by the Complainant-Aligned Parties, TOs, EMCOS and FERC Staff, as was a Joint List of Appearances. On December 18, 2015, finding none of the parties performed the discounted cash flow (“DCF”) methodology in accordance with the FERC’s preferred approach, Trial Judge Sterner reopened the record for the limited purpose of having calculations re-run based on data already in the record as of the close of hearing on July 2, 2015, so that the zone of reasonableness and ROE could be established in both cases. Judge Sterner scheduled a January 5 prehearing conference for the purpose addressing questions and completing the remainder of the procedural schedule. Also on December 18, Chief Judge Cintron set a new deadline for Judge Sterner’s Initial Decision at March 31, 2016.

As previously reported, TOs and FERC Staff filed the supplemental testimonies of their expert witnesses on January 15; Consumer-Aligned Parties, January 20. On January 27, the TOs’ moved to strike Consumer-Aligned Parties’ supplemental expert testimony. The Consumer-Aligned Parties opposed the TOs’ motion to strike on January 28. A limited hearing on the supplemental information and motions related thereto was held on February 1, 2016. An order adopting the transcript corrections from that hearing was issued on February 9. As noted above, an initial decision is now due on or before March 31. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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<sup>17</sup> The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General (“MA AG”), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the “2014 ROE Complainants”), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

<sup>18</sup> *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al.*, 147 FERC ¶ 61,235 (June 19, 2014) (“2012 Base ROE Initial Order”), *reh’g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

<sup>19</sup> *Mass. Att’y Gen. et al. -v- Bangor Hydro et al.*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh’g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

<sup>20</sup> *Id.* at P 27 (for the refund period covered by EL13-33 (i.e., Dec. 27, 2012 through Mar. 27, 2014), the ROE for that particular 15-month refund period should be based on the last six months of that period; the refund period in EL14-86 and for the prospective period, on the most recent financial data in the record).

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

- **Base ROE Complaint (2011) Refund Reports (EL11-66)**

On November 2, the TOs submitted a refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*<sup>22</sup> and *531-B*.<sup>23</sup> As previously reported, following the issuance of *Opinion 531-B*, which denied rehearing of *Opinion 531*<sup>24</sup> and *Opinion 531-A*, the TOs requested an extension of time to permit the following deadlines in connection with refunds resulting from *Opinion No. 531-B*: August 31, 2015, for regional refunds; October 31, 2015, for the regional refund report; October 31, 2015, for local refunds; and December 31, 2015, for the final local refund report. The TOs submitted the additional local refund reports at the end of December (*see* Section VIII below). Other than action on the filed local refund reports, and absent a successful challenge in the federal courts (*see* Section XV below), these proceedings are concluded. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

- **ICR-Related Values and HQICCs - 2019/20 Power Year (ER16-307)**

As previously reported, the FERC accepted, on January 8, 2016, the ICRs, Hydro Quebec Interconnection Capability Credits (“HQICCs”) and related Local Sourcing Requirements (“LSR”) values for the 2019/20 Capability Year.<sup>25</sup> With a 2019/20 ICR of 35,151 MW (reflecting tie benefits of 1,990 MW) and HQICCs of 975 MW/mo., the net amount of capacity to be purchased in FCA10 to meet the ICR was 34,151 MW. The LSR for the SENE Capacity Zone was 10,028 MW. The 1-in-5 Loss of Load Expectation (“LOLE”) and 1-in-87 LOLE capacity requirement values for the Demand Curve were 33,076 MW and 37,053 MW, respectively. In accepting the 2019/20 values, the FERC noted “that ISO-NE followed the Commission’s expectation that ISO-NE would work with its stakeholders to address the incorporation of solar PV forecasts into the ICR calculation for FCA 10.”<sup>26</sup> The FERC found that the ISO “properly incorporated Non-Embedded Solar Resources into its ICR calculation, and has supported that action,” dismissing arguments made by protesters to the contrary.<sup>27</sup> With respect to protests regarding the underlying stakeholder process, the FERC found that, “while those discussions did not result in NEPOOL’s support of ISO-NE’s proposed ICR, [ ] the stakeholder process ... provided sufficient process, and, contrary to NEPGA’s assertion in its answer, considered the operational and market consequences of its change to its method of calculating the ICR.”<sup>28</sup>

On February 8, NRG requested rehearing of the *2019/20 ICR/HQICCs Order* (asserting that, because “ISO-NE provided no evidence that it meaningfully ‘explore[d] the incorporation of distributed generation’ and ‘examine[d] the market and operational issues,’ the Commission erred in agreeing with ISO-NE that it abided by the Commission’s earlier order.” NRG requested that the FERC “clarify that any further changes to the Installed Reserve Margin forecasting methodology to take into account behind-the-meter resources will provide market participants advance notice, and the opportunity to comment on, methodological changes to ICR calculations.” On February 26, NESCOE answered the NRG request for rehearing (asserting that the *2019/20 ICR/HQICCs Order* reflects the FERC’s careful consideration of the issues raised in NRG’s rehearing request and that none of

<sup>22</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

<sup>23</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

<sup>24</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, 147 FERC ¶ 61,234 (June 19, 2014) (“*Opinion 531*”), order on paper hearing, 149 FERC ¶ 61,032 (2014), *reh’g denied*, 150 FERC ¶ 61,165 (Mar. 3, 2015).

<sup>25</sup> *ISO New England Inc.*, 154 FERC ¶ 61,008 (Jan. 8, 2016) (“*2019/20 ICR/HQICCs Order*”), *reh’g requested*.

<sup>26</sup> *Id.* at P 27.

<sup>27</sup> *Id.* at PP 30-37.

<sup>28</sup> *Id.* at P 37.

NRG's arguments require the FERC to provide any additional explanation of its finding). The NRG request for rehearing is pending before the FERC, with FERC action required on or before March 9, 2016, or the NRG request will be deemed denied. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **FCA10 Results Filing (ER16-1041)**

On February 29, the ISO filed the results of the tenth FCA ("FCA10") held February 8, 2016. The ISO reported the following highlights:

- ◆ FCA10 Capacity Zones were the Southeastern New England ("SENE") Capacity Zone (the Northeastern Massachusetts ("NEMA")/Boston, Southeastern Massachusetts, and Rhode Island Load Zones) and the Rest-of-Pool Capacity Zone (the Connecticut, Maine, Western/Central Massachusetts, New Hampshire, and Vermont Load Zones)
- ◆ FCA10 commenced with a starting price of \$17.296/kW-mo. and concluded for SENE and Rest-of-Pool after four rounds.
- ◆ Resources will be paid as follows:
  - ▶ SENE, Rest-of-Pool, and imports over the HQ interfaces (224 MW): \$7.03/kW-month
  - ▶ NY AC Ties imports (1,045 MW): \$6.26/kW-month
  - ▶ New Brunswick imports (181 MW): \$4.00/kW-month
- ◆ No resources cleared as Conditional Qualified New Generating Capacity Resources
- ◆ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource
- ◆ No de-list bids were rejected for reliability reasons

The ISO asked the FERC to accept the FCA10 rates and results, effective June 28, 2016. Comments on this filing are due on or before April 14, 2016. Thus far, a doc-less intervention was filed by Exelon. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Eversource CCRP Cost Treatment Proposal (ER16-116)**

As previously reported, Eversource submitted, on October 19, 2015, a proposal to treat \$15.7 million incurred in connection with the Central Connecticut Reliability Project ("CCRP") as capital costs of the New England East-West Solution ("NEEWS") transmission project. As part of its proposal, Eversource proposes to forgo the two ROE incentive adders that the FERC granted to the NEEWS Project (i.e., the 125 basis points for new transmission under *Order 679* and 50 basis points for participation in an RTO), given this component was redesigned and subsumed into a successor transmission project that does not have transmission incentives under *Order 679*. The proposal included changes to OATT Attachment F and the Attachment F Implementation Rule. Eversource stated that its proposal will have a rate reduction effect. Eversource requested an April 16, 2015 effective date (the date on which ISO-NE approved the Greater Hartford and Central Connecticut Project and Eversource withdrew its original CCRP PPAs from consideration in the RSP). Comments on this filing were due on or before November 9, 2015; none were filed. Doc-less interventions were filed by NESCOE, MA AG, and National Grid.

**Deficiency Letter.** On December 16, the FERC issued a deficiency letter, indicating that additional information, identified in the deficiency letter, was required for the filing to be processed. In addition to the deficiency letter response, the FERC directed Eversource to have the ISO re-submit the proposed revisions to Attachment F to recover the CCRP costs based on the current effective version of the ISO Tariff (finding the Tariff revisions submitted did not reflect the currently effective version of Attachment F accepted by the FERC in ER15-1629, effective June 1, 2015). Eversource's response to the deficiency letter, following an extension granted by the FERC, was due February 15, 2016. Eversource filed its response on February 16, with some of the information protected as confidential information. Comments, if any, on the deficiency letter are due on or before March 9, 2016. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **FCA1 Results Remand Proceeding (ER08-633)**

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order<sup>29</sup> that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding<sup>30</sup> for further consideration. In particular, the FERC was directed to (i) determine whether PSEG's position (that it should receive the full (unprorated) floor price for all its resources that it could not prorate) would be an appropriate way to interpret the then-existing Market Rules and, if not, (ii) respond to PSEG's objections that any contrary result would result in "undue discrimination" and would be "inconsistent with the fundamental policy goals" of FCM.

In a long-awaited order, the FERC, on June 2, 2015, reversed its prior determination and found that, given that the ISO had prohibited resources needed for reliability from prorating quantity based on its interpretation of the Proration Rule, it was appropriate to consider resettlements to those resources that were not able to prorate quantity.<sup>31</sup> "[W]here resources needed for reliability were prohibited from prorating quantity under the Proration Rule, they should have received the full market clearing price for each megawatt offered."<sup>32</sup> Although the FERC found that the ISO reasonably interpreted the Proration Rule as allowing it to limit certain suppliers' ability to prorate quantity, in order to maintain reliability, and the FERC disagrees with PSEG's argument that it would be unduly discriminatory under the FPA to make unavailable to certain resources the option to choose quantity proration instead of price proration, the FERC found that resources prevented from prorating quantity must also receive "a just, reasonable, and not unduly discriminatory or preferential rate," (i.e. the full clearing price for each megawatt offered).

Accordingly, the FERC established a briefing schedule to permit the parties to address issues relating to the amounts of such resettlements (i.e., the difference between a resource's actual payment and what the payment would have been had proration of the resource not been rejected for reliability reasons), and the parties to which those payments should be charged and to whom they should be paid (taking into consideration any possible changes in ownership, retirements, or similar new circumstances of the resources in question).

In its initial brief filed on July 17, 2015, the ISO identified:

- the Connecticut resources that were unable to prorate quantity in FCA1, and the number of MWs for which each resource received a CSO;
- the resettlements due to each such entity, based on the difference between (1) the prorated price that the resources did receive (4.254/kW-mo.), and (2) the un-prorated capacity clearing price that the resources would have received absent price proration (4.50/kW-mo.), plus interest (total refunds with interest will total approximately \$20.4 million);
- the parties to whom the resettlements would be charged (those with Regional Network Load within Connecticut during that time) and paid (the resource's Lead Market Participant during each month of FCA1); and
- the mechanism by which the ISO would make such resettlements.

The ISO did not identify any considerations that would render the resettlements inappropriate or difficult. For purposes of its brief, the ISO assumed a December 14, 2015 resettlement date. Initial briefs were also submitted by Bridgeport Energy, Dominion, and Bridgeport Energy. A reply brief was submitted on August 17 by Bridgeport Energy (requesting that payments be paid to the legal entity that owned the

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<sup>29</sup> *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

<sup>30</sup> *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008); *reh'g denied*, 130 FERC ¶ 61,235 (2010), *remanded*, *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

<sup>31</sup> *ISO New England Inc.*, 151 FERC ¶ 61,196 (June 2, 2015) ("*FCA1 Remand Order*").

<sup>32</sup> *Id.* at P 14.

resource at the time of the FCA 1 Commitment Period or, if that legal entity no longer exists, to the successor in interest to ownership of the subject resource). On September 2, the ISO answered Bridgeport Energy's reply brief, advocating for resettlement payments to the Lead Market Participant during the first Capacity Commitment Period. 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](mailto:pmgerity@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

- **Lotus Energy Waiver Request (EL16-22)**

Lotus withdrew its Waiver Request/Complaint on February 2. As previously reported, in a December 22 motion filed under Section 206 of the FPA, Lotus Energy Group, LLC ("Lotus") requested a waiver of the application of the existing New Resource Offer Floor Price rules to its two generating facilities currently under development (the "Projects"). Lotus stated that it did not seek the adoption of a generically applicable exemption from those rules and does not seek to change any Market Rules.<sup>33</sup> Rather, it sought an order that allows the Projects to avoid be subject to mitigation under the Tariff, mitigation which Lotus asserts would be "unjust, unreasonable, and directly contrary to [FERC] policy and precedent". Comments on the Lotus Complaint were due on or before January 21. Interventions were filed by APPA, Calpine, Champlain ConEd, VT, Entergy, National Grid, NEPGA, and NESCOE. NEPOOL filed limited comments on January 19, 2016. The ISO and NRG filed protests on the January 21 comment date. Lotus answered the ISO and NRG protests on February 28 and, "because ISO-NE has stated that an order granting the Complaint would necessitate a delay in [FCA10], Lotus respectfully makes an emergency motion asking the Commission to delay the start of the auction until after it acts on the Complaint and ISO-NE has had sufficient time to implement relief." However, on February 2, Lotus withdrew that motion and its Complaint, stating that it "has been unable to secure the financing necessary to satisfy the remainder of the collateral deposit required for the Projects ... to participate in ... FCA 10. Lotus' inability to secure financing was caused in large part by ISO-NE's imposition of a New Resource Offer Price under its currently effective tariff and the associated business uncertainty." Lotus noted that it had separately "commenced discussions with ISO-NE concerning the need to avoid the unnecessary and harmful mitigation of truly competitive entrants in the future. Lotus intends to pursue this issue through the stakeholder process in advance of [FCA11]." If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **DARD Pump Parameter Changes (ER16-954)**

On February 17, 2016, as corrected on February 18,<sup>34</sup> the ISO and NEPOOL jointly filed Tariff changes to improve the way that pump storage hydro-generating resources are modeled and dispatched. The DARD Pump Parameter Changes were supported by the Participants Committee at its December 4, 2015 meeting (Consent Agenda Item #3). A March 31, 2017 effective date was requested. Comments on this filing, as corrected, are due March 10, 2016. Doc-less interventions have thus far been filed by Entergy and Exelon. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Transmission Outage Scheduling Revisions (ER16-937)**

On February 12, 2016, the ISO and NEPOOL jointly filed Tariff revisions deleting "Major Transmission Outage" terminology and modifying the Long-Term economic evaluation requirements for transmission outages submitted to the ISO at least 90 days in advance of the start of the outage. These revisions to Appendix G to Market Rule 1 and the Tariff's Definitions section were supported by the Participants Committee at its December 4, 2015 meeting. An April 13, 2016 effective date was requested. Comments on this filing are due March 4,

<sup>33</sup> Lotus Complaint at pp. 12-13.

<sup>34</sup> The Errata filing contained changes to Tariff Section I.2.1 (Definitions) that were omitted inadvertently from the original filing.



