

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of July 1, 2016**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 1, 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	NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Potential Gas Pipeline-Related Price Suppression (EL16-93)	Jun 24 Jun 24-30 Jun 28 Jun 29 Jun 30	NextEra/PSEG file complaint; comment date Jul 14 EPSA, Eversource, ConEd, National Grid intervene ISO moves to dismiss Complaint, suspend due date for answers, and opposes fast-track processing request NextEra files notice of intention to answer ISO’s Jun 28 motion ISO answers NextEra’s Jun 29 notice; NextEra answers ISO motion to dismiss
	1	Base ROE Complaint IV (2016) (EL16-64)	Jun 2-3 Jun 3 Jun 20	Acadia Center, CT PURA, MMWEC, NH OCA, NH PUC, RI PUC, intervene TOs respond to Complaint; CT PURA, MPUC submit comments EMCOS respond to TOs’ Jun 3 response
	2	NextEra Bellingham FCA10 Complaint (EL16-48)	Jun 16	FERC denies Complaint
	2	Dominion Energy Manchester Street FCA10 Complaint (EL16-38)	Jun 27	FERC issues tolling order to afford it additional time to consider Dominion request for rehearing of <i>Manchester Street FCA10 Order</i>
	3	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Jun 10	Settlement Judge Dring issues status report recommending settlement judge procedures be continued
	4	206 Proceeding: 2014/15 RNS Recovery of SeaLink Development Costs (EL15-85)	Jun 13 Jun 30	FERC Trial Staff files comments recommending certification and approval of proposed Settlement Settlement Judge Baten certifies uncontested settlement

<b>II. Rate, ICR, FCA, Cost Recovery Filings</b>	
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6	FCA10 Results Filing (ER16-1041)	Jun 16	FERC accepts FCA10 Results Filing, eff. Jun 28, 2016
6	FCA1 Results Remand Proceeding (ER08-633)	Jun 13	Resettlement reflected in June 13 Statements

<b>III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests</b>	
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*	6	FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126)	Jul 1	ISO and NEPOOL jointly submit compliance changes; comment date Jul 22
	7	Waiver Request: RTEG Resource Type/De-List (ISO-NE) (ER16-1904)	Jun 9 Jun 15-30 Jun 30	ISO requests waiver of RTEG-related Tariff provisions; comment date Jun 30 NEPOOL, Dominion, Eversource, Exelon, NESCOE, NRG intervene CPower requests limited modification of waivers requested

## July 1, 2016 Report

* 7	Sub-Hourly Settlement Changes (ER16-1838)	Jun 2 Jun 7-23 Jun 23	ISO and NEPOOL jointly file changes to change to five minutes the settlement interval in the Real-Time Energy and Reserves Markets Energy, Eversource, National Grid, NESCOE, NRG, RENEW intervene NEPGA/EP SA file comments supporting Changes
7	Demand Curve Design Improvements (ER16-1434)	Jun 24 Jun 28	OEPI staff member D. Kheloussi designated as non-decisional FERC accepts filing, eff. Jun 29, 2016
8	FCM Resource Retirement Reforms (ER16-551)	Jun 2 Jun 13	NEPGA, NextEra protest compliance filing; NESCOE submits comments; Dominion intervenes FERC issues tolling order affording it additional time to consider NEPGA/NextEra request for rehearing of <i>Resource Retirement Reforms Order</i>
9	Demand Curve Changes Remand Proceedings (ER14-1639)	Jun 3 Jun 8	NESCOE answers rehearing request FERC issues tolling order affording it additional time to consider the NextEra/NRG/PSEG request for rehearing of the Apr 8 <i>Demand Curve Remand Order</i>

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

10	Reactive Power Compensation Revisions (ER16-1789)	Jun 8-16	Eversource, Exelon, National Grid, NRG intervene
10	Generator Interconnection Revisions (ER16-946)	Jun 7	FERC accepts compliance filing revising SGIA Attachment 1 to incorporate the definition of "Study Case" and update the definition of "Interconnection Request"; eff. Apr 17, 2016

### V. Financial Assurance/Billing Policy Amendments

* 10	Financial Statement Reporting Requirement Changes (ER16-1874)	Jun 3 Jun 6-22	ISO and NEPOOL jointly file changes Eversource, Exelon, DC Energy, National Grid, NRG intervene
11	GIS API Revisions (ER16-1728)	Jun 3-8 Jun 15	Exelon, National Grid, Eversource intervene FERC accepts revisions

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

* 11	Schedule 22 LGIA: Exelon West Medway II (ER16-2024)	Jun 27	ISO and NSTAR file LGIA; comment date Jul 18
* 11	Schedule 21-NEP: Deepwater Wind Indemnification Agreement (ER16-2012)	Jun 24	Narragansett (National Grid) files agreement to indemnify National Grid for costs to expedite delivery of substation switchgear in connection with the Deepwater Companies' Block Island wind farm; comment date Jul 15
* 11	Schedule 21-NEP: Granite Ridge Prior Service Agreement Termination (ER16-1921)	Jun 14	National Grid files a notice of termination of a prior service agreement with Granite Ridge (superseded by an LGIA); comment date Jul 5
11	Schedule 21-FGE: Revised Depreciation Rates (ER16-1722)	Jun 7 Jun 10	Eversource intervenes FERC accepts revised rates, eff. May 1, 2016
12	Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)	Jun 6 Jun 16 Jun 21	Judge Hurt re-schedules 2nd settlement conf. for Aug 16 Judge Hurt issues report recommending settlement judge procedures be continued Chief Judge issues order continuing settlement judge procedures

12	Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.)	Jun 2 Jun 9 Jun 14 Jun 15 Jun 22 Jun 30	FERC accepts, but establishes hearing and settlement judge procedures for, March 31 filings Chief Judge designates Judge John Dring as settlement judge 1st settlement conf. re-schedule to Jun 29 Emera submits 2nd amendment to its May 2 informational filing Emera submits second amended refund report Judge Dring schedules 2nd settlement conf. for Sep 29
13	Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)	Jun 30	NSTAR submits CWIP supplement to May 31 annual informational filing
* 13	Schedule 21-CMP Annual Informational Filing (ER09-938)	Jun 30	CMP files updated formula rates reflecting actual 2015 cost data and estimated 2016 cost data

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

*No Activity to Report*

**VIII. Regional Reports**

14	Capital Projects Report - 2016 Q1 (ER16-1700)	Jun 20	FERC accepts 2016 Q1 Report
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**IX. Membership Filings**

* 15	July 2016 Membership Filing (ER16-2104)	Jun 30	Memberships: Cumulus Master Fund; J. Jones, National Gas & Electric; termination: EnergyConnect; name change: CleanChoice Energy
15	June 2016 Membership Filing (ER16-1813)	Jun 29	FERC accepts Granite Ridge and BayRing Communications terminations; Engelhart CTP, ENGIE Resources name changes

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

* 15	Retirement of NPCC Regional Reliability Standard PRC-002-NPCC-001 (RD16-8)	Jun 9	NERC and NPCC request approval of retirement of PRC-002-NPCC-001 and related definitions; comment date Jul 11
* 15	Glossary Definitions: Reporting ACE, Actual Frequency, Actual Net Interchange, NIS, IME, ATEC (RD16-7)	Jun 2 Jun 3 Jun 23	NERC files 6 glossary definitions for approval NERC files errata FERC approves Proposed Definitions
* 15	Revised Reliability Standards: IRO-018-1 & TOP-010-1 (RD16-6)	Jun 27	Dominion intervenes
16	Revised Glossary Definition: Special Protection System (RD16-5)	Jun 23	FERC approves revised SPS definition
16	Revised Reliability Standards: BAL-005-1 & FAC-001-3 (RM16-13)	Jun 2 Jun 14	NERC withdraws glossary definitions from this proceeding ( <i>see</i> RD16-7 above) NERC supplements initial filing with additional information
17	Order 822: Revised CIP Reliability Standards (RM15-14)	Jun 3, 21	H. Baptiste files rambling commentary which is posted in this proceeding
18	NOPR: New Reliability Standard: TPL-007-1 (RM15-11)	Jun 28	NERC files update including changes to white papers and related development information and confirming changes did not require changes to Requirements of TPL-007-1; comment date Jul 20

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

20	CFTC RTO/ISO Exemption Amendment	Jun 2-15	Over 40 parties file comments on CFTC-proposed amendment to its 2013 RTO/ISO Final Order to explicitly state that the exemptions for RTO/ISO transactions from certain provisions of the CEA do not provide an exemption from the private right of action in CEA section 22
20	203 Application: GDF Suez Energy Resources/Atlas Power (Dynergy/ECP) (EC16-93)	Jun 8 Jun 15 Jun 29	FERC requests additional data to process the application Atlas supplements application Dynergy Inc. files notice that it is now the 100% owner of Atlas
20	203 Application: FirstLight/PSP (EC16-89)	Jun 1 Jun 8	Control of FirstLight transferred to PSP PSP informs FERC of Jun 1 transfer of control of FirstLight to PSP
21	203 Application: Essential Power (EC16-82)	Jun 8 Jun 16	FERC authorizes transaction Transaction consummated
21	PURPA Complaint v. VT PSB (North Hartland ) (EL16-74)	Jun 20-23	Burlington, Green Mountain Power, VEC, VT DPS, VT PSB, and the Vermont Independent Power Producers Association file comments answering and protesting the Complaint
22	PURPA Complaint v. CT PURA (Allco/Windham Solar) (EL16-69 et al.)	Jun 15 Jun 16	CT PURA, CT OCC file protests to Complaint Allco/Windham Solar answers CT OCC protest
22	CL&P Petition for Declaratory Order (Dominion Outage Dispute Governing Document) (EL16-45)	Jun 28	FERC denies CL&P petition for declaratory order
23	Maine Power Express Project (ER16-1619)	Jul 1	FERC conditionally authorizes MPX to sell transmission rights at negotiated rates on its approximately 315-mile, 1,000 MW HVDC proposed transmission project
23	Emera MPD OATT Changes (ER15-1429; EL16-13)	Jun 2  Jun 9 Jun 14 Jun 29	FERC issues order granting Maine Customer Group's Motion to Compel, and accepting but setting the remaining issues with respect to Emera Maine's 2014 and 2015 Annual Updates for hearing and settlement judge procedures Chief Judge Cintron designates Judge Dring as settlement judge Judge Dring re-schedule 1st settlement conf. for Jun 29 Settlement conf. held
25	ETRACOM & M. Rosenberg (IN16-2)	Jun 3  Jun 17	ETRACOM requests rehearing of May 6 order denying motion to compel CAISO to disclose information FERC issues order assessing ETRACOM <b>\$2.4 million civil penalty</b> ; Rosenberg a <b>\$100,000 civil penalty</b> , and directing ETRACOM to <b>disgorge \$315,072</b> plus interest in unjust profits

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

27	Electric Storage Participation in RTO/ISO Markets (AD16-20)	Jun 6-8	Over 42 parties submit comments on ISO/RTO filings
27	Competitive Transmission Development Rates (AD16-18)	Jun 2-22 Jun 27-28	Parties file additional pre-technical conference comments; speakers file remarks and materials Tech conference held
27	Reactive Supply Compensation in RTO/ISO Markets (AD16-17)	Jun 22 Jun 30	PJM files comments Workshop held

27	PURPA Implementation Issues (AD16-16)	Jun 7-21 Jun 27 Jun 29	Parties file additional pre-technical conference comments; speakers file remarks and materials FERC issues supplemental notice of tech. conf. Tech conference held
* 28	Order 826: Civil Monetary Penalty Inflation Adjustments (RM16-16)	Jun 29	FERC amends its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the FERC's jurisdiction
28	Review of Generator IAs & Procedures / AWEA Petition for LGIA/LGIP Rulemaking (RM16-12; RM15-21)	Jun 3 Jun 10 Jun 13 Jun 16 Jun 21-Jul 1	FERC issues notice inviting post-tech. conf. comments AWEA requests 10-day extension of time, to Jun 30, to file comments EDP Renewables supports AWEA request FERC grants 10-day extension of time, to Jun 30, to file comments Nearly 30 parties file post-tech. conf. comments
30	Order 827: Reactive Power Reqs. for Non-Synchronous Generation (RM16-1)	Jun 16	FERC issues final rule, eff. Sep 21, 2016
30	Order 825: Price Formation Fixes - Settlement Intervals/Shortage Pricing (RM15-24)	Jun 16	FERC issues final rule, eff. Sep 13, 2016