2016. Thus far, doc-less interventions have been filed by Exelon and National Grid. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **FRM Offer Cap, Elimination of Price Netting (ER16-921)**

On February 10, 2016, the ISO and NEPOOL jointly filed changes adjusting the Forward Reserve Market (“FRM”) offer cap and eliminating the need to net the FCA price from the FRM price for a Forward Reserve Resource (“FRM Changes”). The FRM Changes were supported by the Participants Committee at its December 4, 2015 meeting (Consent Agenda Item #2). While a June 1, 2016 effective date was requested, the ISO asked the FERC to issue an order no later than April 11. Comments on this filing were due March 2, 2016 and were filed by NEPGA and EPSA (supporting the filing). Doc-less interventions were filed by ConEd, Dominion, Entergy, EPSA, Eversource, GDF Suez, National Grid, NRG, and Public Citizen. This matter is pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **New DNE Dispatch Changes Effective Date (May 25, 2016) (ER16-870)**

On February 2, 2016, the ISO filed changes to establish May 25, 2016 (rather than April 10, 2016) as the effective date for the new Do Not Exceed (“DNE”) Dispatch Changes. The FERC accepted the DNE Dispatch Changes to become effective on April 10, 2016 in an order issued on July 23, 2015.<sup>35</sup> However, in its February 2 filing, the ISO reported that it would not be able to implement the DNE Dispatch Changes on that date as planned, “in part due to the need to complete thorough quality assurance testing of these changes because they affect the real-time dispatch systems.” Accordingly, the ISO requested the brief delay to permit implementation on May 25, 2016. Comments, if any, on this filing were due February 23, 2016; none were filed. Doc-less interventions were filed by NEPOOL, Exelon and NRG. This matter is pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **CSO Termination: Spruce Mountain Wind (ER16-864)**

Pursuant to Market Rule 1 § 13.3.4(c), the ISO filed on February 2 to terminate a portion of the CSO for Resource No. 38173 held by Project Sponsor Spruce Mountain Wind. The ISO indicated that, upon FERC acceptance of the filing, the ISO will draw down the applicable amount of financial assurance provided by Spruce Mountain Wind with respect to the portion of the CSO to be terminated. NEPOOL filed a doc-less intervention on February 3. Comments on this filing were due on or before February 22; none were filed. 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](mailto:pmgerity@daypitney.com)).

- **Waiver Request: FCM Qualification Lock-In Election (Calpine) (ER16-708)**

On February 4, the FERC granted Calpine’s requested waiver of the FCM qualification rules to allow it to correct the New Capacity Qualification Package for one of its resources to reflect Calpine’s desire to lock-in the FCA10 Capacity Clearing Price for the next six Capacity Commitment Periods (which it omitted to do in its originally submitted Qualification package documents)<sup>36</sup>. Comments on this waiver request were due on or before January 19, 2016. NEPOOL filed a doc-less motion to intervene. Comments supporting the filing were filed by NESCOE and Westfield Gas & Electric Light Department. PSEG filed a protest. The ISO did not intervene or comment. Unless the February 4 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **FCM Resource Retirement Reforms (ER16-551)**

As previously reported, on December 17, the ISO filed revisions it and its Internal Market Monitor (“IMM”) propose to make to the FCM rules for resource retirements (the “ISO/IMM Proposal”). Specifically, the ISO/IMM Proposal requires (i) that capacity suppliers with existing resources to submit a price for the retirement

<sup>35</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 152 FERC ¶ 61,065 (July 23, 2015) (“DNE Dispatch Order”).

<sup>36</sup> *Calpine Energy Services, L.P.*, 154 FERC ¶ 61,082 (Feb. 4, 2016).



of a resource (to replace the existing Non-Price Retirement Request process), (ii) the use of a Proxy De-List Bid, and (iii) notice of the potential retirement and proposed retirement price to be submitted prior to the commencement of an FCA's qualification process for new resources. The ISO/IMM Proposal was considered but not supported by the Participants Committee at its December 4, 2015 meeting. A February 16, 2016 effective date was initially requested. Comments on this filing were initially due on or before January 7, but following a December 18 request by NEPGA, the FERC granted a limited extension of time to submit comments to January 11. Doc-less interventions were filed by Calpine, CMEEC, ConEd, Emera, Entergy, Eversource, Exelon, MMWEC, National Grid, NEPGA, NESCOE, NextEra, NHEC, NRG, PSEG, and TransCanada. NEPOOL submitted comments on December 30 expanding on the reporting of stakeholder consideration of the ISO/IMM Proposal and amendments thereto.

Protests were filed by **GEN Group** (urging the FERC to adopt the GEN Group Proposal, while highlighting concerns with the ISO's proposed sole use of its new discounted cash flow methodology, excessive discretion, assignment of filing rights, price suppression, over-mitigation and impact on retirement rights), **NEPGA** (asserting that (a) elimination of the Non Price Retirement Request mechanism was not sufficiently justified, (b) proposed use of FERC-approved and proxy de-list bids will result in over-mitigation and undue discrimination, and (c) protesting the proposed assignment of filing rights), **Dominion** (supporting NEPGA's protest and highlighting (a) retirement decisions are significant business decisions unlikely to be used to exercise market power; (b) the concepts of "premature" or "uneconomic" retirements cannot be captured by a bright line test; and (c) de-list bid review should defer to the business judgment of the capacity supplier to match the allocation of risk in the market), **NRG** ((a) identifying price suppression, over-mitigation, and unduly discriminatory pricing effects of the ISO's proposal; and (b) asserting that it would be unjust and unreasonable to eliminate the ability for resource owners to reduce bids or to bind a resource to its retirement for every year after it places its retirement bid, and **PSEG** (urging the FERC to reject the filing for many of the same reasons identified by the other protestors and, if not rejected, to direct the ISO to address what PSEG perceives as the real problem -- the lack of flexibility in developing and submitting Static De-List Bids.). **NESCOE** submitted comments supporting the ISO's filing. On January 27, the ISO and Eversource answered the protests filed.

On February 1, the External Market Monitor, **Potomac Economics** moved to intervene out-of-time, supported the ISO/IMM Proposal, and recommended the following three changes to "address some of the concerns and make the reforms more effective in mitigating potential exercises of market power":

1. Allocation of the additional costs of procuring capacity to the retiring supplier when the resource in question was economic based on its competitive, FERC-approved proxy de-list bid.
2. Institution of a 15% threshold for the imposition of mitigation (i.e. mitigation only where the original de-list bid exceeds the ISO's competitive estimate by 15% or more), reasonably allowing for differing expectations and risk preferences of the supplier.
3. Augmenting the proposed portfolio test to include incremental revenues that may result from the higher FCA prices that derive not only from a supplier's portfolio of generation assets, but also from its other physical and financial positions.

On February 5, GEN Group, NEPGA, NRG, Dominion, and on February 8, PSEG, filed answers to the January 27 answers and to the comments of the EMM.

**Deficiency Letter & Response.** On February 12, the FERC issued a deficiency letter, indicating that responses to the five detailed questions set forth in the deficiency letter were required for the filing to be processed. The ISO's response to the deficiency letter was due, and was filed on, February 29. In addition to its responses to the questions posed in the February 12 deficiency letter, the ISO submitted corrected Tariff sheets (which omitted certain changes considered in the Participant Processes), and which reflected the ISO's revised effective date of March 1, 2016. The ISO's response to the deficiency letter is considered an amendment to its filing and re-starts the statutory clock. Comments on the ISO's response to the deficiency letter will be due on or before March 21. On March 1, NEPGA filed an initial protest the ISO's response and, in addition, requested that the FERC take emergency action and issue an order on or before March 17 ordering the ISO: (1) to refrain from applying or enforcing revised tariff provisions set forth in the initial filing until authorized ; and (2) to propose

adjusted FCA11 deadlines that would afford suppliers a reasonable period of time to comply with any requirements that may be accepted in an order on the initial filing.

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

- **Jump Ball Filing: Winter Reliability Program (ER15-2208)**

As previously reported, the FERC conditionally accepted, on September 11, NEPOOL's Winter Reliability Program Proposal as "just and reasonable and preferable ... subject to ISO-NE submitting revised Tariff records in a compliance filing",<sup>37</sup> since submitted and accepted. The *Winter 2015-18 Reliability Program Order* was challenged by Entergy, which asserted that the FERC should reverse itself and adopt the ISO-NE Proposal. On February 24, the FERC denied rehearing of the *Winter 2015-18 Reliability Program Order*.<sup>38</sup> Unless the *Winter 2015-18 Reliability Program Rehearing Order* is challenged in federal court, with any challenges due on or before April 25, 2016, this proceeding will be concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; [dtdoot@daypitney.com](mailto:dtdoot@daypitney.com)), Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Demand Curve Changes (ER14-1639)**

As previously reported, the FERC conditionally accepted, on May 30, 2014, revisions to the FCM rules, jointly submitted by the ISO and NEPOOL, that establish a system-wide sloped demand curve ("Demand Curve Changes").<sup>39</sup> The Demand Curve Changes defined the shape of the system-wide sloped demand curve (with key points defined by CONE and the 0.1 days/year LOLE target), extended the period during which a Market Participant may "lock-in" the capacity price for a new resource from five to seven years, establish a limited renewables resource exemption, and eliminated, at the system-wide level, the administrative pricing rules that were necessary in certain market conditions under the vertical demand curve construct. In response to challenges, the FERC denied rehearing of the *Demand Curve Order*,<sup>40</sup> but clarified (agreeing with Exelon and Entergy) that a resource that elects to utilize the renewables minimum offer price rule exemption should not also be allowed to utilize the new resource lock-in).<sup>41</sup> Accordingly, the FERC directed the ISO to submit, on or before March 2, 2015, a compliance filing clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in. That compliance filing was submitted on March 2, accepted on May 1, and became effective on May 2, 2015.<sup>42</sup> NextEra, NRG and PSEG then petitioned the DC Circuit Court of Appeals for review of the FERC's Demand Curve orders (March 30, 2015). Following submission of Petitioner and Intervenor for Petitioner briefs (October 5 and 20, 2015, respectively), the FERC, on November 20, 2015, requested that the Court remand the case back to the FERC for further proceedings (stating that "review of the opening briefs indicates that further consideration by the Commission is appropriate"). On December 1, 2015, the Court granted FERC's unopposed motion, and remanded the case back to the FERC for further proceedings. Since that remand, there have been no public developments to report. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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<sup>37</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 152 FERC ¶ 61,190 (Sep. 11, 2015) ("*Winter 2015-18 Reliability Program Order*") at P 44.

<sup>38</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 154 FERC ¶ 61,133 (Feb. 24, 2016) ("*Winter 2015-18 Reliability Program Rehearing Order*").

<sup>39</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("*Demand Curve Order*").

<sup>40</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("*Demand Curve Order*"), *reh'g denied but clarif. granted*, 150 FERC ¶ 61,065 (Jan. 30, 2015).

<sup>41</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,065, at P 27 (Jan. 30, 2015) ("*Demand Curve Clarification Order*").

<sup>42</sup> The changes become effective with FCA-10, and will not apply to the resources in FCA9, totaling 12.96 MW, that utilize both the renewable resource exemption and the price lock-in election.

<b>IV. OATT Amendments / TOAs / Coordination Agreements</b>
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- **Generator Interconnection Revisions (ER16-946)**

On February 16, 2016, the ISO and the PTO AC jointly filed revisions to OATT Schedules 22, 23 and 25 to incorporate certain interconnection process improvements. The Generator Interconnection Revisions are intended to: (i) to reduce the time to interconnect new generators; (ii) to address some of the operational issues related to inverter-based generators; and (iii) to meet NERC modeling and performance requirements. Among the changes is a reactive power requirement that will apply to wind generators and that is similar to the requirement that the FERC has proposed in its November 19, 2015 notice of proposed rulemaking in Docket No. RM16-1. The Generator Interconnection Revisions were supported unanimously by the Participants Committee at its February 5, 2016 meeting, with an abstention noted by SunEdison. An April 17, 2016 effective date was requested. Comments on this filing are due March 8, 2016. NEPOOL comments will be separately filed on or before that date. Thus far, doc-less interventions have been filed by NEPOOL, NESCOE, Entergy, Exelon, and RENEW Northeast. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **RSP Timing Changes (ER16-819)**

On January 29, 2016, the ISO and NEPOOL jointly filed changes to OATT Attachment K to modify the timing of the Regional System Plan (“RSP”) so that the full RSP report will be published every other year, rather than every year, but with supporting documents like the RSP project list, the annual load forecast, and other annual planning inputs, to continue to be published as they are completed (“RSP Timing Changes”). The RSP Timing Changes were supported by the Participants Committee at its January 8, 2016 meeting (Consent Agenda Item # 1). A March 29, 2016 effective date was requested. Comments on this filing were due February 19, 2016; none were filed. Doc-less interventions were filed by Eversource, Exelon, NESCOE and National Grid. This matter is pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **CTS Conforming Changes (ER15-2641)**

As previously reported, the FERC conditionally accepted the conforming changes to the ISO Tariff and the ISO-NE/NYISO Coordination Agreement, jointly filed by the ISO, NEPOOL, and PTO AC, to support the implementation of Coordinated Transaction Scheduling between New England and New York over the New York Northern AC interface (“CTS”).<sup>43</sup> The conforming changes were accepted with an effective date on or after December 1, 2015, subject to two weeks’ prior notice to be filed identifying the actual effective date. In accepting the changes, the FERC identified 3 corrections to be made to the Tariff provisions, which it directed be filed with the effective date notice. The November 9 order was not challenged and is final and unappealable.

*Notice of December 15, 2015 Effective Date and Tariff Corrections.* On December 1, the ISO filed notice that CTS would become effective **December 15, 2015**. It also filed the minor corrections directed by the November 9 order. CTS was implemented on December 15, 2015. On February 5, 2016, the FERC accepted the December 1 compliance filing, with the changes effective December 15, 2015, as requested. Unless the February 5 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

<b>V. Financial Assurance/Billing Policy Amendments</b>
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*No Activity to Report*

<sup>43</sup> *ISO New England Inc., New England Power Pool Participants Comm., and the Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,159 (Nov. 9, 2015).

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

- **Schedule 22: New England Wind LGIA (ER16-1024)**

On February 29, the ISO and National Grid filed a non-conforming, 3-party LGIA between the ISO, New England Wind as Interconnection Customer, and National Grid as Interconnecting Transmission Owner. The LGIA will replace a prior 2007 non-conforming LGIA governing the current interconnection of New England Wind's 28.5 MW Hoosac Project in Florida and Monroe, MA. The need for a new LGIA was triggered by New England Wind's request to change from Network Resource Interconnection Service to Capacity Network Interconnection Service. The LGIA is non-conforming in that it contains certain deviations from Schedule 22's *pro forma* LGIA, reflected in the 2007 LGIA, necessary to accommodate resolutions agreed to in settlement. A January 19, 2016 effective date was requested. Comments on this filing are due on or before March 21. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)**

On February 26, Eversource filed changes to Schedule ES-21 to recover \$38.9 million in FERC-jurisdictional, merger-related transmission costs incurred as the result of the April 10, 2012 NU/NSTAR merger. Eversource proposes to recover the costs over either a one-year or three-year amortization period. A June 1, 2016 effective date was requested. On February 29, Eversource submitted an informational filing to inform parties in various other dockets of the February 26 Section 205 filing in this proceeding. And, on March 1, Eversource submitted certain tariff records in Word format to replace pdf versions of the same sections included in the February 26 filing. Comments on these filings are due 21 days from their submission, or March 18, 21, and 22, 2016, respectively. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-NEP: CV South Street Landing Reimbursement Agreement (ER16-986)**

On February 22, Narragansett Electric Company ("National Grid") filed a Cost Reimbursement Agreement between National Grid and CV South Street Landing LLC ("South Street"), designated as CRA-NECO-07 under Schedule 21-NEP. The Agreement is designed to facilitate the work associated with South Street's request that, in connection with South Street's Providence Rhode Island development plans, National Grid relocate underground an existing, above-ground 115 kV transmission line and related facilities owned by National Grid. A February 19, 2016 effective date was requested. Comments on this filing are due on or before March 14, 2016. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-EM: Emera Maine/Covanta Maine LTSA Terminations (ER16-840)**

On January 29, Emera filed a notice of termination of two expired long-term transmission service agreements ("LTSAs") with Covanta Maine that had expired December 31, 2015 by their own terms. The Agreements were Service Agreements 69 and 70 under Schedule 21-EM. Emera requested that the terminations also become effective December 31, 2015. Comments on this filing were due on or before February 19, 2016; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-NSTAR: Fore River LGIA Termination Notice (ER16-816)**

On January 29, Eversource filed a notice of termination of an LGIA that has since been replaced by an executed a three-party LGIA (NSTAR/ISO-NE/Calpine) as a result of Calpine's Interconnection Request to increase the Fore River Energy Center's Capacity Network Resource Interconnection Service. The Agreement was Service Agreement 68 under Schedule 21-NSTAR. Eversource requested that the terminations become effective January 20, 2016, the effective date of the new LGIA. Comments on this filing were due on or before February 19, 2016; none were filed. Calpine filed a doc-less intervention on February 8. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

<b>VII. NEPOOL Agreement/Participants Agreement Amendments</b>
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*No Activity to Report*

<b>VIII. Regional Reports</b>
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- **Opinion 531-A Local Refund Report: FG&E (EL11-66)**

On June 29, 2015, FG&E filed its refund report for its customers taking local service during the refund period in accordance with *Opinion 531-A*. Comments, if any, on this filing were due on or before July 20; none were filed and this matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

In accordance with *Opinions 531-A and 531-B*, the following TOs filed their refund reports for their customers taking local service during the refund period (comment date on refund report noted in parentheses):

- ◆ Central Maine Power (Jan 21)
- ◆ Emera Maine (Jan 29)
- ◆ Eversource (CL&P, PSNH, WMECO) (Jan 21)
- ◆ National Grid (Jan 13)
- ◆ New Hampshire Transmission (Jan 21)
- ◆ NSTAR (Jan 21)
- ◆ United Illuminating (Jan 21); supplement (Feb 1)
- ◆ VT Transco (Feb 3)

All comments dates have passed. No comments were filed in response to any of the reports and each is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Capital Projects Report - 2015 Q4 (ER16-928)**

On February 11, the ISO filed its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter ("Q4") of calendar year 2015 (the "Report"). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Highlights include the following new projects: (i) Market System Corrective Action/Preventative Actions ("CAPAs") (\$1.02 million); (ii) Oracle 12c Upgrade (\$426,000); (iii) Pipeline Constrained Reserve Adequacy Assessment ("RAA") Unit Commitment ("PCUC") Study (\$140,000); (iv) Statistical Analysis System ("SAS") Hardware/Software Upgrade (\$117,221); (v) Strategic Talent Management Initiative (\$60,000); and (vi) NCPC Modifications Project (\$55,000). Projects with significant changes include: (i) FTC Clearing Solutions (\$100,000 decrease; pending resolution of exchange and clearing house issues); Quarterly Release Projects (\$800,000 decrease; enhancements covered under other projects); (iii) FCA10 (\$272,900 decrease; contingency funds unused, internal ISO-NE resources replacing outside consultant fees); (iv) CIP v5 (\$263,800 decrease; funding reallocated to 2016); (v) Synchrophasor Initiatives (\$200,000 increase; e-terraphasoranalytics software acquisition and integration). Comments on this filing are due on or before March 3; NEPOOL filed comments on February 25 supporting the Q4 Report. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbval@daypitney.com](mailto:pnbval@daypitney.com)).

- **LFTR Implementation: 29<sup>th</sup> Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the twenty-ninth of its Quarterly Status Reports regarding LFTR implementation on January 15, 2016. The ISO reported that a significant issues have arisen with the third-party clearing approach it has been pursuing. Specifically, during the process of developing contracts with the exchange and the clearing house, several new issues emerged that have yet to be resolved. The ISO reported that it is working both to resolve those issues and to develop an alternative approach to address the financial assurance issues inherent in the LFTR market that have long been identified in this matter. If the issues with the



exchange and clearing house can be resolved, and it is possible to move forward with the third-party clearing design, the ISO reported that the Commodities Futures Trading Commission (“CFTC”) and the FERC would need to serially approve the proposed structure. The ISO’s preliminary sense was that CFTC approval might be obtained during the second half of 2016. That approval would be followed by finalization of rules through the NEPOOL process and a filing with the FER in early 2017. Assuming CFTC approval and Commission acceptance, the third-party clearing design could be put in place during the fourth quarter of 2017 for the auction that covers the 2018 annual FTR period. Monthly reconfiguration auctions under the third-party clearing design could be implemented about six months later (mid-2018). Finally, the ISO expects that the initial auction of LFTRs under the third-party clearing design could be implemented during the fourth quarter of 2019. These status reports are not noticed for public comment and no comments have been filed.

## IX. Membership Filings

- **March 2016 Membership Filing (ER16-1031)**

On February 29, NEPOOL requested that the FERC accept (i) the membership of EDF Energy Services, LLC (Related Person of EDF Trading North America, LLC; Supplier Sector); and (ii) the terminations of: Guzman Energy (Supplier Sector) and the Westerly Hospital Companies (End User Sector). Comments on this filing are due on or before March 21.

- **February 2016 Membership Filing (ER16-836)**

On February 26, the FERC accepted (i) the membership of GBE Power Inc. (Supplier Sector); (ii) the terminations of: Glacial Energy of New England (Supplier Sector), Parkview Adventist Medical Center (End User Sector), and Vermont Marble (Supplier Sector); and (iii) the name change of: Constellation Energy Power Choice, LLC (f/k/a Constellation Energy Power Choice, Inc.).

- **Involuntary Termination of Membership: NAPP (ER16-820)**

On January 29, NEPOOL and the ISO requested that the FERC accept the involuntary termination of the NEPOOL and Market Participant status of North America Power Partners (“NAPP”) as a result of NAPP’s failure to pay when due the amounts invoiced to it by ISO-NE. A January 1, 2016 effective date was requested. Comments on this filing were due on or before February 19, 2016; none were filed. This matter is pending before the FERC.

- **Involuntary Termination of Membership: Negawatt (ER16-818)**

Also on January 29, NEPOOL and the ISO requested that the FERC accept the involuntary termination of the NEPOOL and Market Participant status of Negawatt Business Solutions (“Negawatt”) as a result of Negawatt’s failure to pay when due the amounts invoiced to it by ISO-NE. A January 1, 2016 effective date was requested. Comments on this filing were due on or before February 19, 2016; none were filed. This matter is pending before the FERC.

- **January 2016 Membership Filing (ER16-670)**

On February 18, the FERC accepted (i) the membership of Solea Energy (Supplier Sector), and Archer Energy (Supplier Sector); (ii) the terminations of: Gulf Oil (Supplier Sector), Tyngsboro Spindle and Beacon Power (AR Sector), and Hawkes Meadow Energy (Related Person of Wallingford Energy, Generation Sector); and (iii) the name change of: Uniper (f/k/a E.ON) Global Commodities North America LLC.

- **Suspension Notices (not docketed)**

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



<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Feb 22/23	Gallop Power Greenville, LLC	TBD

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

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

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

- **Revised Reliability Standard: MOD-031-2 (RD16-1)**

On February 18, the FERC approved Reliability Standard MOD-031-2 (Demand and Energy Data) which, consistent with the directives in *Order 804*,<sup>44</sup> clarifies the compliance obligations related to providing data to Regional Entities, and responding to a request for data subject to confidentiality restrictions. MOD-031-2 will become effective October 1, 2016, as requested.<sup>45</sup> Unless the February 18 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standard: BAL-002-2 (RM16-7)**

On January 29, 2016, NERC filed for approval a revised Reliability Standard -- BAL-002-2 (Disturbance Control Performance - Contingency Reserve for Recovery from a Balancing Contingency Event), and associated Glossary definitions, implementation plan, VRFs and VSLs (together, the "BAL Changes"). NERC stated that the BAL Changes consolidate six requirements in BAL-002-1 into three requirements. The three requirements are supported by several proposed associated NERC Glossary definitions, along with a revised Applicability section that incorporates language from the existing Standard. BAL-002-2 requires responsible entities to maintain and deploy energy reserves and to stabilize system frequency through identification of a Reportable ACE deviation and restoration of Reporting ACE to defined values after a system disturbance. BAL-002-2 will also require the responsible entity to maintain an Operating Process to ensure maintenance of Contingency Reserves to a level at least equal to the responsible entity's Most Severe Single Contingency ("MSSC"). By doing so, BAL002-2 will create and implement a continent-wide reserve policy to ensure that responsible entities will always have adequate Contingency Reserves to be deployed as necessary. NERC requested that responsible entities be required to comply with BAL-002-2 on the first day of the first calendar quarter that is six months after this standard is approved by the FERC. On February 12, 2016, NERC submitted supplemental information that clarified how BAL-002-2 will work in conjunction with the successor provisions to TOP-007-0 (TOP-007-0 is set to expire on April 1, 2017). As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **Order 822: Revised Reliability Standards: CIP-003-6, CIP-004-6, CIP-006-6, CIP-007-6, CIP-009-6, CIP-010-2, CIP-011-2 (RM15-14)**

On January 21, the FERC issued *Order 822*<sup>46</sup> approving changes to seven CIP (Critical Infrastructure Protection) Reliability Standards designed to improve the cyber security protections required by the CIP Standards and address four directives from *Order 791* (the "Supply Chain Cyber Controls Changes"). As previously reported, NERC stated that the Supply Chain Cyber Controls Changes (i) remove the "identify, assess, and correct" language from the 17 requirements in the CIP Version 5 Standards that included such language; (ii)

<sup>44</sup> *Demand and Energy Data Rel. Standard*, Order No. 804, 150 FERC ¶ 61,109 (Feb. 19, 2015) ("*Order 804*").

<sup>45</sup> Oct. 1, 2016 is the later of the effective date of MOD-031-1 (Apr. 1, 2016) or the first day of the first calendar quarter that is six months after the date MOD-031-2 was approved (Oct. 1, 2016).

<sup>46</sup> *Revised Critical Infrastructure Protection Rel.y Standards*, Order No. 822, 154 FERC ¶ 61,037 (Jan. 21, 2016) ("*Order 822*").

require responsible entities to implement cyber security plans for assets containing low impact bulk electric system (“BES”) Cyber Systems; (iii) include specific requirements applicable to transient devices to further mitigate the security risks associated with such devices; and (iv) require entities to implement security controls for non-programmable components of communication networks at Control Centers with high or medium impact BES Cyber Systems. In approving the Supply Chain Cyber Controls Changes, the FERC directed NERC to develop the following modifications to improve the revised CIP Standards: (i) modifications to address the protection of transient electronic devices used at Low Impact BES Cyber Systems; (ii) modifications to CIP-006-6 to require protections for communication network components and data communicated between all bulk electric system Control Centers according to the risk posed to the bulk electric system; and (iii) modifications to the definition for Low Impact External Routable Connectivity. *Order 822* does not address the supply chain risk management issues to be discussed at the January technical conference (the FERC will determine the appropriate action on that issue following the technical conference). *Order 822* will become effective March 31, 2016.<sup>47</sup> On February 22, the Foundation for Resilient Societies and Isologic LLC requested rehearing of *Order 822*. The requests for rehearing are pending before the FERC, with FERC action required on or before March 23, 2016, or the requests will be deemed denied.

***Extension of Time for Compliance with CIP Version 5 Standards.*** On February 25, the FERC granted Trade Associations<sup>48</sup> February 4, 2016 request for an extension of time for implementation of the CIP version 5 Standards for entities with High and Medium Impact BES Cyber Systems from April 1, 2016 to July 1, 2016 to align with the effective date for the revised CIP Standards approved in *Order 822*.<sup>49</sup> In granting the request, the FERC found that “separate implementation dates in short succession create unnecessary administrative burdens with little or no commensurate benefit to reliability”.<sup>50</sup>

***Technical Conference on supply chain risk management issues.*** On January 28, 2016, the FERC held a technical conference to facilitate dialogue on supply chain risk management issues identified by the FERC in *Order 822*. Staff presented on supply chain efforts by other Federal agencies, followed by industry panels on: (1) the need for a new or modified Reliability Standard; (2) the scope and Implementation of a new or modified Standard; and (3) current supply chain risk management practices and collaborative efforts. New England panelists included: John Galloway (ISO-NE, Director, Cyber Security); and Jonathan Appelbaum (UI, Director, NERC Compliance). Speaker materials from the technical conference on posted on the FERC’s eLibrary.

- **NOPR: New Reliability Standard: TPL-007-1 (RM15-11)**

As previously reported, FERC issued a NOPR, on May 14, 2015, proposing to approve a new Reliability Standard -- TPL-007-1 (Geomagnetic Disturbance Operations) -- and one new definition (Geomagnetic Disturbance Vulnerability Assessment), associated VRFs and VSLs (together, the “GMD Operations Changes”).<sup>51</sup> In addition, the FERC proposes to direct NERC (i) to develop modifications to the benchmark GMD event definition set forth in TPL-007-1 Attachment 1 so that the definition is not based solely on spatially-averaged data and (ii) to submit a work plan, and subsequently one or more informational filings, that address specific GMD-related research areas. As previously reported, NERC stated that the GMD Operations Changes address the FERC’s directive in *Order 779* that NERC develop a Reliability Standard that requires owners and operators of the Bulk-Power System to conduct initial and on-going vulnerability assessments of the potential impact of benchmark geomagnetic disturbance events on the Bulk-Power System equipment and the Bulk-Power System as

<sup>47</sup> *Order 822* was published in the *Fed. Reg.* on Jan. 26, 2016 (Vol. 81, No. 16) pp. 4,177-4,191.

<sup>48</sup> “Trade Associations” are Edison Electric Institute (“EEI”), APPA, Electricity Consumers Resource Council (“ECRC”), Electric Power Supply Association (“EPSA”), Large Public Power Council (“LPPC”), National Rural Electric Cooperative Association (“NRECA”), and Transmission Access Policy Study Group (“TAPS”).

<sup>49</sup> *Revised Critical Infrastructure Protection Rel. Standards*, 154 FERC ¶ 61,137 (Feb. 25, 2016).

<sup>50</sup> *Id.* at P 9.