**XIII. Natural Gas Proceedings**



32	Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)	Jun 10	Algonquin Gas Transmission, Sequent Energy Management and Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG file reply comments; Algonquin opposes NGSAs out-of-time motion to intervene
33	Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299)	Jun 10 Jun 15 Jun 16 Jun 24 Jun 28	Chief Judge suspends <i>Empire</i> procedural schedule Chief Judge suspends <i>Columbia Gulf</i> procedural schedule Chief Judge orders interim implementation of settlement rates in <i>Empire</i> Chief Judge suspends <i>Tuscarora</i> procedural schedule Chief Judge suspends <i>Iroquois</i> procedural schedule
33	Opinion No. 538: ANR Storage Company, Order on Initial Decision (RP12-479)	Jun 16	FERC grants in part, but largely denies, rehearing of <i>Opinion No. 538</i> ; denial of ANR request for market-based rate authorization upheld

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



*No Activity to Report*

**XV. Federal Courts**



39	FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)	Jun 16	NEPGA and Exelon file Petitioner Briefs
39	FCA8 Results (14-1244, 14-1246 (consolidated))	Jun 17	Oral argument schedule for Sep 6, 2016 (9:30 a.m.)
39	Entergy Nuclear Fitzpatrick, LLC et al v. Zibelman et al (NY PSC Commissioners) (NDNY 5:15-cv-00230-DNH-TWD)	Jun 3	Case referred to Mandatory Mediation Program

MEMORANDUM

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

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

**DATE:** July 1, 2016

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

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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 July 1, 2016. If you have questions, please contact us.<sup>1</sup>

**I. Complaints/Section 206 Proceedings**

- **NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Gas Pipeline-Related Market Price Suppression (EL16-93)**

On June 24, NextEra Energy Resources (“NextEra”) and the PSEG Companies (“PSEG”) filed a complaint seeking a FERC order, by August 23, 2016, that (i) directs the ISO to file within 90 days of that order Tariff changes to fully mitigate the price suppressive effect of subsidized gas pipeline capacity, and (ii) establishes a post-filing technical conference to address the proposed changes/issues. Complainants further seek a FERC order on the Tariff changes by, and effectiveness of the Tariff changes as of, January 31, 2017 (permitting effectiveness of such Tariff changes for FCA11). Responses to and comments on the Complaint are due on or before July 14, 2016. Thus far, doc-less interventions have been filed by the EPSA, ConEd, Eversource, and National Grid. On June 28, the ISO requested that the FERC dismiss the Complaint (“because it is not ripe for adjudication and is premature and speculative”) and deny the request for fast-track processing. The ISO also requested that, until the FERC acts on those requests, the FERC issue an order (by July 1, 2016) suspending the July 14 answer date to the Complaint. On June 29, NextEra/PSEG filed a notice that they intend to answer the ISO’s motion to dismiss by July 1. The ISO answered that notice on June 30. NextEra/PSEG answered the motion to dismiss on June 30. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, EMCOS<sup>2</sup> filed a complaint, on April 29, 2016, to have the FERC reduce the TOs’ current 10.57% return on equity (“Base ROE”) to 8.93% and determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. EMCOS identified three main considerations requiring submission of this Complaint: (1) the continuing decline of the market cost of equity capital, which makes NETOS’ currently authorized ROE “excessive, unjust and unreasonable, and therefore ripe for adjustment under FPA Section 206”; (2) “divergent rulings concerning the persistence of the

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

<sup>2</sup> “EMCOS” are: Belmont Municipal Light Department, Braintree Electric Light Department, Concord Municipal Light Plant, Georgetown Municipal Light Department, Groveland Electric Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light & Water Department, Middleborough Gas & Electric Department, Middleton Electric Light Department, Reading Municipal Light Department, Rowley Municipal Lighting Plant, Taunton Municipal Lighting Plant, and Wellesley Municipal Light Plant.

“anomalous” capital market conditions”; and (3) “the extent to which the Commission’s anomalous conditions rationale in Opinion No. 531 is intended to reflect changes in its long-standing reliance on the DCF methodology, and particularly the DCF midpoint, for determining ROE remains unclear.” On May 24, EMCOs filed an errata to correct the Direct Testimony of Dr. Jonathan Lesser, to make related corrections to the Direct Testimony of Dr. Lon Peters, and to reflect non-substantive corrections to the April 29 Complaint. The TOs responded to the Complaint on June 3. Also on June 3, the CT PURA and MPUC submitted comments on the Complaint. Doc-less interventions were filed by NEPOOL, Acadia Center, Associated Industries of Massachusetts (“AIM”), CT AG, CT OCC, IECG, Maine Office of Public Advocate (“MOPA”), MA AG, MA DPU, MMWEC, NH OCA, RI PUC, and VT DPS. On June 20, EMCOS answered the TOs’ June 3 response. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)).

- **NextEra Bellingham FCA10 Complaint (EL16-48)**

On June 16, 2016, the FERC denied NextEra’s<sup>3</sup> complaint which alleged that the ISO violated its Tariff by disallowing the proposed capacity increase at NEA’s Bellingham Energy Center (“Bellingham”) from participating in the tenth Forward Capacity Auction (“FCA10”).<sup>4</sup> NextEra argued that its new incremental capacity would be included within its Existing Generating Resource and, under the Tariff rules for Existing Generating Capacity Resources, a composite offer would not be required.” However, the FERC agreed with the ISO that the “a Significant Increase must abide by all the provisions applicable to a New Generating Capacity Resource that met the applicable thresholds.”<sup>5</sup> The FERC also added that NextEra’s failure to take advantage of the opportunities to challenge its disqualification in a timely manner weighed against the requested relief.<sup>6</sup> Challenges to the *NextEra FCA10 Order* are due on or before July 18, 2016. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC issued an order on May 2, 2016 (1) finding the ISO-NE Tariff unjust and unreasonable for its lack of clarity as to whether new incremental capacity and existing capacity at the same generating station must submit a composite offer in order to participate in a FCA but (2) denying Dominion’s requested relief (resettlement of the auction results to allow Dominion’s new incremental capacity to be treated as if it had participated in FCA10).<sup>7</sup> The FERC directed the ISO to submit a compliance filing, due on or before July 1, with Tariff language (a) expressly addressing whether new incremental and existing capacity at the same resource must submit a composite offer (and to provide the rationale for any such requirement); and (b) allowing an existing generating resource to lock-in the price for the new incremental capacity (or to provide reasons why the lock-in should not be allowed).<sup>8</sup> Dominion requested rehearing of the *Manchester Street FCA10 Order* on June 1, 2016. On June 27, the FERC issued a tolling order affording it additional time to consider the Dominion rehearing request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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<sup>3</sup> For purposes of this proceeding, “NextEra” is NextEra Energy Power Marketing (“NEPM”) and Northeast Energy Associates (“NEA”).

<sup>4</sup> *NextEra Energy Power Mktg., LLC and Northeast Energy Assoc., a Limited Partnership v. ISO New England Inc.*, 155 FERC ¶ 61,270 (2016) (“*NextEra FCA10 Order*”).

<sup>5</sup> *Id.* at P 26.

<sup>6</sup> *Id.* at P 27.

<sup>7</sup> *Dominion Energy Mktg., Inc. and Dominion Energy Manchester St., Inc. v. ISO New England Inc.*, 155 FERC ¶ 61,121 (May 2, 2016) (“*Manchester Street FCA10 Order*”), *reh’g requested*.

<sup>8</sup> *Id.* at PP 22-23.

- **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>9</sup> The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”.<sup>10</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>11</sup> Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.<sup>12</sup> The FERC-established refund date is January 4, 2016.<sup>13</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, MOPA, Middleborough, MMWEC, Maine Public Utilities Commission (“MPUC”), Nat’l Grid, NESCOE, NHEC, NH OCA, Norwood, Public Citizen, Reading, RI PUC, Taunton VEC, VELCO, VPSA, VT DPS, Wallingford, and American Public Power Association (“APPA”).

**Settlement Judge Procedures.** As previously reported, John P. Dring was designated the Settlement Judge in these proceedings. Settlement conferences have thus far been held on January 19, March 24, and April 12.. On May 4, Judge Dring issued an order scheduling a fourth settlement conference for July 28. On June 10, Judge Dring issued a status report indicating that the parties are making progress toward settlement and recommending that the settlement procedures be continued. The Transmission Committee is being kept apprised of settlement efforts.

- **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>14</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>15</sup> Finding that “concerns with continued use of vertical demand curves weigh more heavily than they did a year ago”,<sup>16</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>17</sup> the FERC directed that Tariff changes be filed, following a request for extension granted, by **April 15, 2016**.<sup>18</sup> Interventions in EL16-15 were

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<sup>9</sup> *ISO New England Inc. Participating Transmission Owners Admin. Comm. et al.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh’g denied*, 154 FERC ¶ 61,230 (Mar. 22, 2016).

<sup>10</sup> *Id.* at P 8.

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

<sup>12</sup> *Id.*

<sup>13</sup> The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

<sup>14</sup> *ISO New England Inc. et al.*, 153 FERC ¶ 61,338 (Dec. 28, 2015).

<sup>15</sup> *Id.* at P 11.

<sup>16</sup> *Id.* at P 15.

<sup>17</sup> *Id.* at P 14.

<sup>18</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



due January 19 and 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”), and APPA. Tariff revisions to implement a proposed methodology for establishing FCM system-wide and zonal demand curves were supported by the Participants Committee at its April 8 meeting, filed on April 15, and accepted on June 28 (see Demand Curve Design Improvements (ER16-1434), Section III below). 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)**

On May 24, 2016, New Hampshire Transmission (“NHT”) filed an offer of settlement to resolve the issues set for hearing in this proceeding. The proposed “black box” settlement results in a \$6.5 million refund of NHT’s 2012-2014 SeaLink expenditures. The refund will be in the form of a credit in favor of RNS customers against NHT’s 2016/17 RNS revenue requirement. As previously reported, NHT and the New England State Agencies (“NESA”)<sup>19</sup> requested, which Chief Judge Cintron granted, that the hearings underway in this proceeding be held in abeyance for 60 days to afford the parties an opportunity to finalize a settlement agreement based on the agreement-in-principle reached between NHT and NESA. On June 13, FERC Trial Staff filed comments recommending certification and approval of the Settlement. No reply comments were filed. On June 30, Judge Baten certified the uncontested settlement to the Commission.<sup>20</sup> The Settlement Agreement is pending before the Commission.

**Background.** In response to a protest by NESA of the TOs’ July 31, 2014 informational rate filing, the FERC instituted a Section 206 proceeding in Docket EL15-85 to examine whether NHT’s recovery of SeaLink project development costs through the RNS formula rate is just and reasonable.<sup>21</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>22</sup> The FERC-established refund effective date is August 19, 2015.<sup>23</sup> On December 11, NESA requested the following two clarifications 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. NESA’s request for clarifications have not yet been addressed by the FERC. If there are questions on these proceedings, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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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 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>19</sup> The New England State Agencies are: the Attorney General of the Commonwealth of Mass. (“MA AG”), the Conn. Office of Consumer Counsel (“CT OCC”), the Conn. Public Utilities Regulatory Authority (“CT PURA”), the Rhode Island Div. of Public Utilities and Carriers (“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>20</sup> *New Hampshire Transmission, LLC*, 155 FERC ¶ 63,032 (June 30, 2016).

<sup>21</sup> *ISO New England Inc. Participating Trans. Owners Admin. Comm. and NH Trans., LLC*, 152 FERC ¶ 61,121 (Aug. 12, 2015) (“*August 12 Order*”).

<sup>22</sup> *Id.* at P 20.

<sup>23</sup> The notice of this proceeding was published in the *Fed. Reg.* on Aug. 19, 2015 (Vol. 80, No. 160) p. 50,271.

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

As previously reported, the FERC, in response to second (EL13-33)<sup>24</sup> and third (EL14-86)<sup>25</sup> complaints regarding the TOs' 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;<sup>26</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>27</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>28</sup> The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.<sup>29</sup> On July 13, 2015, the TOs appealed those orders to the DC Circuit Court of Appeals (*see* Section XIV below), and that appeal remains pending.

**Hearings and Trial Judge Initial Decision.** Initial hearings on these matters were completed on July 2, 2015. In mid-December, Judge Sterner reopened the record for the limited purpose of having the discounted cash flow ("DCF") calculations re-run in accordance with the FERC's preferred approach and re-submitted. A limited hearing on that supplemental information was held on February 1, 2016. On March 22, 2016, Judge Sterner issued his 939-paragraph, 371-page Initial Decision, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.<sup>30</sup> The Decision also lowered the ROE ceilings. Judge Sterner's decision, if upheld by the FERC, would result in refunds totaling as much as \$100 million, largely concentrated in the EL13-33 refund period. Briefs on exceptions were filed by the TOs, Complainant-Aligned Parties ("CAPs"), EMCOS, and FERC Trial Staff on April 21, 2016; briefs opposing exceptions, on May 20, 2016. Judge Sterner's findings and Initial Decision, and pleadings in response thereto, are pending, and will be subject to challenge, before the FERC. The *2012/14 ROE Initial Decision* and its findings can be approved or rejected, in whole or in part.