<sup>51</sup> *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

a whole.<sup>52</sup> NERC requested the FERC approve a five-year phased implementation plan for Compliance with TPL-007-1. Comments on this NOPR were due on or before July 27, 2015<sup>53</sup> and were filed by over 20 parties, including ISO-NE/NYIOS/PJM/MISO/IESO, EEI, Exelon, and NERC. On August 17, NERC filed a notice that the appeal panel appointed under NERC's process for Standards appeals had concluded NERC appeal proceedings by using a final decision finding that the objections of appellant Foundation for Resilient Societies, Inc. were afforded fair and equitable treatment during the TPL-007-1 development process. Comments on that panel's decision were due and filed by September 10. On October 2, the FERC issued a notice that comments on Foundation for Resilient Societies' filing of a September 2015 technical paper prepared by the Los Alamos National Laboratory entitled "Review of the GMD Benchmark Event in TPL-007-1" as well as on NERC's September 10 comments should be filed on or before October 22. Comments were filed by 8 parties. In addition, On November 2, D. Bardin requested official notice of National Space Weather Strategy and NSW Action Plan. Additional comments and reply comments were filed by EEI, APPA, ECRC, NRECA, D. Bardin, U.S. Geological Survey, Southern Company, IEEE PES Transformers Committee, Storm Analysis Consultants & Advanced Fusion Systems, and J. Stolov.

**March 1, 2016 Technical Conference.** A technical conference was held on March 1, 2016. The technical conference was led by Commission staff, with prepared remarks presented by invited panelists. Topics and related questions discussed during the conference included: the benchmark GMD event definition (including geomagnetic fields and earth conductivity); vulnerability assessments (harmonics and vibrational effects during benchmark GMD events, transformer thermal assessments, non-uniform geoelectric fields), and monitoring and future work. Speaker materials are posted on the FERC's e-Library.

- **NOPR: New Reliability Standard: PRC-026-1 (RM15-8)**

As previously reported, the FERC issued, on September 17, 2015, a NOPR proposing to approve PRC-026-1 (Relay Performance During Stable Power Swings) and associated VRFs and VSLs (the "PRC-026 Standard").<sup>54</sup> The PRC-026 Standard was filed in response to the FERC's directive to NERC in *Order 733*<sup>55</sup> to develop a Reliability Standard addressing undesirable relay operation due to stable power swings. NERC requested that PRC-026 be approved, effective as follows: R1 on the first day of the first full calendar year that is 12 months after FERC approval; R2-R4 on the first day of the first full calendar year that is 36 months after FERC approval. Comments on this NOPR were due on or before November 23, 2015<sup>56</sup> and were submitted by NERC, Luminant, EEI, Idaho Power, ITC, North American Generator Forum, and the Tri-State Generation and Transmission Association. This matter is pending before the FERC.

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

The MOD-001-2 NOPR remains pending before the FERC. On June 19, 2014, the FERC issued a NOPR proposing to approve changes to MOD-001-2 (Modeling, Data, and Analysis - Available Transmission System Capability) ("MOD Changes") proposed by NERC.<sup>57</sup> The MOD Changes would replace, consolidate and improve upon the Existing MOD Standards in addressing the reliability issues associated with determinations of Available Transfer Capability ("ATC") and Available Flowgate Capability ("AFC"). MOD-001-2 will replace

<sup>52</sup> *Rel. Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 ("Order 779").

<sup>53</sup> The *TPL-007 NOPR* was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

<sup>54</sup> *Relay Performance During Stable Power Swings Rel. Standard*, 152 FERC ¶ 61,200 (Sep. 17, 2015).

<sup>55</sup> *Transmission Relay Loadability Rel. Standard*, Order No. 733, 130 FERC ¶ 61,221 (2010); *order on reh'g and clarif.*, Order No. 733-A, 134 FERC ¶ 61,127 (2011); *clarified*, Order No. 733-B, 136 FERC ¶ 61,185 (2011) ("Order 733").

<sup>56</sup> The *PRC-026 NOPR* was published in the *Fed. Reg.* on Sep. 24, 2015 (Vol. 80, No. 185) pp. 57,549-57,553.

<sup>57</sup> *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014).

the six Existing MOD Standards<sup>58</sup> to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2's effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC seeks comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also seeks further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this NOPR were due August 25, 2014,<sup>59</sup> and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, NAESB supplemented its comments with a report on its efforts to develop WEQ Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the MOD-001-2 NOPR remains pending before the FERC.

- **NOPR: BAL-002-1a Interpretation Remand (RM13-6)**

This May 16, 2013 NOPR, which proposes to remand NERC's proposed interpretation of BAL-002 (Disturbance Control Performance Reliability Standard) filed February 12, 2013 (which would prevent Registered Entities from shedding load to avoid possible violations of BAL-002), remains pending.<sup>60</sup> NERC asserted that the proposed interpretation clarifies that BAL-002-1 is intended to be read as an integrated whole and relies in part on information in the Compliance section of the Reliability Standard. Specifically, the proposed interpretation would clarify that: (1) a Disturbance that exceeds the most severe single Contingency, regardless if it is a simultaneous Contingency or non-simultaneous multiple Contingency, would be a reportable event, but would be excluded from Compliance evaluation; (2) a pre-acknowledged Reserve Sharing Group would be treated in the same manner as an individual Balancing Authority; however, in a dynamically allocated Reserve Sharing Group, exclusions are only provided on a Balancing Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,<sup>61</sup> and were filed by NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. As noted, this NOPR remains pending before the FERC.

- **Compliance Filing: BES Exclusions for Local Network Configurations (RM12-6)**

On July 1, 2015, NERC submitted, pursuant to *Order 773*, a Compliance filing identifying in detail the types of local network configurations that may be excluded from the bulk electric system following the implementation of the revised definition of the BES under Exclusion E3 of that definition. As of the date of this Report, the FERC has not noticed the Compliance filing or otherwise invited public comment.

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<sup>58</sup> The 6 existing MOD Standards to be replaced by MOD-001-2 are: MOD-001-1, MOD-004-1, MOD-008-1, MOD-028-2, MOD-029-1a and MOD-030-2.

<sup>59</sup> The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

<sup>60</sup> *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

<sup>61</sup> The *BAL-002-1a Interpretation Remand NOPR* was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 99) pp. 30,245-30,810.

- **Revised Regional Delegation Agreements (RR15-12)**

On November 2, the FERC conditionally accepted a revised *pro forma* and individual Regional Delegation Agreements with each of the eight Regional Entities, including NPCC (the “RDAs”), filed by NERC to be effective January 1, 2016.<sup>62</sup> In accepting the RDAs, the FERC required that NERC submit changes (i) to revise section 8(f) of the RDA as directed to ensure that the RDA accounts for the required NERC audits of Regional Entities in accordance with the NERC Rules of Procedure and provides NERC the flexibility to perform reviews it deems necessary on a reasonable periodicity; (ii) to revise section 8(g) as directed in order to grant the FERC full access to the non-public material resulting from these activities; (iii) to modify the RDAs so that they are subject to FERC re-evaluation and re-approval following the initial term, scheduled to end on December 31, 2020; (iv) to remove the proposed automatic renewal provisions and re-insert audit provisions in section 12(b) that had been proposed to be removed; (v) to revise section 3(b) of the RDAs to include a provision requiring NERC to maintain on its public website the currently effective versions of all of the Regional Entities’ bylaws and regional standard development procedures; (vi) to clarify the meaning of other “guidance that NERC may from time to time develop,” and that its guidance on reporting to the FERC instances of noncompliance of Reliability Standards and their disposition must be filed with the FERC for approval before it becomes effective; and (vii) to include language in RDA section 15 stating that Section 1500 of the NERC Rules of Procedure controls when a conflict between it and the RDAs may arise. NERC submitted its compliance filing on December 18. Comments on that compliance filing were due on or before January 8, 2016; none were filed. The compliance changes are pending before the FERC.

## XI. Misc. - of Regional Interest

- **203 Application: Essential Power (EC16-82)**

On February 29, 2016, On December 29, 2015, Essential Power and Nautilus Generation, LLC (“Nautilus”) requested FERC authorization for the sale of 100% of the direct membership interests in Essential Power Investments, LLC from IFM Global Infrastructure Fund to Nautilus (which does not have any Related Persons in the Pool). Comments on this filing are due on or before March 21, 2016. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **203 Application: ReEnergy Sterling (EC16-58)**

On December 29, 2015, ReEnergy Sterling CT Limited Partnership (“ReEnergy Sterling”) requested FERC authorization for the sale of 100% of its partnership interests to Empire Tire of Edgewater 2, LLC (“Empire Tire”). Should the transaction be consummated, ReEnergy Sterling will no longer be a Related Person to ReEnergy Stratton, Dartmouth Power or TrailStone Power. Comments on this filing were due on or before January 19, 2016; none were filed. On February 25, at the request of Staff, ReEnergy Sterling provided additional information regarding the ownership of Empire Tire. This matter remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **203 Application: Narragansett/Entergy Rhode Island State Energy (EC16-50)**

On February 12, 2016, the FERC authorized the acquisition by Narragansett Electric Company (“National Grid”) from Entergy Rhode Island State Energy, L.P. (“RISE”) of the interconnection assets associated with the RISE combined cycle natural gas-fired electric generating facility located in Johnston, Rhode Island.<sup>63</sup> National Grid and Entergy must notify the FERC within 10 days of the date that the transaction has been consummated. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

<sup>62</sup> *N. Amer. Elec. Rel. Corp.*, 153 FERC ¶ 61,135 (Nov. 2, 2015).

<sup>63</sup> *The Narragansett Elec. Co.*, 154 FERC ¶ 62,105 (Feb. 12, 2016).

- **203 Application: Calpine/Granite Ridge (EC16-19)**

On January 28, 2016, the FERC approved the acquisition by Calpine Granite Holdings, LLC (“Calpine”) of 100% of the membership interests of Granite Ridge Energy, LLC (“Granite Ridge”).<sup>64</sup> On February 11, Calpine and Granite Ridge notified the FERC that the transaction was consummated on February 5, 2016, making them Related Persons. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **203 Application: Passadumkeag Wind Park (SunEdison/ Quantum) (EC15-217)**

On November 17, 2015, the FERC authorized a transaction whereby the membership interests in the owner of Passadumkeag Wind Park would be acquired by SunEdison.<sup>65</sup> However, on February 26, 2016, Passadumkeag notified the FERC that the authorized transaction has not been, and will not be, consummated. The February 26 notice concluded this proceeding. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Cost Sharing Agreements: National Grid/NSTAR/PSNH (Greater Boston Area Transmission Solution Plan) (ER16-878, -879, -882)**

On February 3, 2016, National Grid, NSTAR and PSNH each filed an identical version of a Cost Sharing Agreement designed to set forth in writing the respective rights and obligations of National Grid and the Eversource Companies (together, the “Parties”) in connection with the sharing of costs the planning, engineering, permitting and siting of facilities associated with the Greater Boston transmission projects. The Parties entered into this Agreement to document their cooperation and coordination in constructing the Greater Boston transmission projects, which are planned reliability upgrades to satisfy certain New England regional reliability transmission needs. An April 4, 2016 effective was requested. Comments on this filing were due on or before February 24, 2016; none were filed. A doc-less intervention was filed by National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: National Grid/Wheelabrator Saugus (ER16-760)**

On January 21, 2016, National Grid filed a non-conforming Large Generation Interconnection Agreement (“LGIA”) with Wheelabrator Saugus to govern the interconnection of Wheelabrator Saugus’ 36 MW generating facility located in Saugus, Massachusetts. Since the LGIA continues the existing interconnection arrangements between National Grid and Wheelabrator Saugus, without modification to the Saugus facility’s capability or operating characteristics, a new three-party Interconnection Agreement (that would include the ISO) was not required. A January 1, 2016 effective was requested. Comments on this filing were due on or before February 11, 2016; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **SGIA: CMP/Hackett Mills Hydro (ER16-518)**

As previously reported, CMP filed, on December 14, a non-conforming Small Generation Interconnection Agreement (“SGIA”) with Hackett Mills Hydro Associates (“Hackett Mills Hydro”) to cover the interconnection between CMP and respect Hackett Mills Hydro’s 500 kW hydroelectric facility located in Poland, Maine. Since the SGIA merely continues the existing interconnection arrangement between CMP and Hackett Mills, without modification to that facility’s capability or operating characteristics, a new three-party Interconnection Agreement (that would include the ISO) was not required. A January 1, 2016 effective was requested. Comments on this filing were due on or before January 4, 2016; none were filed. On January 20, CMP amended its filing, removing Effective Date as a Milestone, and supplementing the filing with a one-line diagram not previously included. Comments on the January 20 filing were due on or before

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<sup>64</sup> *Calpine Granite Holdings, LLC and Granite Ridge Energy, LLC*, 154 FERC ¶ 62,058 (Jan. 28, 2016).

<sup>65</sup> *Passadumkeag Windpark, LLC*, 153 FERC ¶ 62,110 (Nov. 17, 2015).



February 10, 2016; again, none were filed. This matter is now pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Emera MPD OATT Changes (ER15-1429; EL16-13)**

As previously reported, the FERC conditionally accepted, on December 7, 2015, changes to the Maine Public District Open Access Transmission Tariff (“MPD OATT”), including to the rates, terms, and conditions set forth in MPD OATT Attachment J.<sup>66</sup> However, the FERC found, ultimately, that the changes to the MPD OATT had not been shown to be just and reasonable, may be unjust and unreasonable, instituted a Section 206 proceeding (in EL16-13) to examine the provisions, and set the matter for a trial-type evidentiary hearing, to be held in abeyance pending the outcome of settlement judge procedures (*see* below). In addition, the FERC noted an inconsistency between the tariff language that Emera Maine filed in eLibrary and the electronic tariff language that Emera Maine submitted through eTariff. Emera was directed to review the entire eLibrary and eTariff Record and to submit appropriate modifications on or before January 6, 2016 to either the eTariff version or the eLibrary version of the filing, or both, to ensure consistency. Emera submitted a filing on January 4, 2016 in response to that directive. That filing was accepted on February 23, 2016.

**Background.** As previously reported, Emera Maine, as successor to Maine Public Service Company (“Maine Public”), provides open access to Emera Maine’s transmission facilities in northern Maine (the “MPD Transmission System”) pursuant to the MPD OATT. Emera Maine stated that the changes to the MPD OATT were needed to ensure that, in light of the filing by Emera of consolidated FERC Form 1 data (data comprising both the former Bangor Hydro and Maine Public systems), charges for service under the MPD OATT reflect only the costs of service over the MPD Transmission System. Emera Maine also proposed additional, limited changes to the MPD OATT. A June 1, 2015 effective date was requested. The “Maine Customer Group”<sup>67</sup> filed a motion to reject (“Motion to Reject”) the April 1 Filing, asserting the April 1 Filing was deficient because, rather than actual rates, it included proxy rates that MPD said would be replaced with 2014 Form 1 numbers when MPD’s 2014 Form 1 was available. On April 22, the Maine PUC and the Maine Customer Group protested the filing. The MPUC challenged three aspects of the filing: (i) the proposed increase of ROE from 9.75% to 10.20% based on anomalous economic conditions; (ii) the change from a measured loss factor calculation to a fixed loss factor; and (iii) the use of end-of-year account balances, rather than average 13-month account balances, for determination of facilities that are included in rate base. In addition to those aspects, the Maine Customer Group further challenged: (iv) inclusion of an out-of-period adjustment to rate base for forecasted transmission; (v) the proposed capital structure, which they assert is artificially distorted to accommodate a requirement resulting from the merger of Emera Maine’s predecessor companies; and (vi) the proposed new cost allocation scheme. On April 24, Emera Maine answered the Maine Customer Group’s Motion to Reject. On April 29, the Maine Customer Group answered Emera Maine’s April 24 answer. On May 1, Emera Maine filed an amendment and errata to its April 1 filing, in part reflecting 2014 FERC Form 1 data rather than estimated data. On May 7, Emera Maine answered the April 22 Maine PUC and MCG protests and the MCG’s April 29 answer. On May 8, MCG moved to compel revision to Emera’s May 1 filing, asserting that it was not filed in accordance with Emera’s OATT, and specifically the Protocols for Implementing and Reviewing Charges Established by the Attachment J Rate Formulas (the “Protocols”). MCG also protested the May 1 filing on May 22. On May 26, Emera Maine answered MCG’s May 8 Motion to Compel, which MCG answered the next day.

**Hearing and Settlement Judge Procedures.** The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures. As previously reported, Chief Judge Cintron designated ALJ Karen Johnson as the settlement judge for these proceedings on December 14. A first settlement

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<sup>66</sup> *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

<sup>67</sup> The “Maine Customer Group (“MCG”) is comprised of: the Maine Office of the Public Advocate (“MOPA”), Houlton Water Company (“Houlton”), Van Buren Light and Power District (“Van Buren”), and Eastern Maine Electric Cooperative, Inc. (“EMEC”).

conference was held January 5, 2016. In a January 12 status report, Judge Johnson reported that, at the January 5 conference, the parties agreed to exchange information and discuss settlement options. Accordingly, Judge Johnson recommended that settlement judge procedures be continued. A second settlement conference was scheduled for March 3, 2016. On January 20, Emera moved for adoption of a protective order. That order was adopted by Chief Judge Cintron on January 21. On February 5, Chief Judge Cintron issued an order continuing settlement judge procedures.

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

- **MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844)**

On December 18, 2012, Judge Sterner issued his 374-page initial decision which, following hearings described in previous reports, found at its core that “it is unjust, unreasonable, and unduly discriminatory to allocate costs of Phase Angle Regulating Transformers (“PARs”) of the International Transmission Company (“ITC”) to NYISO and PJM”,<sup>68</sup> which the Midwest ISO (“MISO”) and ITC proposed unilaterally to do (without the support of either PJM or NYISO) in its October 20, 2010 filing initiating this proceeding. For a summary of specific findings, please refer to any of the January to June 2013 Reports.

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. Briefs opposing exceptions were filed by the FERC Trial Staff, MISO TOs, NYISO, NY TOs, PJM, and the PJM TOs. On February 25, Joint Applicants moved to strike a portion of the PJM Brief Opposing Exceptions. On March 12, PJM answered Joint Applicants February 25 motion. MISO (now called “Midcontinent Independent System Operator, Inc.”) moved to lodge a NYISO “Broader Regional Markets Informational Report” filed March 19, 2014 in ER08-1281 and a related January 16, 2014 “Ontario-Michigan Interface PAR Performance Evaluation Report” (“Evaluation Report”) prepared by MISO, IESO and PJM. Oppositions to that motion to lodge were filed by FERC Staff, NYISO, NY TOs, PJM, and PSEG. This matter remains pending before the FERC. If there are any questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

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

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

- **FERC Enforcement Action: Show Cause Order – Coaltrain, its Co-Owners & Traders/Analysts (IN16-4)**

On January 6, 2015, the FERC issued an order<sup>69</sup> directing Coaltrain Energy L.P. (“Coaltrain”), its co-owners Peter Jones and Shawn Sheehan, and its traders/analysts Robert Jones, Jeff Miller, Jack Wells and Adam

<sup>68</sup> *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“*MISO Initial Decision*”) at P 923.

<sup>69</sup> *Coaltrain Energy, L.P. et al*, 154 FERC ¶ 61, 002 (Jan. 6, 2016) (“*Coaltrain Show Cause Order*”).

Hughes (Collectively, “Respondents”) to show cause why (i) they should not be found to have violated the FERC’s Anti-Manipulation Rule by executing a scheme involving manipulative PJM Up-To Congestion trading between June and September 2010; (ii) why Coaltrain should not be found to have violated the FERC’s Market Behavior Rules through false and misleading statements and material omissions relating to the existence of documents responsive to data requests and relating to the trading conduct at issue; (iii) why Coaltrain, P. Jones and Sheehan should not be jointly and severally required to disgorge unjust profits of \$4,121,894; and (iv) why all Respondents should not be assessed civil penalties as follows: Coaltrain (\$26 million); P. Jones and Sheehan (\$5 million); R. Jones (\$1 million); Miller and Wells (\$500,000); and Hughes (\$250,000). Following an extension request and notice by the FERC, Respondents must file an answer by March 4, 2016. In the meantime, Respondents elected, on February 5, 2016, to invoke their statutory right under FPA § 31(d)(3)(A) to the prompt assessment of a penalty, and a “de novo trial” in federal district court to address whether the penalty, if assessed by the FERC, may be affirmed. On February 17, OE Staff responded to Respondents’ election in order to clarify FERC’s position that the only avenue that *guarantees* an opportunity for trial is an administrative hearing under FPA § 31(d)(2), and to indicate that OE would not oppose a request by Respondents to revoke their election if made before the FERC issues an order addressing the responses to the *Coaltrain Show Cause Order*.

- **FERC Enforcement Action: Show Cause Order - Etracom & M. Rosenberg (IN16-2)**

On December 16, 2015, the FERC issued an order<sup>70</sup> directing Etracom LLC (“Etracom”) and its principal member and primary trader, Michael Rosenberg, to show cause why (i) it should not be found to have violated the FERC’s Anti-Manipulation Rule by engaging, during May 2011, in manipulative virtual trading at CAISO’s New Melones Intertie in order to artificially lower the day-ahead LMP and economically benefit Etracom’s Congestion Revenue Rights sourced at that location; (ii) why Etracom should not pay a civil penalty in the amount of \$2.4 million; (iii) why Rosenberg should not pay a \$100,000 civil penalty; and (iv) why Etracom should not disgorge \$315,072 plus interest in unjust profits, or a modification to these amounts as warranted. On December 31, the FERC granted Etracom an extension of time to file its response, to February 16, 2016. On January 14, pursuant to Ordering Paragraph D of the *Etracom Show Cause Order*, Etracom elected, should the FERC assess any civil penalties in this proceeding, prompt assessment of a penalty and a *de novo* review of those penalties in federal district court, (rather than an ALJ review of such penalties).

On February 16, Etracom and Rosenberg answered the *Etracom Show Cause Order*, denying OE Staff’s allegations and urging the FERC to terminate this proceeding. OE Staff’s reply will be due on or before March 17.

- **FERC Enforcement Action: Staff Notices of Alleged Violations (IN\_\_ - \_\_)**

***Berkshire Power Company/Powerplant Management Services***. On October 23, 2015, the FERC issued a notice that Staff of the Office of Enforcement (“OE”) has preliminarily determined that Berkshire Power Company and Powerplant Management Services violated the FERC’s Anti-Manipulation Rule by engaging in a manipulative scheme to conceal maintenance work and associated outages beginning at least as early as January 2008 and continuing through March 2011. In addition Staff alleges that Berkshire violated FERC-approved Reliability Standards (by failing to provide outage information to its Transmission Operator and failing to inform its Transmission Operator and Host Balancing Authority of all generation resources available for use) and FERC’s Market Behavior Rules (by failing to comply with various provisions of the ISO Tariff and by making false and misleading statements to the ISO regarding its maintenance work and associated outages).

Recall that Notices of Alleged Violations (“NoVs”) are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff’s conclusions regarding the subject’s conduct.<sup>71</sup> NoVs are designed to increase the transparency of Staff’s

<sup>70</sup> *ETRACOM LLC and Michael Rosenberg*, 153 FERC ¶ 61, 314 (Dec. 16, 2015) (“*Etracom Show Cause Order*”).

<sup>71</sup> *See Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh’g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

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

On November 24, 2015, the FERC informed ISO-NE that it will evaluate ISO-NE's compliance with: (1) the transmission provider obligations described in the Tariff, (2) *Order 1000* as it relates to transmission planning and expansion, and interregional coordination, (3) accounting requirements of the Uniform System of Accounts under 18 C.F.R. Part 101, (4) financial reporting requirements under 18 C.F.R. Part 141; and (5) record retention requirements under 18 C.F.R. Part 125. The FERC indicated that the audit will cover the period July 10, 2013 through the present.

## XII. Misc. - Administrative & Rulemaking Proceedings

- **White Paper: Guidance Principles on Clean Power Plan Modeling (AD16-14)**

On January 20, the FERC issued a Staff White Paper that identified four guiding principles that may assist transmission planning entities, or other interested stakeholders, in conducting effective analysis of the Clean Power Plan ("CPP") and associated state plans, federal plans or multi-state plans (compliance plans). FERC stated that NERC and the regional electric reliability organizations may also benefit from following these guiding principles as they perform CPP-related analyses. The guiding principles address the following four areas: (1) transparency and stakeholder engagement; (2) study methodology and interactions between studies; (3) study inputs, sensitivities and probabilistic analysis; and (4) tools and techniques.

- **Price Formation in RTO/ISO Energy and Ancillary Services Markets (AD14-14)**

On November 20, 2015, the FERC directed each RTO/ISO to publicly provide information related to certain price formation issues.<sup>72</sup> Specifically, the FERC asked for information regarding five price formation issues: (1) pricing of fast-start resources; (2) commitments to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency. The FERC directed each RTO/ISO to file a report that provides an update on its current practices in the identified topic areas, that provides the status of its efforts (if any) to address each of the five issues, and that fully responds to the questions on or before February 3, 2016. Following the submission of the RTOs'/ISOs' reports, the FERC will allow for public comment. The FERC also indicated it would use the reports and comments to determine what further action is appropriate. Since the last Report, the ISO/RTO Council requested, on January 15, an extension of time so that responses are due instead on March 4, 2016. The FERC granted that request on January 27, so that the ISO/RTO responses are now due on or before March 4, 2016, and public comments 30 days thereafter, or April 4, 2016. Since the last Report, PJM filed its report on February 17.

- **NOI: Primary Frequency Response - Need for Reforms Related to Provision and Compensation (RM16-6)**

On February 18, the FERC issued a Notice of Inquiry ("NOI") seeking comment on the need for reforms to its rules and regulations regarding the provision and compensation of primary frequency response.<sup>73</sup> In light of the nation's changing resource mix and other factors, and considering the significance of primary frequency response to the reliable operation of the Bulk-Power System, the FERC seeks comment on (i) whether amendments to the *pro forma* LGIA and SGIA are warranted to require all new generation resources to have frequency response capabilities as a precondition of interconnection; (ii) the performance of existing resources and whether primary frequency response requirements for these resources are warranted; and (iii) the

<sup>72</sup> *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

<sup>73</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOI*").

requirement to provide and compensate for primary frequency response.<sup>74</sup> Comments on the *Frequency Response NOI* are due on or before April 25, 2016.<sup>75</sup>

- **NOPR: Price Formation Fixes - Price Caps in RTO/ISO Markets (RM16-5)**

On January 21, the FERC issued a NOPR proposing to require that each RTO/ISO cap each resource's incremental energy offer to the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer (regardless of fuel-type).<sup>76</sup> Verified cost-based incremental energy offers above \$1,000/MWh would be used for purposes of calculating Locational Marginal Prices (LMPs). Comments on the *Price Cap NOPR* are due on or before April 4, 2016.<sup>77</sup>

- **NOPR: Reactive Power Requirements for Wind Generators (RM16-1)**

On November 19, the FERC issued a NOPR proposing to eliminate the exemptions for wind generators from the requirement to provide reactive power.<sup>78</sup> As a result, all newly interconnecting generators, and all existing non-synchronous generators making upgrades to their generation facilities that require new interconnection requests, would be required to provide reactive power. To implement this requirement, the FERC proposes to revise the *pro forma* LGIA, Appendix G to the *pro forma* LGIA, and the *pro forma* SGIA. Comments on the *Reactive Power NOPR* were due on or before January 25, 2016<sup>79</sup> and were filed by more than 20 parties, including NEPOOL, ISO-NE, ISO/RTO Council, AWEA, EEL, NERC, NextEra, and UCS. In its initial comments, NEPOOL provided a status report both on NEPOOL's consideration of the *Reactive Power NOPR* and on NEPOOL's own consideration with the ISO of the reactive power requirement for non-synchronous (i.e., primarily wind) generators, that has been ongoing in New England for several months, independent of the *Reactive Power NOPR*. NEPOOL indicated that it would supplement its initial comments with substantive comments following the February 5 Participants Committee meeting (at which the supplemental comments were approved (Agenda Item #6)). Since the last Report, NEPOOL filed its supplemental comments on February 5, Midwest Energy, Inc. submitted comments on February 19, and Six Cities filed reply comments on February 26. The *Reactive Power NOPR* is pending before the FERC.

- **NOPR: Price Formation Fixes - Settlement Intervals/Shortage Pricing (RM15-24)**

On September 17, the FERC issued a NOPR proposing to revise its regulations to require that each RTO/ISO (i) settle (a) energy transactions in its real-time markets at the same time interval it dispatches energy and (b) operating reserves transactions in its real-time markets at the same time interval it prices operating reserves; and (ii) trigger shortage pricing for any dispatch interval during which a shortage of energy or operating reserves occurs.<sup>80</sup> The FERC stated that adopting these reforms would align prices with resource dispatch instructions and operating needs, providing appropriate incentives for resource performance. The *Settlement Intervals/Shortage Pricing NOPR* was discussed at the October 7-9 Markets Committee meeting. Comments on

<sup>74</sup> *Frequency Response NOI* at P 2.

<sup>75</sup> The *Frequency Response NOI* was published in the *Fed. Reg.* on Feb. 24, 2016 (Vol. 81, No. 36) pp. 9,182-9,192.

<sup>76</sup> *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,038 (Jan. 21, 2016) ("*Price Cap NOPR*").

<sup>77</sup> The *Price Cap NOPR* was published in the *Fed. Reg.* on Feb. 4, 2016 (Vol. 81, No. 23) pp. 5,951-5,965.

<sup>78</sup> *Reactive Power Requirements for Non-Synchronous Generation*, 153 FERC ¶ 61,175 (Nov. 19, 2015) ("*Reactive Power NOPR*").

<sup>79</sup> The *Reactive Power Requirements for Non-Synchronous Generation NOPR* was published in the *Fed. Reg.* on Nov. 25, 2015 (Vol. 80, No. 227) pp. 73,683-73,689.

<sup>80</sup> *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,218 (Sep. 17, 2015) ("*Settlement Intervals/Shortage Pricing NOPR*").

this NOPR were due on or before November 30, 2015.<sup>81</sup> Nearly 50 sets of comments were filed, including comments by NEPOOL (summarizing the status of New England’s consideration of pricing reforms like those identified in the NOPR and urging that FERC action on the NOPR, and any final rule, be sufficiently flexible in implementation schedule and details to permit final approval and implementation of New England’s solutions, which are planned to be filed in the first half of 2016 and implemented in 2017), ISO-NE, Potomac Economics (ISO-NE EMM), APPA/NRECA, EEI, EPSA, Direct Energy, Dominion, Entergy, ESA, Exelon, IRC, NEI, Public Interest Organizations, and PSEG. Golden Spread Electric Cooperative submitted limited reply comments. This matter is pending before the FERC.

- **NOPR: Connected Entity Data Collection (RM15-23)**

As previously reported and summarized, the FERC issued a NOPR that would dramatically expand the corporate and relationship structure information that all Market Participants will be required to share with the ISO as a condition to their participation and that the ISO would be required to share with the FERC.<sup>82</sup> The FERC proposed to require that all ISO/RTO market participants report all of their “Connected Entities,” which is a newly defined term that is much broader than, and is intended to replace, “Affiliate” as defined in and administered under the ISO Tariff. The rule would multiply by several factors the amount of information required to be reported, by including reporting of certain employee and contractual relationships, and of debt/profitability arrangements. The NOPR proposed additional registration and compliance requirements for each market participant and RTO/ISO. The FERC explained in the NOPR that this additional data collection will improve the information that it has for detecting market manipulation, which is a FERC enforcement priority. A more detailed summary of the *Connected Entity Data Collection NOPR* was distributed with the additional materials for the October 2 meeting.