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

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<sup>24</sup> The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOs' 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

<sup>25</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>26</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>27</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>28</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>29</sup> *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al. and Mass. Att'y Gen. et al. -v- Bangor Hydro et al.*, 151 FERC ¶ 61,125 (May 14, 2015).

<sup>30</sup> *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al. and Mass. Att'y Gen. et al. -v- Bangor Hydro et al.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) ("2012/14 ROE Initial Decision").

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

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

On June 16, the FERC accepted the results of the tenth FCA (“FCA10”), effective June 28, 2016, as requested.<sup>31</sup> In accepting the FCA10 Results Filing, the FERC rejected, for the same reasons articulated in its order accepting the FCA9 Results,<sup>32</sup> assertions by the Utility Workers Union of America Local 464 (“UWUA Local 464”) that the FCA10 results were the product of continued illegal market manipulation and violation of the ISO Tariff.<sup>33</sup> Because, as reported in Section I above, the FERC denied the FCA10-related complaints of both Dominion (EL16-38) and NextEra (EL16-48), the FERC also rejected the Dominion and NextEra comments made in this proceeding.<sup>34</sup> Challenges to the *FCA10 Results Order* are due on or before July 18. 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)).

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

As previously reported, the FERC issued an order, on May 19, 2016, directing the ISO to issue resettlements, consistent with the methodology the ISO proposed in its July 17, 2015 filing, to Connecticut resources that were not able to prorate, or reduce, their capacity offers, due to reliability requirements during FCA1.<sup>35</sup> The FERC directed resettlements be charged to those with Regional Network Load within Connecticut during the FCA1 Capacity Commitment Period and payments be made to affected resources’ Lead Market Participant during each month of FCA1, unpersuaded by Bridgeport’s assertion that resettlement payments should be made to the capacity resource’s current legal owner and not to the Lead Market Participant.<sup>36</sup> The *FCA1 Resettlements Order* was not challenged and is final and unappealable. Final resettlements were reflected in the June 13, 2016 Statements, noted as either “FCA 1 Resettlement Credit” or “FCA 1 Resettlement Charge” on the BL\_INVOICE MIS Report.<sup>37</sup> This matter is now concluded. If you have any remaining questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

- **FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126)**

On July 1, 2016, the ISO and NEPOOL jointly filed changes, in compliance with the *Manchester Street FCA10 Order* (see Section I, EL16-38 above), that: (1) require the ISO, as part of the qualification process for a Forward Capacity Auction (“FCA”), to automatically match new incremental summer generating capacity or a significant increase in summer capacity (“Significant Increase”) with excess existing winter generating capacity at the same generating resource; and (2) allow new summer incremental generating capacity that is matched with excess existing winter generating capacity at the same generating resource to

<sup>31</sup> *ISO New England Inc.*, 155 FERC ¶ 61,273 (June 16, 2016) (“*FCA10 Results Order*”).

<sup>32</sup> *ISO New England Inc.*, 151 FERC ¶ 61,226, *order denying reh’g*, 153 FERC ¶ 61,378, at PP 16, 19 (2015) (finding that, even if Brayton Point could profitably run in the future, that is not dispositive of whether market manipulation occurred or whether that issue should be set for hearing. The FERC found that neither the FPA nor the Tariff require a resource to demonstrate that it is uneconomic as a condition of retiring, and neither the ISO nor the FERC can, under the Tariff, compel a resource to stay in the FCM).

<sup>33</sup> *FCA10 Results Order* at P 26.

<sup>34</sup> *Id.* at P 18.

<sup>35</sup> *ISO New England Inc.*, 155 FERC ¶ 61,173 (May 19, 2016) (“*FCA1 Resettlements Order*”).

<sup>36</sup> *Id.* at PP 28-31.

<sup>37</sup> For additional specifics, please refer to the June 13, 016 Bill Job Aid available at <http://www.iso-ne.com/static-assets/documents/2016/06/20160613-billing-job-aid-hourly-and-non-hourly-service-v1.0.pdf>.

elect to have the Capacity Supply Obligation (“CSO”) and Capacity Clearing Price continue to apply after the Capacity Commitment Period associated with the FCA in which its offer clears for up to six additional and consecutive Capacity Commitment Periods (the “multiyear lock-in”). The compliance changes were supported by the Participants Committee at the June 23 session of the Summer Meeting. An August 30, 2016 effective date was requested. Comments on this filing are due on or before July 22, 2016. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Waiver Request: RTEG Resource Type/De-List (ISO-NE) (ER16-1904)**

On June 9, the ISO requested a limited waiver of Tariff Sections III.13.1.4.2.5.2, III.13.1.4.3.1.2 & III.13.1.2.3.1.1 to allow Real-Time Emergency Generation Resources (“RTEGs”) either to change their resource type to Real-Time Demand Response Resources or to de-list (“Waiver Request”), particularly in connection with FCA11, but also, to the extent applicable, for FCA8, FCA9, and FCA10. The ISO requested the waiver in light of (i) a May 4, 2016 order of the United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”) reversing and remanding United States Environmental Protection Agency (“EPA”) rules that provided for a 100-hour exemption for operation of emergency engines for purposes of emergency demand response under National Emissions Standards; and (ii) an April 15, 2016 EPA Guidance Memorandum, which in anticipation of the DC Circuit order, indicated that the EPA will not develop an alternative to the rules reversed by the DC Circuit. The Waiver Request was not considered in the Participant Processes. The ISO requested that the Waiver Request become effective as of June 21, 2016, and that the FERC issue an order on the waiver request filing by August 8, 2016. Comments on the Waiver Request were due on or before June 30, 2016 and were filed by CPower. CPower requested the following limited modification to the waivers requested: for the 2017/18 Capacity Commitment Period only, and in the limited circumstance where an RTEG Resource CSO holder cannot convert or shed some or all of its CSO due to market conditions, ISO Market Rule 1, Section III.13.4.2.1.3 (Adjustment for Significant Decreases in Capacity) should be waived such that demand bids entered in the Third Annual Reconfiguration Auction (“ARA3”) for remaining RTEG CSOs will be at the FCA Payment Rate and not at the FCA Starting Price. Interventions only were filed by NEPOOL, Dominion, Eversource, Exelon, National Grid, NESCOE, and NRG. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Sub-Hourly Settlement Changes (ER16-1838)**

On June 3, 2016, the ISO and NEPOOL jointly filed changes to the Tariff to change to five minutes the settlement interval in the Real-Time Energy and Reserves Markets (“Sub-Hourly Settlement Changes”). The Sub-Hourly Settlement Changes were supported unanimously by the Participants Committee at its April 8, 2016 meeting (Consent Agenda Item # 1). Although a March 1, 2017 effective date was requested, an order on or before August 2, 2016 was also requested. Comments on this filing were due on or before June 24, 2016. NEPGA/EPSCA filed comments supporting the filing. Interventions were filed by Entergy, Eversource, National Grid, NESCOE, NRG, RENEW Northeast, Inc. (“RENEW”). This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Demand Curve Design Improvements (ER16-1434)**

On June 28, 2016, the FERC accepted without change or condition the Tariff changes jointly filed by the ISO and NEPOOL on April 15, 2016.<sup>38</sup> As previously reported, the changes implement a proposed methodology for establishing FCM system-wide and zonal demand curves (“Demand Curve Design Improvements”). The Demand Curve Design Improvements were accepted effective as of June 29, 2016. In accepting the Demand Curve Design Improvements, the FERC found “on balance ... the MRI-based zonal sloped demand curves as just

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<sup>38</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 155 FERC ¶ 61,319 (June 28, 2016) (“*Demand Curve Design Improvements Order*”).

and reasonable.”<sup>39</sup> The FERC rejected arguments that the April 15 filing went beyond compliance, concluding that the MRI-based system-wide curve and the MRI-based zonal curves “must be designed in conjunction with one another, as part of an integrated, coherent package. Thus, as in MISO, the proposed changes to the system-wide demand curve are closely and plainly related to the compliance requirement that the Commission placed on ISO-NE, namely, to develop zonal sloped demand curves that would effectively address price volatility and market power issues.”<sup>40</sup> The FERC also rejected protests against the transition mechanism, finding the proposed transition period “to be a balanced approach for implementing the proposed MRI-based demand curves as early as reasonable, while attenuating any potential abrupt change in market signals that could produce substantial differences in capacity prices unrelated to actual market dynamics” and that “implementing a methodical transition promotes long-term cost-effectiveness for the market, while promoting investor confidence. We also acknowledge that this mechanism has widespread stakeholder support.”<sup>41</sup> With respect to arguments that Improvements are inconsistent with current rules for reconfiguration auctions and bilateral transactions, the FERC agreed that “harmonizing [those] rules is important in order to ensure consistency [with] the current FCA rules” and noted “ISO-NE’s commitment to address revisions to these rules in future stakeholder meetings and encourage[d] ISO-NE to undertake the development of these revisions in the stakeholder process.”<sup>42</sup> Challenges, if any, to the Demand Curve Design Improvements Order are due on or before July 28, 2016. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

As previously reported, the FERC conditionally accepted, effective March 1, 2016, changes proposed by the ISO and its Internal Market Monitor (“IMM”) to the FCM rules for resource retirements (the “ISO/IMM Proposal”).<sup>43</sup> The FERC conditioned its acceptance of the ISO/IMM Proposal on the filing of Tariff revisions “establishing a materiality threshold for determining whether or not a particular proxy de-list bid will replace a Retirement Bid in an FCA”<sup>44</sup> (as suggested by the EMM). The FERC granted the ISO and IMM the latitude to propose the percentage of the IMM’s determined price that they find appropriate.<sup>45</sup> All other protests and comments were rejected. NEPGA, Exelon and NextEra jointly requested rehearing of the *Resource Retirement Reforms Order*. On June 13, the FERC issued a tolling order affording it additional time to consider the joint rehearing request, which remains pending before the FERC.

**Compliance Filing.** Revisions to the FCM Rules proposed by the ISO and IMM in response to the *Resource Retirement Reforms Order* (establishing a 10% materiality threshold for the mitigation of Retirement De-List Bids and Permanent De-List Bids) were supported by the Participants Committee at its May 6 meeting and were filed on May 12. Comments on the compliance filing were due on or before June 2. Protests were filed by *NEPGA* (on two grounds: (i) the IMM’s failure to provide the FERC with any evidence supporting a 10% materiality threshold or to protect against the mitigation of economic offers; and (ii) the evidence argues for a materiality threshold higher than 10%) and *NextEra* (urging the FERC to reject the compliance filing because the

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<sup>39</sup> *Id.* at P 30.

<sup>40</sup> *Id.* at P 32.

<sup>41</sup> *Id.* at P 62.

<sup>42</sup> *Id.* at P 56.

<sup>43</sup> *ISO New England Inc.*, 155 FERC ¶ 61,029 (Apr. 12, 2016), *reh’g requested* (“*Resource Retirement Reforms Order*”). As previously reported, the ISO/IMM Proposal requires (i) that capacity suppliers with existing resources to submit a price for the retirement 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 Dec. 4, 2015 meeting.

<sup>44</sup> *Id.* at P 62.

<sup>45</sup> *Id.*

elimination of flexibility in the review by the IMM, in lieu of an exclusive 10 percent materiality threshold, is inconsistent with the *Resource Retirement Reforms Order*). *NESCOE* filed comments (agreeing that the threshold, which it views at the top end of an acceptable range, complies with the *Resource Retirement Reforms Order*). A doc-less intervention was filed by NRG. The May 12 compliance filing 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)).

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

Rehearing has been requested and is pending of the FERC's April 8, 2016 *Demand Curve Remand Order*.<sup>46</sup> 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>47</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>48</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>49</sup> A compliance filing clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in was submitted on March 2, 2015, accepted on May 1, and became effective on May 2, 2015.<sup>50</sup> NextEra, NRG and PSEG 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, which, as noted above, resulted in the *Demand Curve Remand Order*. NextEra, NRG and PSEG jointly requested rehearing of the *Demand Curve Remand Order* on May 9. On June 3, *NESCOE* answered the NextEra/PSEG/NRG rehearing request. On June 8, the FERC issued a tolling order affording it additional time to consider the NextEra/PSEG/NRG request for rehearing, which remains 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)).

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

As previously reported, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable).<sup>51</sup> The FERC must

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<sup>46</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 155 FERC ¶ 61,023 (Apr. 8, 2016), *reh'g requested* ("*Demand Curve Remand Order*") (affirming its earlier finding that the renewables exemption from the minimum offer price rule is just and reasonable, and not unduly discriminatory or preferential).

<sup>47</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("*Demand Curve Order*").

<sup>48</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>49</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>50</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.

<sup>51</sup> *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

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. 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)).