**Dec 8 Technical Conference.** A staff-led and Commissioner (LaFleur and Norris)-attended technical conference was held on for December 8. The technical conference was intended to allow for a dialogue regarding industry concerns and the extent of the burdens that would be imposed upon market participants under the NOPR. It also provided staff an opportunity to ask questions and clarify a number of issues, many raised in NEPOOL’s comments filed on December 1 (highlighted at the technical conference as “particularly constructive” and an example of how others might use the comment period to offer “specific, concrete suggestions”).

Staff clarifications included the following:

- ◆ The Proposed Rule is designed to address and give some visibility to the unknown and “hidden” relationships, and the incentives that may be associated with those relationships, that present a risk to the efficiency and fairness of the wholesale markets.
- ◆ The Proposed Rule applies only to participants in RTO/ISO markets. Participants in wholesale gas markets who are not RTO/ISO market participants have no obligation under the Proposed Rule.
- ◆ The unique Legal Entity Identifier (LEI) will only be required of market participants, not all Connected Entities.
- ◆ “FERC jurisdictional markets” means participation in any or all of an RTO/ISO’s markets, physical and financial. Natural gas resources not included.
- ◆ Trader. Similar to the NEPOOL-proposed definition, a trader is the person who makes the decisions, or devises the strategies, for buying and selling physical or financial products which are or may be traded in the RTO/ISO electric markets. It would not include a person who simply

<sup>81</sup> The *Settlement Intervals/Shortage Pricing NOPR* was published in the *Fed. Reg.* on Sep. 29, 2015 (Vol. 80, No. 188) pp. 58,393-58,405.

<sup>82</sup> *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219 (Sep. 17, 2015) (“*Connected Entity Data Collection NOPR*”).



“pushes the button” to make a trade, if that person has no control over or input into the decision-making process.

- ◆ With respect to Contracts, Control, whether over trading activities or unit commitment decisions, is the defining characteristic that creates a connected entity relationship. Fuel arrangements, physical maintenance arrangements, and standard power purchase agreements, and other contracts not conferring control, would not be included.

Staff’s presentations, as well as presentations and written comments from some of the speakers, are available in the FERC’s eLibrary and attached for your convenience. For those who were unable to attend or view the technical conference via webcast, an archive of the webcast will be available for three months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>.

Comments on the NOPR were due on or before January 22, 2016. The FERC denied a December 30 request by Industry Groups<sup>83</sup> that it suspend the January 22 comment date and either: (1) withdraw the NOPR and issue a new or revised NOPR; or (2) issue a supplemental NOPR that takes into consideration the discussion and clarifications discussed at the December 8, 2015 Technical Conference.<sup>84</sup> Over 50 parties, including the ISO-NE IMM, ISO-NE/MISO, IRC, Backyard Farms, CMEEC/MMWEC/NHEC/VPPSA, Dominion, National Grid, NextEra, NRG, and SunEdison, submitted comments. This matter is pending before the FERC.

- **AWEA Petition for LGIA/LGIP Rulemaking (RM15-21)**

On June 19, the American Wind Energy Association (“AWEA”) petitioned the FERC to conduct a rulemaking to revise provisions of the FERC’s *pro forma* Large Generator Interconnection Procedures (“LGIP”) and *pro forma* Large Generator Interconnection Agreement (“LGIA”). AWEA stated that various aspects of the LGIP and LGIA are out of date in comparison to current market conditions and do not ensure that the generation interconnection process is just, reasonable, and not unduly discriminatory or preferential. AWEA indicated that the rulemaking would address reforms to improve (i) certainty in the study and restudy process, (ii) transparency in the interconnection process, (iii) certainty of network upgrade costs, and accountability in the interconnection process. Comments in response to this petition were due on or before September 8, 2015. More than 30 sets of comments were filed, including by ISO-NE, NESCOE, ISO/RTO Council (“IRC”), APPA/NRECA/Large Public Power Council, EEI, EPSA, NextEra, NRG, and PSEG. Reply comments were filed by AWEA and SunEdison. This matter is pending before the FERC.

- **Order 816: MBR Authorization Refinements (RM14-14)**

As previously reported, the FERC issued *Order 816* on October 16, 2015.<sup>85</sup> *Order 816* represents another step in the FERC’s efforts to modify, clarify and streamline certain aspects of its market-based rate (“MBR”) program. The *Order 816* revisions are intended to both increase transparency and refine existing filing requirements. By way of example, *Order 816*:

- ◆ requires electronic submissions of asset appendices in MBR filings to be searchable and sortable, and eliminates the requirement to report behind-the-meter generation in asset appendices

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<sup>83</sup> “Industry Groups” are American Forest & Paper Association (“AF&PA”), Canadian Electricity Association (“CEA”), Commercial Energy Working Group (“CEWG”), Edison Electric Institute (“EEI”), Electricity Consumers Resource Council (“ELCON”), Electric Power Supply Association (“EPSA”), Independent Power Producers of New York, Inc. (“IPPNY”), Industrial Energy Consumers Group (“IECG”), International Energy Credit Association (“IECA”), and the Retail Energy Supply Association (“RESA”). The Industry Groups’ request was supported by Ares EIF and the National Rural Electric Cooperative Association (“NRECA”) and APPA.

<sup>84</sup> *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,016 (2016).

<sup>85</sup> *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Srvcs. by Public Utils.*, 153 FERC ¶ 61,065 (Oct. 16, 2015) (“*Order 816*”).

- ◆ requires MBR sellers to report all long-term firm purchases of capacity and energy that have associated long-term firm transmission (thereby providing a more accurate measure of a seller's generation resources)
- ◆ eliminates MBR sellers' requirement to file quarterly land acquisition information for new generation sites
- ◆ reduces the number of "notice of change in status" filings by establishing a new threshold for reporting new affiliations and redefines the default relevant geographic market for an independent power producer with generation capacity located in a generation-only balancing authority area
- ◆ provides clarification on issues including capacity ratings and simultaneous transmission import limit (SIL) studies

*Order 816* became effective January 28, 2016.<sup>86</sup> Requests for clarification and/or rehearing of *Order 816* were filed by EDF Renewables, EEI, EPSA, Invenergy, NextEra, Southern Company, TAPS, SoCal Edison, and the National Hydropower Association. On December 11, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC. On December 23, the FERC partially granted an extension of time such that market-based rate applicants and sellers will not be required to comply with the corporate organizational chart requirement prior to the issuance of an order on the merits of the requests for rehearing of the corporate organizational chart requirement.

### XIII. Natural Gas Proceedings

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

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

On February 19, Algonquin Gas Transmission, LLC ("Algonquin") requested that the FERC approve tariff modifications that provide an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies ("EDCs") that are participating in state-regulated electric reliability programs. Algonquin states that modifications are consistent with the FERC's current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies ("LDCs") from bidding requirements. Algonquin adds that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC's initiatives related to gas-electric coordination. An April 1, 2016 effective date was requested. Comments and interventions on this filing were due on or before March 2.

- **Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)**

On January 21, the FERC issued orders initiating Natural Gas Act Section 5 investigations into whether the rates charged by the following gas pipeline companies were too high above their costs under federal law:

- ◆ Columbia Gulf Transmission, LLC (Docket No. RP16-302);<sup>87</sup>
- ◆ Empire Pipeline, Inc. (Docket No. RP16-300);<sup>88</sup>
- ◆ Iroquois Gas Transmission System, LP (Docket No. RP16-301);<sup>89</sup> and
- ◆ Tuscarora Gas Transmission Company (Docket No. RP16-299);<sup>90</sup>

<sup>86</sup> *Order 816* was published in the *Fed. Reg.* on Oct. 30, 2015 (Vol. 80, No. 210) pp. 67,056-67,123.

<sup>87</sup> *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,027 (2016).

<sup>88</sup> *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016).

<sup>89</sup> *Iroquois Gas Transmission System, LP*, 154 FERC ¶ 61,028 (2016).

<sup>90</sup> *Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,030 (2016).

Acting Chief Administrative Law Judge Carmen Cintron subsequently designated Administrative Law Judges to preside over the Track II hearings in the respective proceedings and orders. Pre-hearing conferences were held in each proceeding that established dates for the commencement of discovery, hearing and initial decisions in each proceeding, as follows:

Case	Presiding Judge	Prehearing Conference	Discovery Begins	Hearings Commence	Initial Decision
Columbia Gas (RP16-302)	John P. Dring	Feb 10	Apr 5	Nov 15, 2016	Feb 28, 2017
Empire Pipeline (RP16-300)	Michael J. Cianci, Jr.	Feb 10	Apr 6	Nov 8, 2016	Feb 28, 2017
Iroquois Gas (RP16-301)	David H. Coffman	Feb 10	Apr 5	Nov 15, 2016	Feb 28, 2017
Tuscarora Gas (RP16-299)	Dawn E.B. Scholz	Feb 11	April 5	Dec 14, 2016	Mar 30, 2017

Since the issuance of the orders, numerous parties have moved to intervene in each of the proceedings. In addition, Empire requested on February 22 rehearing of its order.

- **Opinion No. 538: ANR Storage Company, Order on Initial Decision (RP12-479)**

In what it described as “the first fully-litigated proceeding where a gas storage provider has sought market-based rate authority,” the FERC, on October 15, 2015, upheld a January 2014 Initial Decision in which a FERC Presiding Judge (ALJ) denied an application for market-based rate authorization by a natural gas storage provider that previously charged cost-based rates for its services. As the first case of its kind, the FERC provided clarity to its policies and procedures for market-based rate applications from gas storage providers, and also described how gas storage providers can meet the evidentiary burden to demonstrate that they lack significant market power. While reversing the ALJ on certain discrete issues (such as the Initial Decision’s finding that market-based rate applicants are required to meet their evidentiary burden solely through direct testimony), the FERC ultimately agreed with the ALJ that the applicant (ANR Storage) “has not met its evidentiary burden to show it lacks significant market power in the relevant markets.”<sup>91</sup> Requests for rehearing of *ANR Order* were filed by ANR and the Joint Intervenor Group.<sup>92</sup> On December 11, 2015, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending before the FERC.

- **Natural Gas-Related Enforcement Actions**

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

**BP (IN13-15).** On August 13, 2015, Judge Cintron issued her 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 and section 4A of the Natural Gas Act.<sup>93</sup> Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP’s Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel (“HSC”) trading point in order to benefit correspondingly long position at the Henry Hub trading point. Judge Cintron’s Initial Decision found that:

<sup>91</sup> *ANR Storage Co.*, 153 FERC ¶ 61,052 (Oct. 15, 2015) (“*ANR Order*”), *reh’g requested*.

<sup>92</sup> “Joint Intervenor Group” is comprised of the following: the Canadian Association of Petroleum Producers (“CAPP”), Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin (jointly, “NSP”), Tenaska Gas Storage, LLC (“Tenaska”), and BP Canada Energy Marketing Corp., (“BP Canada”).

<sup>93</sup> *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

- ▶ There were at least 48 violations on 49 days;
- ▶ BP's manipulation resulted in financial losses of \$1,375,482 to \$1,927,728 on the next-day natural gas markets at Houston Ship Channel (HSC) and Katy during the Investigative Period;
- ▶ the violation was less than five years after a prior FERC adjudication and adjudications of similar misconduct by the CFTC and DOJ (warranting a 2 point increase in BP's culpability score);
- ▶ BP's conduct contravened the terms of a permanent injunction with the CFTC (warranting a 2 point increase in BP's culpability score);
- ▶ BP did not have an effective Compliance program; and
- ▶ the BP Texas team's gross profits from the manipulation were between \$233,330 and \$316,170 and net profits between \$165,749 and \$248,589.

Judge Cintron also certified the *BP Initial Decision* and the record to the Commission on August 13, 2015. BP filed its Brief on Exceptions on September 14, 2015, and Enforcement Staff filed its Brief Opposing Exceptions on October 5, 2015. This matter is currently pending before the FERC.

- **FERC Enforcement Action: Staff Notices of Alleged Violations (IN\_\_ - \_\_)**

*Total Gas & Power, North America, Inc.* On September 21, 2015, the FERC issued a notice that Staff has preliminarily determined that Total Gas & Power, North America, Inc. ("TGPNA") and its West Desk traders and supervisors Therese Nguyen and Aaron Hall, 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 alleges that the scheme involved making largely uneconomic trades for physical natural gas during bidweek designed to move indexed market prices in a way that benefited the company's related positions. Staff alleges that the West Desk implemented the bidweek scheme on at least 38 occasions during the period of interest and that Therese Nguyen and Aaron Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

- **New England Pipeline Proceedings**

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

- **Algonquin Incremental Market Project (AIM Project) (CP14-96)**
  - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate Feb. 28, 2014
  - ▶ 342,000 dekatherms/day (Dth/d) of firm capacity to NY, CT, RI and MA.
  - ▶ 37.6 miles of take-up, loop and lateral pipeline facilities in NY, CT, and MA and system modifications in NY, CT and RI. The system upgrades would also require the removal of some facilities.
  - ▶ 10 firm shippers: Yankee Gas, NSTAR, Connecticut Natural Gas, Southern Connecticut, Narragansett Electric, Colonial Gas, Boston Gas, Bay State, Norwich Public Utilities, and Middleborough Gas and Electric (eight LDCs and two municipal utilities).
  - ▶ Final Staff-prepared Environmental Impact Statement (EIS) issued Jan. 23, 2015.
  - ▶ Certificate of public convenience and necessity granted Mar. 3, 2015.<sup>94</sup>
  - ▶ Construction began May 2015.
  - ▶ In-service: Nov. 2016 (anticipated).
- **Atlantic Bridge Project (CP16-9)**
  - ▶ Algonquin Gas Transmission filed for Section 7(b) and 7(c) certificate on Oct. 22, 2015.

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<sup>94</sup> Order Issuing Certificate and Approving Abandonment, *Algonquin Gas Transmission LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015), *reh'g requested*.

- ▶ 132,700 Dth/d of firm transportation to new and existing delivery points on the Algonquin system and 106,276 Dth/d of firm transportation service from Beverly, MA to various existing delivery points on the Maritimes & Northeast system.
  - ▶ 6.3 miles of replacement pipeline along Algonquin in NY and CT; new 7,700-horsepower compressor station in Weymouth, MA; more horsepower at existing compressor stations in CT and NY.
  - ▶ Seven firm shippers: Heritage Gas Limited, Maine Natural Gas Company, NSTAR Gas Company d/b/a Eversource Energy, Exelon Generation Company, LLC (as assignee and asset manager of Summit Natural Gas of Maine), Irving Oil Terminal Operations, Inc., New England NG Supply Limited, and Norwich Public Utilities.
- **Connecticut Expansion Project (CP14-529)**
    - ▶ Tennessee Gas Pipeline filed for Section 7(c) certificate July 31, 2014.
    - ▶ 72,100 Dth/d of firm capacity.
    - ▶ 13.26 miles of three looping segments and facility upgrades/modifications in NY, MA and CT.
    - ▶ Three firm shippers: Connecticut Natural Gas, Southern Connecticut Gas, and Yankee Gas.
    - ▶ Notice of Schedule issued Sept. 1 with FERC EA to be issued Oct. 23 and 90-day Federal Authorization Decision Deadline set at Jan. 21, 2016.
    - ▶ FERC Staff-prepared Environmental Assessment (EA) issued on Oct. 23, 2015, as well as contemporaneous notice soliciting comments on or before November 23, 2015.
    - ▶ Construction expected to begin Winter/Spring 2016.
    - ▶ In-service: Nov 2016 (anticipated).
  - **Constitution Pipeline (CP13-499) and Wright Interconnection Project (CP13-502)**
    - ▶ Constitution Pipeline Company and Iroquois Gas Transmission (Wright Interconnection) concurrently filed for Section 7(c) certificates on June 13, 2013.
    - ▶ 650,000 Dth/d of firm capacity from Susquehanna County, PA through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
    - ▶ New 122-mile interstate pipeline.
    - ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
    - ▶ Final EIS completed on Oct 24, 2014.
    - ▶ Certificates of public convenience and necessity granted Dec 2, 2014;
    - ▶ Construction expected to begin first quarter 2016 (after final Federal Authorizations).
  - **Salem Lateral Project (CP14-522)**
    - ▶ Algonquin Gas Transmission filed application Jul 10, 2013.
    - ▶ 115,000 Dth/d of firm capacity.
    - ▶ 1.2 miles of pipeline to 630 MW Salem Harbor Station and other Salem, MA facilities.
    - ▶ Footprint Power sole firm customer.
    - ▶ FERC Staff-prepared EA issued Dec 2, 2014.
    - ▶ Certificate of public convenience and necessity granted May 14, 2015.<sup>95</sup>
    - ▶ Construction began in May 2015.
    - ▶ In-Service: first quarter 2016 (anticipated).

<sup>95</sup> Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

**XIV. State Proceedings & Federal Legislative Proceedings***No Activity to Report.***XV. Federal Courts**

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

- **FCA9 Results (16-1068\*\*)**

**Underlying FERC Proceeding: ER15-1137<sup>96</sup>**

**Appellant: UWUA Local 464 and Robert Clark**

On February 24, 2016, Robert Clark and UWUA Local 464 filed a petition for review of the FERC’s orders on the FCA9 Results Filing. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions are due March 28, 2016; dispositive motions, April 11.

- **New Entry Pricing Rule Complaint Appeal (16-1042\*\*)**

**Underlying FERC Proceeding: EL15-23<sup>97</sup>**

**Appellant: Exelon**

On February 8, 2016, Exelon filed a petition for review of the FERC’s orders on Exelon/Calpine’s New Entry Pricing Rule Complaint. Exelon followed the notice of appeal with a February 10 request to consolidate this appeal with the pending petition for review in Case No. 15-1071. On March 1, the Court granted Exelon’s motion to consolidate this proceeding with 15-1071. Accordingly, 15-1071 was returned to the court’s active docket and parties instructed to file motions to govern further proceedings in the consolidated cases on or before March 28, 2016. In future Reports, developments in these cases will similarly be summarized on a consolidated basis.

- **NEPGA Peak Energy Rent (PER) Complaint (16-1024)**

**Underlying FERC Proceeding: EL15-25<sup>98</sup>**

**Appellants: NEPGA**

As previously reported, NEPGA filed, on January 19, 2016, a petition for review of the FERC’s orders on NEPGA’s PER Complaint. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions were filed. Also on February 18, NEPGA filed a request to consolidate this appeal with the pending petition for review in Case No. 16-1023 (*see* immediately below). On February 24, the Court granted NEPGA’s motion to consolidate this proceeding with 16-1023. In future Reports, developments in these cases will similarly be summarized on a consolidated basis.

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<sup>96</sup> 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

<sup>97</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

<sup>98</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).



- **FCM Jump Ball and Compliance Proceedings (16-1023)**  
**Underlying FERC Proceedings: ER14-1050;<sup>99</sup> EL14-52<sup>100</sup>**  
**Appellants: NEPGA**

Also on January 19, 2016, NEPGA filed a petition for review of the FERC's orders on the FCM PI Jump Ball Filing and the subsequent compliance proceedings. On February 18, a Docketing Statement Form, Statement of Issues to be Raised were filed. Appearances were filed by the ISO, NESCOE, Dynegy, and Entergy. On February 24, the Court granted NEPGA's motion to consolidate this proceeding with 16-1024. In future Reports, developments in these cases will similarly be summarized on a consolidated basis.

- **Base ROE Complaints (2012 and 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>101</sup>**  
**Appellants: New England Transmission Owners**

On July 13, 2015, the TOs filed a petition for review of the FERC's orders in the 2012 and 2014 ROE complaint proceedings. On July 16, the Court issued a scheduling order directing, among other things, a statement of issues and procedural motions to be filed by August 17 and dispositive motions to be filed by August 31; briefing was deferred until further order of the court. However, on August 14, 2015, NETOs filed an unopposed motion to hold this case in abeyance pending final FERC action on the 2012 and 2014 ROE Complaints (*see* Section I above). On August 20, 2015, the Court granted NETOs' motion to hold the case in abeyance, subject to submission of status reports every 90 days. On February 16, the parties filed their second 90-day status report, again indicating, ultimately, that the proceedings upon which the NETOs based their request for abeyance of this appeal remain ongoing.

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<sup>99</sup> 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

<sup>100</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

<sup>101</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

- **Order 1000 Compliance Filings (15-1139, 15-1141\*\*) (consolidated)**  
**Underlying FERC Proceedings: ER13-193; ER13-196<sup>102</sup>**

**Appellants: New England Transmission Owners (NETOs); NESCOE/CT DEEP/CT PURA, et al.**

On May 15, 2015, NETOs<sup>103</sup> and NESCOE, et al., filed a petition for review of the FERC's orders in the *Order 1000* Compliance Filing proceeding. On June 15, the parties filed a joint statement of issues and unopposed motion regarding briefing format. On June 18, a Joint Statement of issues and docketing statement was filed. On July 2, the Court granted all motions to intervene. On November 6, 2015, the court issued an order setting the following briefing schedule (remaining dates only): Mar. 11, 2016 - Brief for Respondent; Apr. 1, 2016 - Brief for Intervenors Supporting Respondent in No. 15-1139 and Brief for Intervenors Supporting Respondent in No. 15-1141; Apr. 22, 2016 - Joint Reply Brief in No. 15-1139 and Joint Reply Brief in No. 15-1141; May 13, 2016 - Deferred Appendix; May 20, 2016 - Final Briefs. The Court noted that parties would be notified separately of the oral argument date and composition of the merits panel.

As previously reported, Joint Petitioner Briefs were filed on January 11, 2016. Next up is submission of Brief for Respondent.

- **Base ROE Complaint (2011) (15-1118, 15-1119, 15-1121\*\*) (consolidated)**  
**Underlying FERC Proceeding: EL11-66<sup>104</sup>**

**Appellants: NETOs**

On April 30, 2015, NETOs filed a petition for review of the FERC's orders in the 2011 Base ROE Complaint Proceeding. Motions for leave to intervene have been filed by NEPOOL, EMCOS,<sup>105</sup> NJ Division of Rate Counsel, NHEC, MMWEC, CT PURA, CT OCC, CT AG, NJ BPU, Delaware PSC, and Coalition of MISO Transmission Customers. The Court granted all motions to intervene on June 23. On August 10, Petitioners filed an unopposed proposed briefing format and schedule. On October 6, 2015, the court issued an order setting the following briefing schedule (remaining dates only): March 4 - Joint Intervenor Brief for Complainant, EMCOS, and Non-New England Intervenors on the issues of the ROE being too low and modification of incentive adders and Joint Intervenor Brief for NETOs on the issue of the ROE being too high; March 25 - Reply Brief(s) for Complainants/EMCOS and Joint Reply Brief for NETOs; April 15 - Deferred Appendix; April 26, 2016 - Final Briefs.

On December 7, 2015, (i) "Customers"<sup>106</sup> and the TOs<sup>107</sup> filed their Opening briefs. On December 8, the clerk's office sent to counsel a letter noting the use of uncommon acronyms and abbreviations in briefs filed with the court (parties are expected to limit the use of acronyms and to avoid using acronyms that are not widely known), advising counsel that they could submit within a week revised briefs eliminating any uncommon acronyms used in previously filed briefs, which the TOs did on December 15. The FERC filed its brief on February 12. As noted above, next up, due to be filed on March 4, is Joint Intervenor Brief for Complainant, EMCOS, and Non-New England Intervenors on the issues of the ROE being too low and modification of incentive adders and Joint Intervenor Brief for NETOs on the issue of the ROE being too high.

<sup>102</sup> 150 FERC ¶ 61,209 (Mar. 19, 2015); 143 FERC ¶ 61,150 (May 17, 2013).

<sup>103</sup> "NETOs" are Emera Maine; Central Maine Power Co., National Grid; New Hampshire Transmission ("NHT"), Eversource (on behalf of its electric utility company affiliates CL&P, WMECO, PSNH, and NSTAR), UI, and Vermont Transco.

<sup>104</sup> 150 FERC ¶ 61,165 (Mar. 3, 2015); 149 FERC ¶ 61,032 (Oct. 16, 2014); 147 FERC ¶ 61,234 (June 19, 2014).

<sup>105</sup> "EMCOS" are Taunton, Reading, Hingham, and Braintree.

<sup>106</sup> "Customers" are: the Commonwealth of Massachusetts, CT AG, CT PURA, NH PUC, RI PUC, CT OCC, MOPA, NH OCA, the "EMCOS" group (Braintree, Hingham, Reading, Taunton), MMWEC, NHEC, AIM, IECG, and Power Options.

<sup>107</sup> In this case, TOs are CMP, Emera Maine, Eversource, National Grid, NHT, UI, and Vermont Transco.

- **FCM Administrative Pricing Rules Complaint (15-1071\*\*)**  
**Underlying FERC Proceeding: EL14-7<sup>108</sup>**  
**Appellants: NEPGA**

On March 31, 2015, NEPGA filed a petition for review of the FERC's orders on NEPGA's FCM Administrative Pricing Rules Complaint. A Docketing Statement Form, Statement of Issues to be Raised, and Petitioners' Appearances were filed on April 23, 2015. Also on April 23, 2015, NEPGA requested that the case be held in abeyance pending the FERC's issuance of an order on rehearing of its initial order in Exelon Corporation v. ISO New England Inc. (EL15-23). Motions for leave to intervene have been filed by NEPOOL, CT PURA, CT OCC, NESCOE, NECPUC, NHEC, and PSEG. On May 22, the Court granted all motions to intervene and NEPGA's motion to hold the case in abeyance pending a decision in EL15-23. Motions to govern future proceedings are due 30 days from the completion of the FERC proceedings in EL15-23. NEPGA was directed to, and did, file an abeyance status report on or before August 20, 2015. In its August 20 report, NEPGA indicated that the FERC had not taken final action in EL15-23 and requested the Court continue to hold the case in abeyance. NEPGA filed a second abeyance status report on November 18, again requesting that the Court continue to hold this case in abeyance.

As noted above, the Court granted, on March 1, 2016, Exelon's motion to consolidate this proceeding with 16-1042. Accordingly, this proceeding was returned to the court's active docket and parties instructed to file motions to govern further proceedings in the consolidated cases on or before March 28, 2016. In future Reports, developments in these cases will similarly be summarized on a consolidated basis.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**  
**Underlying FERC Proceeding: ER14-1409<sup>109</sup>**  
**Appellants: Public Citizen and CT AG**

As previously reported, Public Citizen and the CT AG filed petitions for review of the FERC's action on the FCA8 Results Filing, which became effective by operation of law on September 16, 2014. These proceedings have been consolidated. Briefing on the issue of the Court's jurisdiction to hear this matter (with FERC (supported by EPSA and NEPGA) asserting the FCA8 Results Filing Order was not an "order" within the meaning of section 313 of the FPA, or "agency action" reviewable under the Administrative Procedures Act, and Connecticut<sup>110</sup> and Public Citizen taking the opposing view) has now been completed. Since the last Report, the parties filed a Joint Appendix (reflecting all filings and issuances in ER14-1409) on December 16. Final Petitioner briefs and reply briefs were filed by Public Citizen on December 17; by Connecticut, on December 22. The FERC's final brief was filed on December 23, as was the final brief of Joint Intervenors for Respondent (EPSA, GenOn Energy Management, HQUS, NRG, and NEPGA). With the jurisdictional issue now fully briefed, the Court will next issue a separate order notifying the parties of the date and time of oral argument. As of the date of this Report, that order (date for oral argument) has not been set.

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**  
**Underlying FERC Proceedings: ER13-1851<sup>111</sup> and ER13-2266<sup>112</sup>**  
**Appellants: TransCanada and RESA**

On December 22, 2015, 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

<sup>108</sup> 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

<sup>109</sup> Notice of Filing Taking Effect by Operation of Law, *ISO New England Inc.*, Docket No. ER14-1409 (Sep. 16, 2014); Notice of Dismissal of Pleadings, *ISO New England Inc.*, Docket No. ER14-1409 (Oct. 24, 2014).

<sup>110</sup> For purposes of this proceeding, "Connecticut" means the CT AG, CT PURA and CT OCC.

<sup>111</sup> 144 FERC ¶ 61,204 (Sep. 16, 2013); 147 FERC ¶ 61,026 (Apr. 8, 2014).

<sup>112</sup> 145 FERC ¶ 61,023 (Oct. 7, 2013); 147 FERC ¶ 61,027 (Apr. 8, 2014).

could not properly assess whether the Program's rates were just and reasonable).<sup>113</sup> The FERC must 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. With respect to TransCanada's claims regarding the FERC's decision in ER13-1851, the Court found that TransCanada's challenge with respect to the procurement process, bid results, and explanation of costs were properly raised and considered in conjunction with Docket ER13-2266 and were not ripe for review in ER13-1851, and found no merit in TransCanada's challenge to the FERC's order that Program costs should be allocated to Real-Time Load Obligation. The Clerk issued the mandate (official remand to the FERC) on February 17, 2016. Reporting on this matter will return to Section III (Market Rule Changes) in future reports.

- **New England's Order 745 Compliance Filing (12-1306)**  
**Underlying FERC Proceeding: ER11-4336<sup>114</sup>**  
**Appellants: EPSA and NEPGA**

On July 16, 2012, EPSA and NEPGA filed a petition for review of FERC's orders on New England's *Order 745* (Demand Response Compensation) filings. On August 16, 2012, EPSA and NEPGA filed a statement of issues as well as an unopposed motion to hold case in abeyance pending the final resolution of Case Nos. 11-1486, et al. (*EPSA et al. v. FERC*) (see Orders 745 and 745-A below). On August 23, 2012, the Court granted the motion to hold the case in abeyance. Motions to govern future proceedings will be due 30 days following the issuance of the mandate in the *Order 745* appeal.