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

- **Reactive Power Compensation Revisions (ER16-1789)**

As previously reported, the ISO and NEPOOL jointly filed, on May 26, 2016, changes to Schedule 2 of the OATT to support the participation of inverter-based generators (wind, solar, etc.) capable of providing VAR Service to the New England Transmission System in the Schedule 2 compensation program. The Schedule 2 Revisions were supported unanimously by the Participants Committee at its April 8, 2016 meeting. A July 26, 2016 effective date was requested. Comments on this filing were due on or before June 16, 2016; none were filed. Doc-less interventions were filed by Brookfield, Eversource, Exelon, National Grid, and NRG. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **Generator Interconnection Revisions (ER16-946)**

As previously reported, the FERC conditionally accepted revisions to OATT Schedules 22, 23 and 25 that incorporate certain interconnection process improvements 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.<sup>52</sup> The Generator Interconnection Revisions were accepted subject to the condition that the ISO file revisions to the SGIA to include the definition of "study case" and update the definition of "interconnection request" or, alternatively, explain their exclusion from the SGIA. The revisions to incorporate the definition of "Study Case" and update the definition of "Interconnection Request" were filed on May 16 and accepted on June 7, 2016. All of the Generator Interconnection Revisions became effective as of April 17, 2016, as requested. If you have any questions concerning this now-concluded proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

- **Financial Statement Reporting Requirement Changes (ER16-1874)**

On June 3, 2016, the ISO and NEPOOL jointly filed changes to the Financial Assurance Policy to modify the financial statement submission requirements to voluntary submissions. Market Participants who have unsecured credit and Market Participants that meet the minimum capitalization requirements by maintaining a Tangible Net Worth of \$1 million or total assets of \$10 million must continue to submit financial statements to maintain their unsecured credit or continue to have their total assets or Tangible Net Worth assessed for purposes of the minimum capitalization requirements. Any Market Participant may be required by the ISO to submit financial statements at any time within 10 days of such request. The Financial Statement Reporting Requirement Changes were supported by the Participants Committee at its June 3, 2016 meeting. An August 5, 2016 effective date was requested. Comments on this filing were due on or before June 24, 2016; none were filed. Doc-less interventions were filed by Eversource, Exelon, DC Energy, National Grid, and NRG. This matter is pending

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<sup>52</sup> *ISO New England Inc. and Participating Trans. Owners Admin. Comm.*, 155 FERC ¶ 61,031 (Apr. 15, 2016).

before the FERC. If you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

- **GIS API Revisions (ER16-1728)**

On June 15, the FERC accepted changes to Tariff Section I and the Financial Assurance and Billing Policies associated with NEPOOL's extension of the GIS Automatic Programming Interface (“API”) (“GIS API Revisions”). The GIS API Revisions were accepted effective as of July 1, 2016, as requested. Unless the June 15 order is challenged, this proceeding will be concluded. Should you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

<b>VI. Schedule 20/21/22/23 Changes</b>
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- **Schedule 22 LGIA: Exelon West Medway II (ER16-2024)**

On June 27, the ISO and NSTAR filed a non-conforming LGIA between the ISO, NSTAR and Exelon West Medway II. The LGIA is non-conforming in that it contains limited deviations from the *pro forma* LGIA necessary to recognize that the Interconnection Facilities are jointly owned and used by Exelon West Medway, LLC, and are not for the sole use of Exelon West Medway II, LLC. A June 14, 2016 effective date was requested. Comments on this filing are due on or before July 18. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-NEP Deepwater Wind Indemnification Agreement (ER16-2012)**

On June 24, National Grid filed an indemnification agreement under which the Deepwater Wind Companies<sup>53</sup> will indemnify National Grid for all costs National Grid directly incurs to request expedited delivery of switchgear at certain Rhode Island substations in connection with the DW Companies’ construction of an offshore wind farm pursuant to the Town of New Shoreham (Block Island) Project. A May 10, 2016 effective date was requested. Comments on this filing are due on or before July 15. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-NEP: Deerfield Wind Reimbursement Agreement (ER16-1745)**

On May 19, 2016, National Grid filed a Transmission System Upgrade Reimbursement Agreement (“Reimbursement Agreement”) with Deerfield Wind, LLC (“Deerfield Wind”), designated as Service Agreement No. CRA-NEP-08. National Grid explained that the Reimbursement Agreement is designed to facilitate the performance of certain re-conductoring and related work associated with the Deerfield Wind facility. An April 28, 2016 effective date was requested. Comments on this filing were due on or before June 9, 2016; none were filed. A doc-less intervention was filed by Avangrid Renewables. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-NEP: Granite Ridge Prior Service Agreement Termination (ER16-1921)**

On June 14, National Grid filed a notice of termination of a prior service agreement with Granite Ridge Energy since superseded and replaced by an LGIA between the ISO, Granite Ridge Energy, National Grid, and Eversource. Comments on this filing are due on or before July 5, 2016. An effective date of August 31, 2015, the effective date of the LGIA, was requested. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-FGE: Revised Depreciation Rates (ER16-1722)**

On June 10, the FERC accepted revised depreciation rates used to calculate Fitchburg Gas & Electric’s (“FGE”) annual transmission revenue requirements for Pool Transmission Facilities (“PTF”) and non-PTF Transmission Service under the ISO Tariff and to Schedule 21-FGE. As previously reported, the

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<sup>53</sup> “Deepwater Wind Companies” are Deepwater Wind, LLC, Deepwater Wind Block Island, LLC, and Deepwater Wind Block Island Transmission, LLC.



revised depreciation rates reflect recommendations contained in a depreciation study based on 2014 data and approved by the MA DPU as part of FG&E's retail rate filing. FGE stated that revised depreciation rates will result in an estimated annual decrease of \$20,442 to depreciation expense and will have a de *minimis* effect on the transmission rates of PTF and non-PTF customers. The revised depreciation rates were accepted effective as of May 1, 2016, as requested. Unless the June 10 order is challenged, this proceeding will be concluded. 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 May 3, the FERC accepted but, finding that Eversource “has not shown that the transaction-related costs are just and reasonable and that such costs may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful”, set for hearing and settlement judge procedures Eversource’s 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.<sup>54</sup> The FERC accepted Eversource’s proposed “Option B” tariff revisions for filing, which would amortize costs over a three-year period, “to minimize the immediate impact on transmission customers while the issues are being resolved at hearing.”<sup>55</sup> In accepting the changes, the FERC reiterated the following points with respect to transaction-related cost recovery, as explained in prior FERC orders: (i) “applicant must demonstrate its use of appropriate internal controls and procedures for proper identification, accounting, and rate treatment of all transaction-related costs”; (ii) transaction-related savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs; (iii) savings must be shown to have a nexus with the transaction and must directly benefit (i.e., be passed on to) transmission customers; (iv) the filing must be shown to be just and reasonable in light of all the other factors underlying the new rate; and (v) the applicant must demonstrate that the transaction-related costs are exceeded by the savings produced by the transaction.<sup>56</sup> The FERC also provided guidance on other points with respect to transaction-related cost recovery: (x) “only costs that would have been eligible for inclusion in the then-existing transmission rates, but for the hold harmless commitment, will be eligible for cost recovery”; and (y) “transaction-related savings should not be calculated based on an after-the-fact reconstruction of costs that would have been incurred absent the transaction, but instead should be based on a comparison of costs known prior to consideration of the transaction compared against actual spending.”<sup>57</sup> The FERC encouraged participants to make every effort to settle their dispute before hearing procedures commence.

**Settlement Judge Procedures.** On May 17, Chief Judge Cintron designated Judge Patricia E. Hurt as the Settlement Judge in this proceeding. A first settlement conference was held on May 26. The parties agreed to exchange data and a second settlement conference has since been re-scheduled to August 16, 2016. Judge Hurt issued a status report on June 16 recommending, in view of the progress being made, that the settlement proceeding continue. On June 21, Chief Judge Cintron issued just such an order, continuing settlement judge procedures. 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: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.)**

On June 2, 2016, the FERC accepted, but established hearing and settlement judge procedures for,<sup>58</sup> March 31 filings by Emera Maine in which Emera Maine sought authorization to recover certain merger-related costs viewed by the FERC’s Office of Enforcement’s Division of Audits and Accounting (“DAA”) to be subject to the conditions of the orders authorizing Emera Maine’s acquisition of, and ultimate merger with,

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<sup>54</sup> *ISO New England Inc. et al.*, 155 FERC ¶ 61,136 (May 3, 2016).

<sup>55</sup> *Id.* at P 27.

<sup>56</sup> *Id.* at P 28.

<sup>57</sup> *Id.* at P 29.

<sup>58</sup> *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016).

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

In the June 2 Order, the FERC found that the Compliance Filings raise issues of material fact that could not be resolved based on the record, and are more appropriately addressed in the hearing and settlement judge procedures.<sup>59</sup> The FERC reiterated several points with respect to transaction-related cost recovery explained in prior FERC orders and provided guidance on other transaction-related cost recovery points.<sup>60</sup> The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures.<sup>61</sup> The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.<sup>62</sup>

**Settlement Judge Procedures.** Chief Judge Cintron designated ALJ John Dring as the settlement judge for these proceedings on June 9. A first settlement conference was held on June 29. A second settlement conference has been scheduled for September 27. If you have any questions concerning these matters, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On May 31, 2016, NSTAR submitted an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period January 1, 2015 through December 31, 2015. NSTAR stated that the filing complies with the requirements of Section 4 and Attachment D of Schedule 21-NSTAR, as well as the Settlement Agreement approved previously by the FERC.<sup>63</sup> On June 30, 2016, NSTAR supplemented its May 31 annual informational filing with a “CWIP Supplement” in accordance with Section 4.1(i) and (ix) of Schedule 21-NSTAR as added and supplemented by Article 4.2 of the 2008 Settlement. The CWIP Supplement was provided primarily on a project-specific basis, and included NSTAR’s 2016 long-range construction forecast. The FERC will not notice either of these filings for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-CMP Annual Informational Filing (ER09-938)**

On June 30, CMP submitted its annual update to the formula rates contained in Schedule 21-CMP. CMP indicated that the informational filing reflected actual cost data for the 2015 calendar year plus estimated cost data for the 2016 calendar year associated with CMP’s forecasted transmission plant additions and MPRP CWIP as well as the annual true-up and associated interest. CMP referred to Section 10.2 of Schedule 21-CMP for specific procedures for review and challenges to the informational report. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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<sup>59</sup> *Id.* at P 24.

<sup>60</sup> *Id.* at PP 25-26.

<sup>61</sup> *Id.* at P 27.

<sup>62</sup> *Id.* at P 21; Ordering Paragraph (B).

<sup>63</sup> *See NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

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

*No Activity to Report*

**VIII. Regional Reports**

• **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 Regional Refund Reports (EL11-66)**

On November 2, 2015, the TOs submitted a refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*<sup>64</sup> and *531-B*.<sup>65</sup> As previously reported, refunds resulting from *Opinion No. 531-B* were completed by August 31, 2015. 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)
- ◆ NHT (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 - 2016 Q1 (ER16-1700)**

On June 20, the FERC accepted the ISO's Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2016 (the "Report"). As previously reported, Report highlights included the following new projects: (i) Real-Time Fast-Start Pricing (\$4.9 million); (ii) Sub-Hourly Settlements (\$4.4 million); (iii) FCA11 (\$2.5 million); (iv) 2016 Issue Resolution Phase I (\$600,000); (v) Participant One-Line Diagram Submissions (\$429,000); (vi) Streamline Asset Registration (\$300,000); (vii) The Information Bus Company (TIBCO) Hardware and Software Upgrade (\$189,900); and (viii) Drastic Action Limits (\$160,000). Projects with significant changes include: (i) FCA10 (\$100,000 decrease); DARD Pumps Market Enhancements (\$100,000 increase); (iii) Energy Management Platform Customs Elimination (removal of \$600,000 budget and reallocation to 2017); and (iv) Asset Characteristics Database Redesign (reduction of 2016 budget by \$300,000 with reallocation to 2017) and Operations Document Management System (reduction of 2016 budget by \$300,000 with reallocation to 2017). Projects removed from the 2016 Budget were identified as follows: (i) 2016 Issue Resolution Phase II (\$750,000), Web Enhancement 2016

<sup>64</sup> *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

<sup>65</sup> *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

(\$500,00), and Dynamic Interchange Adjustment Tool project (\$300,00). Unless the June 20 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

## IX. Membership Filings

- **July 2016 Membership Filing (ER16-2104)**

On June 30, NEPOOL requested that the FERC accept (i) the memberships of Cumulus Master Fund (Supplier Sector), Jeff Jones (End User Sector), and National Gas & Electric (Related Person to Spark Energy and Oasis Energy, Supplier Sector); (ii) the termination of the Participant status of EnergyConnect (Provisional Member; Related Person to CPower, AR Sector LR Sub-Sector); and (iii) the name change of CleanChoice Energy (f/k/a Ethical Electric). Comments on this filing are due on or before July 21, 2016.

- **June 2016 Membership Filing (ER16-1813)**

On June 29, the FERC accepted (i) the termination of the Participant status of Granite Ridge Energy (Related Person to Calpine Energy Services, Supplier Sector) and BayRing Communications (End User Sector); and (ii) the name change of ENGIE Resources Inc. (f/k/a GDF SUEZ Energy Resources NA, Inc.) and Engelhart CTP (US) LLC (f/k/a BTG Pactual Commodities (US) LLC).

## 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)).

- **Retirement of NPCC Regional Reliability Standard PRC-002-NPCC-001 (RD16-8)**

On June 9, NERC and NPCC requested that the FERC approve the retirement of NPCC Regional Reliability Standard PRC-002-NPCC-01 (Disturbance Monitoring) and two related NPCC regional definitions, (Current Zero Time and Generating Plant), which became redundant and unnecessary for reliability with the recent approval of continent-wide Reliability Standard PRC-002-2 (Disturbance Monitoring and Reporting Requirements). Comments on this filing are due on or before July 11, 2016.

- **Glossary Definitions: Reporting ACE, Actual Frequency, Actual Net Interchange, NIS, IME, ATEC (RD16-7)**

On June 23, the FERC approved the following six definitions filed by NERC on June 2 (and corrected on June 3): “Reporting ACE;” “Actual Frequency;” “Actual Net Interchange;” “Scheduled Net Interchange” (“NIS”); “Interchange Meter Error” (“IME”); and “Automatic Time Error Correction” (“ATEC”) (collectively, “Proposed Definitions”). Unless the June 23 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standards: IRO-018-1 & TOP-010-1 (RD16-6)**

On May 26, 2016, NERC filed for approval revised Reliability Standards -- IRO-018-1 (Reliability Coordinator Real-Time Reliability Monitoring and Analysis Capabilities) and TOP-010-1 (Real-Time Reliability Monitoring and Analysis Capabilities), and associated implementation plan, VRFs and VSLs (together, the “Real-Time Situational Awareness Changes”). NERC stated that the revised Standards are designed to improve real-time situational awareness capabilities and enhance reliable operations by requiring Reliability Coordinators, Transmission Operators, and Balancing Authorities to provide operators with awareness of monitoring and analysis capabilities, including alarm availability, so that operators may take appropriate steps to protect reliability. Comments on this filing were due on or before June 27; none were filed. Dominion filed a doc-less intervention on June 27. This matter is pending before the FERC.

- **Revised Glossary Definition: Special Protection System (Completing Transition to Remedial Action Scheme) (RD16-5)**

On June 23, the FERC accepted a revised definition of “Special Protection System” in the NERC Glossary of Terms Used in Reliability Standards (“NERC Glossary”). NERC stated that the revised definition completes the transition from the term “Special Protection System” to “Remedial Action Scheme” that was initiated by NERC in 2014. Unless the June 23 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standards: BAL-005-1 & FAC-001-3 (RM16-13)**

As previously reported, NERC filed for approval revised Reliability Standards -- BAL-005-1 (Balancing Authority Control) and FAC-001-3 (Facility Interconnection Requirements), and associated Glossary definitions, implementation plan, VRFs and VSLs (together, the “Frequency Control Changes”) on April 20, 2016. NERC stated that the Frequency Control Changes clarify and refine Requirements for accurate, consistent, and complete reporting of Area Control Error (“ACE”) calculations. NERC indicated that the Frequency Control Changes will improve reliability by supporting efforts to maintain Interconnection frequency at 60 Hz in a manner consistent with FERC directives, technological developments, and NERC’s current framework of integrated Reliability Standards. NERC requested that the Frequency Control Changes become effective on the first day of the first calendar quarter that is 12 months after the effective date of an order approving the Standard, pursuant to the Implementation Plans included with the Changes. Since the last Report, NERC withdrew from this proceeding the request to approve six glossary definitions, which were filed separately and approved in Docket No. RD16-7. The glossary definitions were separately filed so that they could be effective when BAL-001-2 becomes effective on July 1, 2016 (rather than at a later date when the FERC has acted on the filing in this proceeding). In addition, on June 14, NERC provided supplemental information related to the April 20 petition. As of the date of this Report, the FERC has still not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

On May 19, the FERC issued a NOPR proposing to (i) approve 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”); (ii) direct NERC to modify BAL-002-2 to address concerns related to the possible extension or delay of the periods for ACE recovery and contingency reserve restoration; and (iii) direct NERC to address a reliability gap regarding megawatt losses above the most severe single contingency.<sup>66</sup> As previously reported, NERC stated that the BAL Changes consolidate six requirements in BAL-002-1 into three requirements, 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”), thereby implementing a continent-wide reserve policy to ensure that adequate Contingency Reserves will always be available 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). On March 31, NERC provided further supplemental information to further clarify the significance of the Most Severe Single Contingency (“MSSC”) as the upper bounds for events that qualify as Reportable Balancing Contingency Events (“RBCE”) under Reliability

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<sup>66</sup> *Disturbance Control Standard - Contingency Reserve for Recovery from a Balancing Contingency Event Rel. Standard*, 155 FERC ¶ 61,180 (May 19, 2016) (“BAL Changes NOPR”).

Standard BAL-002-2 and the way in which other Reliability Standards are necessary and appropriate to address events beyond MSSC. Comments on the *BAL Changes NOPR* are due on or before July 25, 2016.<sup>67</sup>

- **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)**

Rehearing remains pending of *Order 822*,<sup>68</sup> which approved 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) 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* became effective March 31, 2016.<sup>69</sup> On February 22, the Foundation for Resilient Societies (“FRS”) and Isologic LLC requested rehearing of *Order 822*. On March 21, the FERC issued a tolling order affording it additional time to consider the FRS and Isologic requests for rehearing, which remain pending before the FERC. On March 29, FRS, Isologic and Applied Content Solutions asked the FERC to reopen the evidentiary record to consider new evidence and analysis it summarized, including new information related to the late 2015 cyber-attack against the electric grid in the Ukraine.

**Extension of Time for Compliance with CIP Version 5 Standards.** On February 25, the FERC granted Trade Associations<sup>70</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>71</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>72</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

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<sup>67</sup> The *BAL Changes NOPR* was published in the *Fed. Reg.* on May 26, 2016 (Vol. 81, No. 102) pp. 33,441-33,448.

<sup>68</sup> *Revised Critical Infrastructure Protection Rel. Standards*, Order No. 822, 154 FERC ¶ 61,037 (Jan. 21, 2016) (“*Order 822*”).

<sup>69</sup> *Order 822* was published in the *Fed. Reg.* on Jan. 26, 2016 (Vol. 81, No. 16) pp. 4,177-4,191.

<sup>70</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>71</sup> *Revised Critical Infrastructure Protection Rel. Standards*, 154 FERC ¶ 61,137 (Feb. 25, 2016).

<sup>72</sup> *Id.* at P 9.

panelists included: John Galloway (ISO-NE, Director, Cyber Security); and Jonathan Appelbaum (UI, Director, NERC Compliance). Speaker materials from the technical conference are posted on the FERC's eLibrary. Post-technical conference comments were filed by H. Baptiste, APPA/LPPC/TAPS, EEI/EPSA/NRECA, and FRS.

- **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>73</sup> In addition, the FERC proposed 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 a whole.<sup>74</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>75</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 FRS' 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. On April 28, NERC supplemented its filing to inform the FERC that it had identified new information that might necessitate a minor revision to a figure in one of the supporting technical white papers; the revision, however, would not require a change to any of the Requirements of the proposed Reliability Standard. NERC indicated that it would provide a further update following additional vetting in its stakeholder process. NERC provided that update on June 28. In its June 28 update, NERC reiterated that the revisions to the technical white papers and related development information did not require any changes to the Requirements of the proposed Reliability Standard, but were being included in the record along with the standard drafting team's consideration of stakeholder comments. Comments on the update are due on or before July 20, 2016.

**March 1, 2016 Technical Conference.** As previously reported, 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. Additional

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<sup>73</sup> *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) ("TPL-007 NOPR").

<sup>74</sup> *Rel. Standards for Geomagnetic Disturbances*, Order No. 779, 143 FERC ¶ 61,147 ("Order 779").

<sup>75</sup> The TPL-007 NOPR was published in the *Fed. Reg.* on May 26, 2015 (Vol. 80, No. 100) pp. 29,990-30,001.

comments following the technical conference were filed by Trade Associations,<sup>76</sup> D. Bardin, J. Kappenman/C. Birnbach, FRS, and AEP.

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

The *ATC NOPR* remains pending before the FERC. As previously reported, the FERC's June 19, 2014, *NOPR*<sup>77</sup> proposed to approve changes to MOD-001-2 (Modeling, Data, and Analysis - Available Transmission System Capability) to replace, consolidate and improve upon the Existing MOD Standards in addressing the reliability issues associated with determinations of Available Transfer Capability ("ATC") and Available Flowgate Capability ("AFC"). MOD-001-2 will replace the six Existing MOD Standards<sup>78</sup> to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2's effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC sought comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also sought further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this *NOPR* were due August 25, 2014,<sup>79</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. NAESB 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 *ATC NOPR* remains pending before the FERC.

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

The *BAL-002-1a Interpretation Remand NOPR*<sup>80</sup> remains pending. As previously explained, this *NOPR* 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). 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

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<sup>76</sup> "Trade Associations" are the Edison Electric Institute ("EEI"), APPA, Electricity Consumers Resource Council ("ECRC"), Electric Power Supply Association ("EPSA"), Large Public Power Council, and National Rural Electric Cooperative Association ("NRECA").

<sup>77</sup> *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) ("*ATC NOPR*").

<sup>78</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>79</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>80</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*").



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>81</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.

<b>XI. Misc. - of Regional Interest</b>
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- **CFTC RTO/ISO Exemption Amendment**

As previously reported, the Commodity Futures Trading Commission (“CFTC”), on May 10, 2016, issued a proposed amendment to its 2013 RTO/ISO Final Order (which generally exempted specified RTO/ISO transactions from certain provisions of the Commodity Exchange Act (“CEA”) and CFTC regulations). The proposed amendment to the RTO/ISO Final Order would explicitly state that the exemption does not apply to private rights of action pursuant to CEA Section 22. If adopted, the amendment would permit private parties to bring claims under the CEA for fraud and manipulation involving financial energy products traded in the organized wholesale power markets, a right private parties do not have under the Federal Power Act. The proposed amendment could heighten the litigation risk faced by electricity companies and other entities that participate in RTO/ISO markets. Comments on the CFTC’s proposed amendment were due on or before June 15, 2016,<sup>82</sup> and were filed by over 40 parties, including the FERC, ISO/RTO Council, EEI, EPSA, Exelon, Large Public Power Council, GDF SUEZ, and PSEG. This matter is now pending before the CFTC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **203 Application: GDF Suez Energy Resources/Atlas Power (Dynergy/ECP) (EC16-93)**

On March 25, 2016, Atlas Power Finance, a subsidiary of Atlas Power (a newly-formed joint venture between Dynergy and ECP III), Dynergy Inc. (“Dynergy”), Energy Capital Partners III, LLC (“ECP”) and GDF Suez requested FERC authorization of Atlas Power’s acquisition of GDF Suez Energy Resources. In addition, Dynergy and ECP III requested in a separate proceeding (EC16-94) that the FERC approve the purchase by an ECP affiliate, Terawatt Holdings, LP (“Terawatt”), of newly-issued Dynergy common stock representing approximately 10% of the outstanding shares of Dynergy. Comments on both those filings were due on or before May 24, 2016; none were filed. On June 8, the FERC requested additional data to process the filing, which has not yet been submitted. In addition, on June 15, Atlas supplemented the application by informing the FERC that Dynergy would purchase all of ECP’s interests in Atlas Power prior to the closing of the Transaction. Comments on the June 15 filing were due on or before June 29; none were filed. This matter is again 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: FirstLight/PSP (EC16-89)**

On May 23, 2016, the FERC authorized the transfer of control of FirstLight Power Resources Holdings, Inc. and its indirect wholly-owned public utility subsidiaries FirstLight Hydro Generating Company (“FirstLight Hydro”) and FirstLight Power Resources Management, LLC (“FirstLight Management”) (collectively,

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<sup>81</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.

<sup>82</sup> The CFTC Proposed Amendment was published in the *Fed. Reg.* on May 16, 2016 (Vol. 81, No. 94) pp. 30,245-30,255.