**Status of New England Implementation of Order 745 (in light of *FERC v. EPSA* below).** Recall that, in response to the FERC's issuance of *Order 745* on March 15, 2011,<sup>115</sup> ISO-NE submitted New England's compliance filing on August 19, 2011, proposing a two-stage implementation process (Transition Period Rules to be effective June 1, 2012; Full Integration Rules,<sup>116</sup> June 1, 2015 (later amended to June 1, 2016)).<sup>117</sup> NEPOOL did not support the ISO-NE compliance filing, with 51.9% voting to support the package at the August 12, 2011 Participants Committee meeting. On January 19, 2012, the FERC conditionally accepted New England's *Order 745* compliance filing, with the Transition Period Rules to be effective June 1, 2012 and Full Integration Rules effective June 1, 2016, as either in compliance with *Order 745* or just and reasonable under FPA § 205.<sup>118</sup> ISO-NE's 90-day compliance filing (providing further justification for using the Demand Reduction Threshold Price and amending the Transition Period rules to allow for ARCs to bid into the energy markets on behalf of smaller individual assets) was accepted on May 29, 2012.<sup>119</sup> A number of parties requested rehearing of the January 19 Order, but the FERC denied rehearing on May 17, 2012.<sup>120</sup> EPSA and NEPGA petitioned the DC Circuit Court of Appeals for review of the FERC's January 19 and May 17, and, as noted above, that case has been held in abeyance pending resolution of the Federal Court challenges to *Order 745*.

The Transition Period rules were implemented on June 1, 2012, and have been in effect, subject to minor adjustment, since that time. With respect to the Full Integration Rules, the ISO included with an April

<sup>113</sup> *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

<sup>114</sup> 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

<sup>115</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187 (Mar. 11, 2015).

<sup>116</sup> The "Full Integration Rules" enable DR to (i) fully participate (make Demand Reduction Offers) in the Day-Ahead and Real-Time Energy Markets; (ii) provide Operating Reserve and participate in the Forward Reserve Market ("FRM"); and (iii) receive FCM obligations and compensation that are fully comparable with those of dispatchable generation resources.

<sup>117</sup> See *ISO New England Inc.* Order No. 745 Compliance Filing, Docket No. ER11-4336 (filed Aug 19, 2011).

<sup>118</sup> *ISO New England Inc.*, 138 FERC ¶ 61,042 (Jan. 19, 2012).

<sup>119</sup> *ISO New England Inc.*, Docket No. ER11-4336-005 (May 29, 2012) (unpublished letter order).

<sup>120</sup> *ISO New England Inc.*, 139 FERC ¶ 61,116 (May 17, 2012).

26, 2012 filing of FCM conforming changes, a request that implementation of the Full Integration Rules be pushed back another year, to June 1, 2017. That delay, together with the Market Rule changes, was accepted on January 14, 2013.<sup>121</sup> The Full Integration Rules have been clarified and revised several times since, with the most recently filed changes including a request, in light of the uncertainty created by the DC Circuit Order and Supreme Court review, to defer implementation of the Full Integration Rules one more year to June 1, 2018. That request was accepted December 23, 2015. Given the Supreme Court's January 25 Decision, in the time remaining before the Full Integration Rules are implemented on June 1, 2018, NEPOOL and ISO-NE will need to work together to identify, finalize, file, and implement any refinements to the Market Rules, Manuals, or other rules and procedures that may be necessary to support the full integration of DR in the New England's Markets as of June 1, 2018.

- **Orders 745 and 745-A (FERC v. EPSA, Supreme Court, 14-840 and 14-841)**

**Underlying FERC Proceeding: RM10-17-000**<sup>122</sup>

**Appellants: FERC and EnerNOC**

On January 25, 2016, the Supreme Court reversed the DC Circuit Court of Appeals' May 23, 2014 decision<sup>123</sup> vacating FERC Order 745.<sup>124</sup> As previously reported, the DC Circuit vacated *Order 745*<sup>125</sup> in its entirety as impermissibly encroaching on "states' exclusive jurisdiction to regulate the retail market". The DC Circuit vacated *Order 745* on two separate and independent grounds. First, it held that the FERC does not have jurisdiction to regulate demand response. As an alternative and secondary basis for its decision against *Order 745*, the Court concluded that the FERC order was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," failing to reasonably consider and address arguments that *Order 745* will result in over-compensation of demand response resources.

The Supreme Court, however, held that the FPA does provide the FERC with the authority to regulate wholesale market operators' compensation of demand response bids, and the FERC's decision to compensate demand response providers at LMP instead of at LMP-G, is not arbitrary and capricious. As to the FERC's authority to regulate ISO/RTO compensation of DR bids, the Supreme Court reasoned that *Order 745* complies with the FPA's plain terms because the practices at issue directly affect wholesale rates and the FERC has not thereby regulated retail sales. The contrary view, the Court held, would conflict with the FPA's core purposes. As to compensation at LMP, the Court held that the FERC's serious and careful discussion of the issue (provided by its detailed explanation of its choice of LMP and response at length to contrary views) satisfies the arbitrary and capricious standard. In upholding FERC's choice of compensation at LMP, the Court did "not discount the cogency of EPSA's arguments in favor of LMP-G. Nor do we say that in opting for LMP instead, FERC made the better call. It is not our job to render that judgment, on which reasonable minds can differ. Our important but limited role is to ensure that the [FERC] engaged in reasoned decision-making—that it weighed competing views, selected a compensation formula with adequate support in the record, and intelligibly explained the reasons for making that choice. FERC satisfied that standard." This matter will be remanded to the DC Circuit Court of Appeals for disposition of any remaining issues (e.g. the unresolved cost allocation issue raised by the CAISO and CA PUC). The remand will not issue for at least 25 days pursuant to Rule 45 of the Rules of the Supreme Court.

- **Hughes v. Talen Energy Marketing (Supreme Court, 14-614/14-623 consol.)**

Since the last Report, oral argument was held on February 24. The questions presented were: (1) when a seller offers to build generation and sell wholesale power on a fixed rate contract basis, does the FPA field-

<sup>121</sup> *ISO New England Inc.*, 142 FERC ¶ 61,027 (2013).

<sup>122</sup> 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

<sup>123</sup> *EPSA v. FERC*, 753 F.3d 216 (May 23, 2014), *reversed and remanded*.

<sup>124</sup> *FERC v. EPSA et al.*, 577 U. S. \_\_\_\_ (2016).

<sup>125</sup> *Order 745* required RTOs and ISOs to include provisions in their tariffs that assured demand response would be paid at LMP for interrupting their loads when such interruption was cost effective.

preempt a state order directing retail utilities to enter into the contract?; and (2) does FERC's acceptance of an annual regional capacity auction preempt states from requiring retail utilities to contract at fixed rates with sellers who are willing to commit to sell into the auction on a long-term basis? The matter now awaits a decision by the Court.

As previously reported, on June 2, 2014, the 4th Circuit Court of Appeals affirmed the September 30, 2013 decision of the United States District Court for the District of Maryland<sup>126</sup> which found that a Maryland Public Service Commission ("MD PSC") order directing three Maryland distribution utilities to enter into a 'contract for differences' for capacity and energy in the PJM control area (the "CfD") with a gas-fired merchant generator selected by the MD PSC (the "MD PSC Order") violated the Supremacy Clause of the United States Constitution and cannot be enforced.<sup>127</sup> In affirming the District Court decision, the 4th Circuit found the MD PSC Order to be both field<sup>128</sup> and conflict pre-empted.<sup>129</sup>

With respect to field pre-emption, the 4th Circuit stated that a "wealth of case law confirms FERC's exclusive power to regulate wholesale sales of energy in interstate commerce, including the justness and reasonableness of the rates charged."<sup>130</sup> It found the federal scheme (i.e. the PJM Market) "carefully calibrated to protect a host of competing interests" (representing "a comprehensive program of regulation that is quite sensitive to external tampering"),<sup>131</sup> and leaving "no room either for direct state regulation of the prices of interstate wholesales of [energy], or for state regulations which would indirectly achieve the same result." Accordingly, the 4th Circuit concluded that the MD PSC Order was "field preempted because it functionally sets the rate that CPV receives for its sales in the PJM auction."<sup>132</sup> The MD PSC Order "compromises the integrity of the federal scheme and intrudes on FERC's jurisdiction" because the MD PSC Order "effectively supplants the rate generated by the auction with an alternative rate preferred by the state." The 4th Circuit rejected arguments that the CfD payments "represented a separate supply-side subsidy implemented entirely outside the federal market."<sup>133</sup> And, even if the presumption against preemption were to apply, the Court found that that it was "overcome by the text and structure of the FPA, which unambiguously apportions control over wholesale rates to FERC."<sup>134</sup>

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<sup>126</sup> *PPL EnergyPlus, LLC v. Nazarian*, 974 F.Supp. 2d 790 (D. Md. Sep. 30, 2013); 2013 U.S. Dist. LEXIS 140210, 2013 WL 5432346 ("District Court Decision"). The *District Court Decision* was summarized in past Litigation Reports.

<sup>127</sup> *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467; 2014 U.S. App. LEXIS 10155.

<sup>128</sup> "Field preemption" is a doctrine based on the Supremacy Clause of the U.S. Constitution that holds that any federal law, including regulations of a federal agency, takes precedence over any conflicting state law. Preemption can be implied when federal law/regulation "occupies the field" in which the state is attempting to act/regulate. Field preemption occurs when there is "no room" left for state regulation. Accordingly, a state may not pass a law or take any action in a field, like the regulation of wholesale power sales, pervasively regulated by federal law/regulation.

<sup>129</sup> "Conflict preemption" occurs where there is a conflict between a state law and a federal law. ("[E]ven if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute."). Such a conflict occurs when "the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The court must look to 'the entire scheme of the statute' and determine '[i]f the purpose of the [federal] act cannot otherwise be accomplished--if its operation with its chosen field [would] be frustrated and its provisions be refused their natural effect. Where a state law conflicts with a federal law, the Court does not balance the competing federal and state interests. Any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield."

<sup>130</sup> Slip op. at p. 14.

<sup>131</sup> *Id.* at p. 10.

<sup>132</sup> *Id.* at p. 16.

<sup>133</sup> *Id.* at pp. 18-19.

<sup>134</sup> *Id.* at p. 20. The Court noted the limited scope of its holding, which "is addressed to the specific program at issue" and did not "express an opinion on other state efforts to encourage new generation." *Id.* at p. 21.



With respect to conflict pre-emption, the 4th Circuit found that the MD PSC Order “presents a direct and transparent impediment to the functioning of the PJM markets, and is therefore preempted”.<sup>135</sup> Preemption was appropriate because of the “extensive and disruptive” impact of the MD PSC Order on matters within federal control (the PJM markets). It found that the MD PSC Order had “the potential to seriously distort the PJM’s auction’s price signals, thus ‘interfer[ing] with the method by which the federal statute (i.e. the PJM Markets) was designed to reach its goals.’”<sup>136</sup> “Maryland’s initiative disrupts [the PJM scheme] by substituting the state’s preferred incentive structure for that approved by FERC.”<sup>137</sup> “Maryland has sought to achieve through the backdoor of its own regulatory process what it could not achieve through the front door of FERC proceedings. Circumventing and displacing federal rules in this fashion is not permissible.”<sup>138</sup>

Petitions for rehearing *en banc* were filed by MD PSC and CPV Maryland on June 16, 2014. The Supreme Court granted certiorari on October 19, 2015. Oral argument is scheduled for February 24, 2016.

- **CPV Power Development, et al. v. PPL EnergyPlus, LLC, et al. (Supreme Court, 14-634, 14-694)**

Petitions for a writ of certiorari in this case were filed on November 26, 2014 and December 10, 2014 and placed on the Supreme Court’s docket as Case Nos. 14-634 and 14-694, respectively. The parties consented to the filing of amicus curiae briefs, and such briefs were filed by NARUC, the State of Connecticut, APPA, AWEA, and the NY PSC. Since the last Report, Respondents (PPL EnergyPlus, LLC, et al.) filed a brief opposing the writ of certiorari on February 11. Petitioners (CPV Power Development, Inc., et al.) replied to that brief on February 20. On March 23, the Court invited the Solicitor General to file a brief in the case expressing the views of the United States. Since the last Report, the Solicitor General filed, on September 16, an amicus brief of the United States. On September 29, petitioner CPV Maryland filed a supplemental brief. The case was distributed on September 30 for the Court’s October 16, 2015 Conference.

As previously reported, on September 11, 2014, the 3rd Circuit Court of Appeals affirmed<sup>139</sup> the analogous October 11, 2013 decision of the United States District Court for the District of New Jersey declaring unconstitutional (and therefore null and void) New Jersey’s Long Term Capacity Agreement Pilot Program Act (“LCAPP”).<sup>140</sup> In affirming the New Jersey District Court’s decision, the 3rd Circuit concluded:

LCAPP compels participants in a federally-regulated marketplace to transact capacity at prices other than the price fixed by the marketplace. By legislating capacity prices, New Jersey has intruded into an area reserved exclusively for the federal government. Accordingly, federal statutory and regulatory law preempts and, thereby, invalidates LCAPP and the Standard Offer Capacity Agreements.<sup>141</sup>

No petition for rehearing or rehearing *en banc* was filed on or before September 25, 2014. Accordingly, the mandate was issued on October 3, 2014. As noted above, petitions for *certiorari* to the U.S. Supreme Court were filed and are pending before the Supreme Court.

<sup>135</sup> *Id.* at p. 27.

<sup>136</sup> *Id.* at p. 23.

<sup>137</sup> *Id.* at p. 24. (“Two features of the Order render its likely effect on federal markets particularly problematic. First, as noted, the CfDs are structured to actually set the price received at wholesale. They therefore directly conflict with the auction rates approved by FERC. Second, the duration of the subsidy -- twenty years -- is substantial.”)

<sup>138</sup> *Id.* at p. 25.

<sup>139</sup> *PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, (“*NJ Order*”).

<sup>140</sup> *PPL EnergyPlus, LLC v. Hanna*, 766 F.3d 241; 2014 U.S. App. LEXIS 17557 (Sep. 11, 2014).

<sup>141</sup> *Id.* slip op. at 31.

- **Entergy Nuclear Fitzpatrick, LLC et al v. Zibelman et al (NY PSC Commissioners) (NDNY 5:15-cv-00230-DNH-TWD)**

Entergy<sup>142</sup> filed, on February 27, 2015, in the United States District Court for the Northern District of New York (“NDNY”), a Complaint that seeks a declaratory judgment that the NYPSC Commissioners’ order (“Order”) approving an agreement to keep NRG’s 435 MW Dunkirk facility in the NYISO market, “repowered” as a natural gas-fired (rather than coal-fired) plant (the “Term Sheet”)<sup>143</sup> is preempted by the FPA and invalid under the dormant Commerce Clause of the US Constitution. Entergy also seeks a permanent injunction requiring the NYPSC Commissioners to withdraw the Order and/or preventing the NYPSC Commissioners from continuing to treat the Order as valid and binding. This case is noteworthy given the relationship of the issues raised to the Maryland and New Jersey CfD cases summarized above.

Since the last Report, on February 19, a previously-scheduled telephone conference was re-scheduled to April 20, 2016. A temporary stay of discovery remains in effect.

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<sup>142</sup> Plaintiffs are Entergy Nuclear FitzPatrick, LLC (“FitzPatrick”); Entergy Nuclear Power Marketing, LLC (“ENPM”); and Entergy Nuclear Operations, Inc. (“ENOI”).

<sup>143</sup> The Term Sheet provides that, in exchange for Dunkirk’s commitment to participate in the NYISO energy and capacity markets through 2025, Dunkirk will receive out-of-market payments of \$20.4 million per year from National Grid and a \$15 million one-time subsidy from a New York State agency. Entergy asserts that the contract structure will lead Dunkirk to bid below its actual costs in the capacity auction, causing the auction market to “clear” at a lower price than otherwise would have resulted, and resulting in all generators receiving lower capacity revenues than they otherwise would have received.

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