“FirstLight”) to PSP H2O FL USA LLC (“PSP”).<sup>83</sup> In a June 8 notice, PSP notified the FERC that the transfer of control was completed on June 1, 2016. This proceeding is now concluded. As of June 1, FirstLight became an individual voting member of the Generation Sector. 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 (Southern Renewable Energy / Quantum) (EC16-86)**

On April 20, 2016, the FERC authorized the sale of 100% of the membership interests in Passadumkeag Windpark, LLC (“Passadumkeag”) to Southern Renewable Energy, Inc. (“SRE”), a wholly-owned subsidiary of Southern Power Company.<sup>84</sup> SRE must notify the FERC within 10 days of the date that the transaction has been consummated. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On June 8, 2016, the FERC authorized the sale of 100% of the direct membership interests in Essential Power Investments, LLC from IFM Global Infrastructure Fund to Nautilus Generation, LLC (“Nautilus”) (which does not yet have any Related Persons in the Pool).<sup>85</sup> Nautilus informed the FERC on June 21 that the sale was consummated on June 16, 2016, concluding this proceeding. 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 March 9, 2016, the FERC authorized the sale of 100% of the partnership interests in ReEnergy Sterling CT Limited Partnership (“ReEnergy Sterling”) to Empire Tire of Edgewater 2, LLC (“Empire Tire”).<sup>86</sup> When consummated, ReEnergy Sterling will no longer be a Related Person to ReEnergy Stratton, Dartmouth Power or TrailStone Power. ReEnergy Sterling and Empire Tire must notify the FERC within 10 days of the date that the transaction has been consummated. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **PURPA Complaint v. VT PSB (North Hartland) (EL16-74 et al.)**

On May 31, 2016, North Hartland (“NHL”) petitioned the FERC to pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) against the Vermont Public Service Board (“VT PSB”) to remedy the VT PSB’s “improper implementation of PURPA”<sup>87</sup> through its creation of a rule that creates an unreasonable barrier to forming a legally enforceable obligation. NHL seeks a 20-year term power purchase agreement (“PPA”) with Vermont Electric Power Producers, Inc. (“VEPPI”), Vermont’s Purchasing Agent, for the output of NHL’s 4MW hydro facility. NHL reports that VT PSB reads Rule 4.104(H) to limit the availability of either long-term rates or levelized rates to “qualifying facilities which have been found by the [VT PSB], after due hearing[,] to satisfy the substantive criteria of 30 V.S.A. §248(b).” The VT PSB issued an order on February 24, 2016 to grant a hearing to determine if NHL is eligible for a long-term, non-levelized contract. Concerns raised with the VT PSB appear to revolve around the fact that the NHL facility already exists, rather than having a not-yet-built project that needs levelized rates to make construction of the projects viable and financially feasible. Comments on the Petition were due

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<sup>83</sup> *FirstLight Hydro Generating Company Docket No. and FirstLight Power Resources Management, LLC*, 155 FERC ¶ 62,136 (May 23, 2016).

<sup>84</sup> *Passadumkeag Windpark, LLC*, 155 FERC ¶ 62,050 (Apr. 20, 2016).

<sup>85</sup> *Essential Power, LLC et al.*, 155 FERC ¶ 62,191 (June 8, 2016).

<sup>86</sup> *ReEnergy Sterling CT Limited Partnership*, 154 FERC ¶ 62,167 (Mar. 9, 2016).

<sup>87</sup> Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC’s PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

on or before June 21. Comments answering and protesting the Petition were filed by City of Burlington, Green Mountain Power, VEC, VT DPS, VT PSB, and the Vermont Independent Power Producers Association. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **PURPA Complaint v. CT PURA (Allco/Windham Solar) (EL16-69 et al.)**

On May 19, 2016, Windham Solar LLC and Allco Finance Limited (together, “Allco”) petitioned the FERC to pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) against the Connecticut Public Utilities Regulatory Authority (“CT PURA”) to remedy “Connecticut’s improper implementation of PURPA”.<sup>88</sup> Allco bases its Petition on its experience trying to arrange with Eversource 30-year contracts for the sale of energy and capacity from 26 solar facilities. In a separate CT PURA-approved transaction, Allco has already sold the Renewable Energy Credits (“RECs”) to Eversource. Allco seeks a FERC order that it states would “invalidate (i) the requirement of a bidding process as a pre-condition to obtaining an avoided cost contract at a rate fixed at the outset for the entirety of a QF contract based upon the utility’s projected future avoided costs, and (ii) the prohibition against a QF who has already sold its RECs from selling its energy and capacity pursuant to a long-term contract”. Allco amended its petition on May 25. Protests to the Petition were filed by the CT PURA and CT OCC. Allco answered the CT OCC pleading on June 16. As previously reported, Eversource filed a doc-les intervention. This matter is now pending before the FERC, with FERC action expected on or before July 18. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **CL&P Petition for Declaratory Order (Dominion Outage Dispute Governing Document) (EL16-45)**

On June 28, the FERC denied CL&P’s March 15 petition for declaratory order.<sup>89</sup> As previously reported, that Petition asked the FERC to determine whether a dispute between CL&P and Dominion, arising out of a May 25, 2014 CL&P transmission outage, is governed by a Transmission Support Agreement (from 1974, as amended in 2000) or an LGIA (from March 2010) to each of which CL&P and Dominion is a party. The FERC declined to exercise primary jurisdiction over this contractual dispute because, “although the Commission may have greater expertise than a court in interpreting technical aspects of the LGIA, the question here is which of two agreements controls, an issue that appears to turn on classic rules of contract interpretation, rather than any determination requiring the Commission’s special expertise.”<sup>90</sup> The FERC further found that its “determination as to whether the Transmission Support Agreement is superseded by the LGIA would likely have little impact beyond the parties involved in the instant proceeding”<sup>91</sup> and “Commission resolution of this issue is not necessary for the Commission to fulfill its regulatory responsibilities.”<sup>92</sup> If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement Amendment: NSTAR/Exelon West Medway (ER16-1809)**

On May 31, Eversource filed an amendment to the Design and Engineering Agreement (“D&E Agreement”) between NSTAR and Exelon West Medway (designated as service agreement IA-NSTAR-32) that sets forth the terms and conditions under which NSTAR will undertake certain design and engineering activities on the Interconnection Facilities identified in ISO-NE studies, prior to execution of an LGIA under Schedule 22 of the ISO-NE Tariff. Eversource states that NSTAR’s costs include applicable overheads and

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<sup>88</sup> Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC’s PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

<sup>89</sup> *The Conn. Light and Power Co.*, 155 FERC ¶ 61,318 (June 28, 2016).

<sup>90</sup> *Id.* at P 19.

<sup>91</sup> *Id.* at P 20.

<sup>92</sup> *Id.* at P 21.

loaders in performing design and engineering activities for Exelon's 207 MW West Medway, MA facility. Eversource stated that, due to the complexities of the interconnection, execution of an LGIA has not yet occurred. In the meantime, in order to advance the implementation of this interconnection, the parties executed the Amendment, which expands the scope of the services provided by NSTAR under the original Agreement to include the procurement of certain equipment that will comprise the Interconnecting TO's Interconnection Facilities under the LGIA, and includes updated cost estimates. Eversource requested that the amended D&E Agreement be accepted for filing as of May 31, 2016. Comments on this filing are due on or before June 20, 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).

- **Maine Power Express Project (ER16-1619)**

On July 1, the FERC conditionally authorized Maine Power Express, LLC ("MPX") to sell transmission rights at negotiated rates on an approximately 315-mile High-Voltage Direct Current ("HVDC") 1,000 MW proposed transmission project (the "MPX Project").<sup>93</sup> As previously reported, MPX stated that the MPX Project will be will originate at a new AC/DC converter station located in Haynesville, Maine, and consist of two underground or submarine cable systems that will terminate at a new DC/AC converter station in Boston that will connect with the transmission system at Eversource's 345 kV K Street substation, all under the operational control of the ISO. Acknowledging the commitments by MPX in the filing, the FERC authorized the sale of the transmission rights subject to a compliance filing, 30 days after the close of the open solicitation process, disclosing the results of the capacity allocation process and demonstrating that the capacity allocation was consistent with the FERC's Transmission Project Capacity Allocation Policy Statement<sup>94</sup> and the FERC's open access policies.<sup>95</sup> Challenges, if any, to the MPX Order are due on or before August 1. 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 ("MPD") Open Access Transmission Tariff ("MPD OATT"), including to the rates, terms, and conditions set forth in MPD OATT Attachment J.<sup>96</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*).

**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>97</sup> filed a motion to reject ("Motion to Reject") the April 1 Filing, asserting the April 1

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<sup>93</sup> *Maine Power Express, LLC*, 156 FERC ¶ 61,002 (July 1, 2016) ("MPX Order").

<sup>94</sup> *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013) ("Policy Statement").

<sup>95</sup> *MPX Order* at P 22.

<sup>96</sup> *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

<sup>97</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").

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 "Motion to Compel"). 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.

On June 2, 2016, the FERC granted Maine Customer Group's Motion to Compel, and set the remaining issues with respect to Emera Maine's 2014 and 2015 Annual Updates for hearing and settlement judge procedures.<sup>98</sup> The FERC also consolidated ER12-1650 with this proceeding. In addition, the FERC directed that Emera Maine to make a compliance filing, on or before July 5, that (1) revises its 2014-2015 formula rate charges to correct the errors the Maine Customer Group raised with respect to amortization of long-term debt costs and post-retirement benefits other than pensions, and (2) imputes the retired debt balance for the tax-free Maine Public bonds (\$22.6 million) into the capital structure calculation for the 2014-2015 Rate Year.

**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. Settlement conferences have thus far been held on January 5, March 3, and April 26, 2016. On May 19, Settlement Judge Johnson issued a status report reporting that the parties are continuing to exchange information and discuss settlement options and recommending that settlement judge procedures be continued. 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)**

Since the last Report, NYISO submitted a letter supporting calls for FERC action Judge Sterner's decision. Answers were also filed by MISO/ITC, Consumers and DTE, which while also seeking prompt action, continue to advocate for the acceptance of their initial filing (and rejection of Judge Sterner's decision). As long reported, Judge Sterner issued his 374-page initial decision on December 18, 2012, 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>99</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

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<sup>98</sup> *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016).

<sup>99</sup> *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) ("*MISO Initial Decision*") at P 923.

proceeding.<sup>100</sup> Judge Sterner's decision 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: Coaltrain Penalties Order (IN16-4)**

On May 27, 2016, the FERC issued an order<sup>101</sup> assessing civil penalties against 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 Hughes (collectively, "Respondents") for having violated (i) the FERC's Anti-Manipulation Rule by executing a scheme involving manipulative PJM Up-To Congestion ("UTC") trading<sup>102</sup> between June and September 2010; (ii) 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. The FERC 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) and directed* Coaltrain, P. Jones and Sheehan, jointly and severally, to disgorge unjust profits of **\$4,121,894** plus applicable interest. The FERC found the UTC trading conduct at issue in this proceeding similar to the behavior the FERC found fraudulent in its Chen<sup>103</sup> and City Power<sup>104</sup> orders issued last year. The FERC found that the Coaltrain Respondents knowingly and intentionally placed fraudulent trades that did not try to arbitrage price differences, but rather were placed because Respondents knew they would capture MLSA payments that would offset and exceed the transaction costs. Given Respondents' earlier reported election under FPA Section 31(d)(3)(A), the *Coaltrain Penalties Order* will not be subject to rehearing. Rather, the Respondents will be entitled to a *de novo* review by a federal district court in an action by the FERC to affirm its actions, with such action to be filed should Respondents not pay the FEC-directed penalties and disgorgement on or before July 26.

- **FERC Enforcement Action: ETRACOM Penalties Order (IN16-2)**

**Etracom Penalties Order.** On June 17, the FERC issued an order finding ETRACOM LLC and its principal member and primary trader, Michael Rosenberg (together, "ERACOM"), violated the FERC's Anti-

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<sup>100</sup> For a summary of specific findings, please refer to any of the January to June 2013 Litigation Reports.

<sup>101</sup> *Coaltrain Energy, L.P. et al*, 155 FERC ¶ 61, 204 (May 27, 2016) ("*Coaltrain Penalties Order*").

<sup>102</sup> The UTC trading product is a type of spread trade that allows market participants to arbitrage the difference between day-ahead and real-time congestion prices at two different locations. When the UTC transactions discussed in this proceeding were made, PJM's market rules required market participants to reserve transmission service to successfully place them. UTC transactions became eligible to receive certain transmission credits, known as Marginal Loss Surplus Allocation ("MLSA"), if they reserved and used paid transmission service. MLSA payments were distributed on a *pro rata* basis to all customers who paid for transmission service.

<sup>103</sup> *Houlian Chen*, 151 FERC ¶ 61,179 (2015) ("*Chen*").

<sup>104</sup> *City Power Marketing, LLC*, 152 FERC ¶ 61,012 (2015) ("*City Power*").

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.<sup>105</sup> The FERC assessed **\$2.4 million** in civil penalties against ETRACOM and **\$100,000** against Rosenberg; and directed ETRACOM to **disgorge \$315,072** plus interest in unjust profits.<sup>106</sup> Given ETRACOM's earlier reported election under FPA Section 31(d)(3)(A), the *ETRACOM Penalties Order* will not be subject to rehearing. Rather, the ETRACOM will be entitled to a *de novo* review by a federal district court in an action by the FERC to affirm its actions, with such action to be filed should Respondents not pay the FEC-directed penalties and disgorgement on or after August July 16.

**Motion to Compel.** As previously reported, ETRACOM requested, on March 4, 2016, that the FERC require the California ISO ("CAISO") to disclose certain materials and information that ETRACOM asserted was relevant to allegations against it ("Motion to Compel"). The Motion to Compel was opposed by both CAISO and OE Staff. The FERC denied the Motion to Compel on May 6.<sup>107</sup> In that order, the FERC indicated that "if Respondents believe that discovery is necessary to enable them to provide a defense to OE Staff's allegations, the Commission would entertain a request to revoke their election of the procedures of FPA section 31(d)(3) within seven days of this order." On May 13, ETRACOM filed a letter declining to make that request within the seven days provided. Subsequently, on June 3, 2016, ETRACOM requested rehearing of the May 6 order. In the *ETRACOM Penalties Order*, the FERC denied ETRACOM's request for rehearing, finding it procedurally improper. The FERC exercised its discretion to construe the improper request for rehearing as a motion for reconsideration, but nonetheless denied the ETRACOM motion, finding "proof of a "well-functioning market" is not a prerequisite to a finding of manipulation; Respondents did not need to understand all of the reasons for export congestion in order to implement the alleged manipulative scheme; and Respondents' allegations that CAISO violated its tariff are not material to Respondents' alleged misconduct."<sup>108</sup>

- **FERC Enforcement Action: Lincoln Paper & Tissue ("LP&T") (IN12-10)**

On June 1, the FERC approved a Stipulation and Consent Agreement that, while it continues to require LP&T to pay a **\$5 million civil penalty** and to **disgorge \$379,016** of payments received as a result of participation in the DALRP (plus interest), provides for resolution given LP&T's subsequent bankruptcy.<sup>109</sup> The June 1 order affirms the findings and penalties previously assessed in 2013,<sup>110</sup> and approves a Settlement Agreement that resolves this matter, which has been since 2013 subject to challenge in the federal courts. Because LP&T is bankrupt, and unlikely to pay the full amounts, LP&T agreed to allow the FERC's bankruptcy claims in two parts: (1) an allowed unsecured Claim of \$379,016.03 for the disgorgement; and (2) an allowed subordinated Claim of \$5,000,000 for the civil penalty (collectively, the "Settled Claims"). The first \$379,016.03 paid by LP& T will be paid to ISO-NE, which must then allocate the payment(s) *pro rata* to network load during the applicable period. Any amounts exceeding \$379,016.03 are to be paid to the United States Treasury. OE agreed that LP&T's allowance of the Settled Claims reasonably satisfies Lincoln's disgorgement and civil penalty obligations. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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<sup>105</sup> *ETRACOM LLC and Michael Rosenberg*, 155 FERC ¶ 61,284 (June 17, 2016) ("*ETRACOM Penalties Order*").

<sup>106</sup> *Id.* at P 1.

<sup>107</sup> *ETRACOM LLC and Michael Rosenberg*, 155 FERC ¶ 61,149 (May 6, 2016).

<sup>108</sup> *Id.* at PP 37-38.

<sup>109</sup> *Lincoln Paper and Tissue, LLC*, 155 FERC ¶ 61,228 (June 1, 2016).

<sup>110</sup> *Lincoln Paper and Tissue, LLC*, 144 FERC ¶ 61,162 (2013) ("*LP&T Order*"). The FERC alleged that, from approximately July 2007 through February 2008, LP&T engaged in a fraudulent practice (curtailing on-site generation during DALRP program hours when it enrolled in the DALRP, artificially inflating its' baseline load and misrepresenting its' load profile) to collect payments in the DALRP. LP&T was paid for the difference between its inflated baseline load and its normal operational load as a "load reduction" even though no load reduction actually occurred.

- **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 CFR Part 125. The FERC indicated that the audit will cover the period July 10, 2013 through the present.

<b>XII. Misc. - Administrative &amp; Rulemaking Proceedings</b>
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- **Electric Storage Participation in RTO/ISO Markets (AD16-20)**

On April 11, FERC Staff issued a data request directing the ISO to submit information on rules that affect the participation of electric storage resources in the New England Markets, "including, but not limited to, the eligibility of electric storage resources to participate in the ISO-NE markets, the qualification and performance requirements for market participants, required bid parameters, and the treatment of electric storage resources when they are receiving electricity for later injection to the grid." Information from each of the ISO/RTOs, including ISO-NE's information, was submitted on May 16. Comments on ISO-NE's submission were due on or before June 6, 2016. Commenters addressing electric storage participation in the New England Markets included FirstLight Power Resources Management. Comments not specific to a particular region were submitted by many, among others, the Energy Storage Association, APPA, Brookfield, EEI, EPSA, NextEra, NRECA and Tesla. This matter is pending before the FERC.

- **Competitive Transmission Development Rates (AD16-18)**

The FERC held a technical conference on a June 27-28, 2016 to discuss competitive transmission development process-related issues, including use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking issues. In addition, participants had the opportunity to discuss issues relating to interregional transmission coordination, regional transmission planning and other transmission development issues. Pre-technical conference comments were filed by over 20 parties, including by NESCOE, BHE US Transmission, LSPower, and NextEra Energy Transmission. Technical conference materials are available on the FERC's e-Library. A webcast of the technical conference will also be available on-line for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>.

- **Reactive Supply Compensation in RTO/ISO Markets (AD16-17)**

A workshop to discuss compensation for Reactive Supply and Voltage Control (Reactive Supply) in RTO/ISO markets was held on June 30, 2016. The workshop explored the types of costs incurred by generators for providing Reactive Supply capability and service; whether those costs are being recovered solely as compensation for Reactive Supply or whether recovery is also through compensation for other services; and different methods by which generators receive compensation for Reactive Supply (e.g., FERC-approved revenue requirements, market-wide rates, etc.). The workshop also explored potential adjustments in compensation based on changes in Reactive Supply capability and potential mechanisms to prevent overcompensation for Reactive Supply. Written comments can be filed by July 28, 2016. Technical conference materials are available on the FERC's e-Library. A webcast of the technical conference will also be available on-line for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>.

- **PURPA Implementation (AD16-16)**

A workshop to discuss issues associated with the FERC's implementation of PURPA was held on June 29, 2016. The conference focused on two issues: the mandatory purchase obligation under PURPA and the determination of avoided costs for those purchases. Panelists' advanced written comments and materials from the technical conference are available on the FERC's e-Library. A webcast of the technical conference will also be available on-line for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>.



- **Transmission Metrics (AD15-12)**

On March 17, the FERC issued a staff report describing a range of objective and standardized metrics that could be used to help assess the effectiveness of FERC policies regarding transmission investment and to inform potential policy revisions going forward. The range of metrics considered fell into three broad categories: (1) metrics designed to evaluate key goals of *Order 1000*; (2) metrics designed to indicate whether appropriate levels of transmission infrastructure exist in a particular region; and (3) metrics designed to permit analysis of the impact of FERC policy changes by comparing key values before and after changes take place. The Report described Staff’s methodology for applying each of the three categories of metrics, the results of that analysis, and the further research that staff believes would be needed to help ensure that each metric provides useful insight as to whether transmission investment in the US is both cost-effective and sufficient to meet the nation’s needs.

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

As previously reported, the FERC directed each RTO/ISO to publicly provide information related to five price formation issues:<sup>111</sup> (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. The FERC indicated it would use the reports and comments to determine what further action is appropriate. The RTO/ISO reports were filed February 17 by PJM, March 4 by ISO-NE, CAISO, MISO, and NYISO (corrected on March 23), and March 7 by SPP. Comments on the reports were due on or before April 6<sup>112</sup> and were filed by over 25 parties, including Exelon, EEI, and EPSA. Since the last Report, an addendum to its comments was filed by Financial Marketers Coalition. This matter is pending before the FERC.

- **Order 826: Civil Monetary Penalty Inflation Adjustments (RM16-16)**

On June 29, the FERC issued *Order 826*<sup>113</sup> to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission’s jurisdiction. The FERC was required to issue the rule on or before July 1, 2016 under The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The FERC must update each such civil monetary penalty on an annual basis every January 15 thereafter. Of particular interest is the increase in potential civil penalties for market manipulation which increase from a round number of \$1 million per violation, per day to a not-so-round number of \$1,193,970 per violation, per day.

- **Review of Generator IAs & Procedures / AWEA Petition for LGIA/LGIP Rulemaking (RM16-12; RM15-21)**

On May 13, 2016, the FERC held a technical conference to discuss select issues related to AWEA’s petition in RM15-21 and to explore other generator interconnection issues, including interconnection of energy storage. Discussions addressed: the current state of generator interconnection queues, transparency and timing in the generator interconnection study process; certainty in cost estimates and construction time; other interconnection queue coordination and management issues; and interconnection of electric storage resources. A free copy of the webcast will be available on the FERC’s website for 3 months at <http://stream.capitolconnection.org/capcon/ferc/ferc.htm>. Speaker materials are posted on the FERC’s eLibrary. On June 3, the FERC issued a notice inviting interested persons to file post-technical conference

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<sup>111</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>112</sup> In the order directing the reports, the FERC provided that public comment in response to the RTOs/ISOs’ reports may be submitted within 30 days of the filing of the reports. Apr. 6 is 30 days after the filing of the last of the reports, the SPP report, on Mar. 7.

<sup>113</sup> *Civil Monetary Penalty Inflation Adjustments*, Order No. 826, 155 FERC ¶ 61,320 (June 29, 2016) (“*Order 826*”).

responses to a number of questions related to the docketed proceedings. Following a request for extension of time to file comments, the FERC extended the deadline for filing comments to and including June 30, 2016. Post-technical conference comments were filed by nearly 30 parties, including comments the ISO, Public Power (APPA, LPPC, NRECA), NextEra, EEI, Avangrid, and the Energy Storages Association (“ESA”), and are available on the FERC’s eLibrary.

- **NOPR: Small Generator Ride Through Requirements (RM16-8)**

As previously reported, the FERC issued, on March 17, 2016, a NOPR proposing to modify the *pro forma* SGIA to require small generating facilities interconnecting through the SGIA to “ride through”<sup>114</sup> abnormal frequency and voltage events and not disconnect during such events.<sup>115</sup> The *pro forma* LGIA already requires large generators to have this capability, the FERC believes that small generating facilities should now be held to comparable ride through requirements, and that it would be unduly discriminatory not to also impose these requirements on small generating facilities. Comments on the *Small Generator Ride Through NOPR* were due May 23, 2016<sup>116</sup> and were filed by the ISO/RTO Council (supporting ride through requirements for small generating facilities as proposed, with clarifying language for proposed section 1.5.7, as well as comments regarding the demonstration of compliance with the requirements); NERC, Bonneville Power Administration, EEI/APPA/LPPA/NRECA, Entergy, EPRI, Idaho Power, IEEE, Peak Reliability, PG&E, Public Service Company of New Mexico, and So. Cal. Edison. The *Small Generator Ride Through NOPR* is pending before the FERC.

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

On February 18, 2016, 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>117</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 requirement to provide and compensate for primary frequency response.<sup>118</sup> Comments on the *Frequency Response NOI* were due on or before April 25, 2016<sup>119</sup> and were filed by over 50 parties, including: ISO-NE (with NYISO, PJM, SPP, and IESO), APPA/LPPA/TAPS, EDP Renewables, EEI, ELCON, ESA, EPRI, ESPA/NEPGA/IPPNY/Western Power Trading Forum, NARUC, NEI, and NERC. The *Frequency Response NOI* is pending before the FERC.

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<sup>114</sup> “ride through” means “a Generating Facility staying connected to and synchronized with the Transmission System during system disturbances within a range of over- and under-frequency conditions, in accordance with Good Utility Practice.” *See Order 2003* at P 562.

<sup>115</sup> *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, 154 FERC ¶ 61,222 (Mar. 17, 2016) (“*Small Generator Ride Through NOPR*”).

<sup>116</sup> The *Small Generator Ride Through NOPR* was published in the *Fed. Reg.* on Mar. 23, 2016 (Vol. 81, No. 56) pp. 15,481-15,485.

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

<sup>118</sup> *Frequency Response NOI* at P 2.

<sup>119</sup> The *Frequency Response NOI* was published in the *Fed. Reg.* on Feb. 24, 2016 (Vol. 81, No. 36) pp. 9,182-9,192.

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

On January 21, 2016, 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>120</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* were due on or before April 4, 2016<sup>121</sup> and were filed by 44 parties, including ISO-NE, the ISO-NE IMM, Potomac Economics (the ISO-NE EMM), ISO/RTO Council, NESCOE, Direct Energy Business, Dominion, Exelon, and a number of trade associations. Since the last Report, comments were filed by Advanced Energy Management Alliance. The *Price Cap NOPR* remains pending before the FERC.

- **Order 827: Reactive Power Requirements for Non-Synchronous Generation (RM16-1)**

On June 16, 2016, the FERC issued a final rule ("*Order 827*") eliminating the exemptions for wind generators from the requirement to provide reactive power.<sup>122</sup> As a result, all newly interconnecting generators that have not yet executed a Facilities Study Agreement as of September 21, 2016 will be required to provide dynamic reactive power within the range of 0.95 leading to 0.95 lagging at the high-side of the generator substation. To implement this requirement, the FERC revised the *pro forma* LGIA, Appendix G to the *pro forma* LGIA, and the *pro forma* SGIA. Existing non-synchronous generators making upgrades to their generating facilities that require new interconnection requests may be required to provide reactive power if a transmission provider determines through that generator's System Impact Study that a reactive power requirement is necessary to ensure safety or reliability. *Order 827* recognizes technical differences and related costs between synchronous and non-synchronous generators. Unlike the *Reactive Power NOPR*, *Order 827* does not provide a partial exemption for when the generator's output is at 10% or less of its nameplate capacity; instead, non-synchronous generators must provide reactive power at all levels of real power output. The Reactive Power Final Rule does not institute any reactive power compensation changes. The FERC will consider proposed variations from the *pro forma* language based on (1) Regional Entity reliability requirements; (2) variations that are "consistent with or superior to" the Final Rule; and (3) "independent entity variations" from ISOs/RTOs. *Order 827* will become effective September 21, 2016.

- **Order 825: Price Formation Fixes - Settlement Intervals/Shortage Pricing (RM15-24)**

Also on June 16, the FERC issued *Order 825*,<sup>123</sup> which revises FERC 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; (b) operating reserves transactions in its real-time markets at the same time interval it prices operating reserves; and (c) intertie transactions in the same time interval it schedules intertie transactions; and (ii) trigger shortage pricing for any dispatch interval during which a shortage of energy or operating reserves occurs. The FERC stated that adopting these reforms will align prices with resource dispatch instructions and operating needs, providing appropriate incentives for resource performance. *Order 825* will become effective September 13, 2016.<sup>124</sup>

**Compliance.** Each RTO/ISO is required to submit a compliance filing with the tariff changes needed to implement this Final Rule within 120 days of the Final Rule's September 13, 2016 effective date (on or before January 11, 2017). The FERC will allow a further 12 months from the compliance filing date for the tariff changes implementing reforms to settlement intervals to be effective, and 120 days from that same compliance

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<sup>120</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>121</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>122</sup> *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 (June 16, 2016).

<sup>123</sup> *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 825, 155 FERC ¶ 61,276 (June 16, 2016) ("*Order 825*").

<sup>124</sup> *Order 825* was published in the *Fed. Reg.* on June 30, 2016 (Vol. 81, No. 126) pp. 42,882-42,910.

filing date for the tariff changes implementing shortage pricing reforms to be effective. As noted in Section III above, the ISO's and NEPOOL's jointly filed Sub-Hourly Settlement Changes, which change to five minutes the settlement interval in the Real-Time Energy and Reserves Markets, are currently 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>125</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 NOPR* was distributed with the additional materials for the October 2, 2015 Participants Committee meeting.

**Dec 8 Technical Conference.** A staff-led and Commissioner (LaFleur and Norris)-attended technical conference was held on for December 8, 2015. 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 "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.

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<sup>125</sup> *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219 (Sep. 17, 2015) ("*Connected Entity Data NOPR*").

Staff's presentations, as well as presentations and written comments from some of the speakers, are available in the FERC's eLibrary. Comments on the *Connected Entity Data NOPR* were due on or before January 22, 2016,<sup>126</sup> and were submitted by 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. The *Connected Entity Data NOPR* remains pending before the FERC.

### XIII. Natural Gas Proceedings

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

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

On March 31, 2016, the FERC conditionally accepted Algonquin tariff modifications and request for waiver that provided an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies ("EDCs") that are participating in state-regulated electric reliability programs.<sup>127</sup> The modifications were accepted subject to refund and to the outcome of the technical conference to be held within 120 days of the *Algonquin Order*. The effectiveness of the modifications was suspended until, and the modifications will become effective on, the earlier of September 1, 2016 or the date specified in a further FERC order. As previously reported, Algonquin stated that the modifications were consistent with the FERC's current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies ("LDCs") from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC's initiatives related to gas-electric coordination.

On May 9, 2016, the FERC held a technical conference to examine "concerns raised regarding the basis and need for the waiver." Speaker presentations were made by Richard J. Kruse, Spectra Energy/Algonquin Gas Transmission; James Daly, Eversource; Tim Brennan and Stephen McCauley, National Grid; John Rudiak (Connecticut Natural Gas) speaking on behalf of the New England Local Distribution Companies; John Coyle (Partner, Duncan & Allen) speaking on behalf of the MA AG; Craig Adams, Calpine Corporation; Joe Dalton, ENGIE Gas & LNG LLC, Kathy Barrón, Exelon Corporation; Vince Morrissette, Repsol; and Tom Lockett, Tenaska Marketing Ventures. Initial comments were due May 31. Almost two dozen sets of initial comments were filed, raising numerous issues both in support and in opposition to the Algonquin proposal. Reply comments were due June 10, 2016 and were filed by Algonquin Gas Transmission, Sequent Energy Management, L.P. and Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG. This matter is pending before the FERC

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<sup>126</sup> The FERC denied a Dec. 30 request filed by a number of industry groups that it suspend the Jan. 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. *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,016 (Jan. 13, 2016).

<sup>127</sup> *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016) ("*Algonquin Order*").

- **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>128</sup>
- ◆ Empire Pipeline, Inc. (Docket No. RP16-300);<sup>129</sup>
- ◆ Iroquois Gas Transmission System, LP (Docket No. RP16-301);<sup>130</sup> and
- ◆ Tuscarora Gas Transmission Company (Docket No. RP16-299);<sup>131</sup>

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. As previously reported, pre-hearing conferences were held in each proceeding that established dates for the commencement of discovery, hearing and initial decisions in each proceeding.

Since the last Report, however, Chief Judge Cintron suspended the procedural schedule in each of these proceedings. In each proceeding, the parties reported that they have reached a settlement in principle that would fully resolve all issues set for hearing in their respective proceedings. The parties will now focus on drafting the necessary settlement documents. In the *Empire* Proceeding, on June 16, Chief Judge Cintron issued an order granting Empire's motion for interim implementation of settlement rates. Interim implementation of the settlement rates permits reduced rates to be placed into effect pending the FERC's consideration of the settlement agreement to be filed. The agreement in principle achieves a reduction in Empire's tariff rates for its Connector Line, including reducing the "Year-Round Reservation" rate from \$9.9664 to \$8.8701, the "Winter Period Reservation" rate from \$13.3838 to \$12.7729, and the "Summer Period Reservation" rate from \$7.2063 to \$6.0824.

- **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>132</sup> Requests for rehearing of *ANR Order* were filed by ANR and the Joint Intervenor Group.<sup>133</sup> On June 16, 2016, the FERC denied ANR's request for

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<sup>128</sup> *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,027 (2016), *reh'g denied*, 154 FERC ¶ 61,275 (Mar. 31, 2016).

<sup>129</sup> *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016), *reh'g denied*, 154 FERC ¶ 61,274 (Mar. 31, 2016).

<sup>130</sup> *Iroquois Gas Transmission System, LP*, 154 FERC ¶ 61,028 (2016).

<sup>131</sup> *Tuscarora Gas Transmission Company*, 154 FERC ¶ 61,030 (2016), *reh'g denied, clarif. granted*, 154 FERC ¶ 61,273 (Mar. 31, 2016).

<sup>132</sup> *ANR Storage Co.*, 153 FERC ¶ 61,052 (Oct. 15, 2015) ("*ANR Order*"), *reh'g granted in part*, 155 FERC ¶ 61,279.

<sup>133</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").

rehearing and granted in part, and denied in part, the Joint Intervenor Group's request for clarification and rehearing.<sup>134</sup> Unless the June 16 order is challenged, this proceeding will be concluded.

- **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 ("Anti-Manipulation Rule") and section 4A of the Natural Gas Act ("NGA").<sup>135</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:

- ▶ 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.

**Total Gas & Power North America, Inc. et al. (IN12-17).** On April 28, 2016, the FERC issued a show cause order<sup>136</sup> in which it directed Total Gas & Power North America, Inc. ("TGPNA") and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen ("Tran") and Aaron Hall (collectively, "Respondents") to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC's Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA's parent company, Total, S.A. ("Total"),

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<sup>134</sup> *ANR Storage Co.*, 155 FERC ¶ 61,279 (June 16, 2016). The FERC granted rehearing on two points: (1) the FERC agreed that it erred in including in the list of good alternatives storage facilities that are physically unavailable to ANR Storage customers; and (2) the FERC agreed to allocate 100 percent of Eaton Rapids capacity to ANR. The granting of rehearing on these points, however, did not alter the FERC's reasoning for denial of market-based rate authorization.

<sup>135</sup> *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

<sup>136</sup> *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

and TGPNA's affiliate, Total Gas & Power, Ltd. ("TGPL"), to show cause why they should not be held liable for TGPNA's, Hall's, and Tran's conduct, and be held jointly and severally liable for their disgorgement and civil penalties based on Total's and TGPL's significant control and authority over TGPNA's daily operations. Following an extension of time granted on May 10, Respondents have until July 12, 2016 to file their answer. OE Staff's reply will be due 75 days after Respondents' answer is filed.

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

- **New England Pipeline Proceedings**

The following New England pipeline projects are currently under construction or 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>137</sup> Order Denying Rehearing and Dismissing Stay Request issued Jan. 28, 2016. FERC orders appealed to DC Circuit.
  - ▶ 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.
  - ▶ 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.

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<sup>137</sup> Order Issuing Certificate and Approving Abandonment, *Algonquin Gas Transmission LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015), *reh'g denied*, 154 FERC ¶ 61,048 (Jan. 28, 2016).



- **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 & facility upgrades/modifications in NY, MA & CT.
  - ▶ Three firm shippers: Conn. Natural Gas, Southern Conn. 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.
  - ▶ Environmental Assessment (EA) issued on Oct. 23, 2015.
  - ▶ Certificate of public convenience and necessity granted Mar. 11, 2016.<sup>138</sup>
  - ▶ Construction expected to begin 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 (Marcellus Shale) through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
  - ▶ New 122-mile interstate pipeline.
  - ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
  - ▶ Final EIS completed on Oct 24, 2014.
  - ▶ Certificates of public convenience and necessity granted Dec 2, 2014;
  - ▶ Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays.
  - ▶ On April 22, 2016, New York State Department of Environmental Conservation denied Constitution's application for a Section 401 permit under the Clean Water Act. The decision effectively guarantees that the Constitution Pipeline project will, at best, be delayed by several years.
  - ▶ On May 16, 2016, the New York Attorney General filed a complaint against Constitution at the FERC (CP13-499) seeking a stay of the December 2014 order granting the original certificates, as well as alleging violations of the order, the Natural Gas Act, and the Commission's own regulations due to acts and omissions associated with clear-cutting and other construction-related activities on the pipeline right of way in New York.
  
- **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>139</sup>
  - ▶ Construction began in May 2015.
  - ▶ In-Service: November 2016 (anticipated).

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<sup>138</sup> *Tennessee Gas Pipeline Co., LLC*, 154 FERC ¶ 61,191 (Mar. 11, 2016) (order issuing certificate); *reh'g requested*. See also 154 FERC ¶ 61,263 (Mar. 30, 2016) (order denying stay); 155 FERC ¶ 61,087 (Apr. 22, 2016) (order denying stay).

<sup>139</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>140</sup>**  
**Petitioner: UWUA Local 464 and Robert Clark**

Robert Clark and UWUA Local 464 filed a petition for review of the FERC’s orders on the FCA9 Results Filing on February 24, 2016. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions were filed on March 28, 2016. The FERC filed a certified index to the record on April 11. On April 13, the Court granted NEPGA’s and CPV Towantic’s interventions. On May 31, the Clerk issued an order setting a briefing schedule that calls for submissions as follows: August 1, Petitioner Brief; September 30, Respondent Brief (granting the FERC’s motion for a 60-day interval between Petitioners’ and its brief); October 7, Intervenor for Respondent (NEPGA/CPV Towantic) Brief; October 21, Petitioner Reply Brief; October 28, Deferred Appendix; and November 14, 2016, Final Briefs.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**  
**Underlying FERC Proceeding: ER14-1050,<sup>141</sup> EL14-52;<sup>142</sup> EL15-25<sup>143</sup>**  
**Petitioner: NEPGA**

As previously reported, NEPGA filed, on January 19, 2016, a petition for review of the FERC’s orders on NEPGA’s Peak Energy Rent (“PER”) Complaint. A Docketing Statement Form, Statement of Issues to be Raised, Petitioners’ and Respondents’ Appearances, and procedural motions were filed. On February 24, the Court granted NEPGA’s February 18 motion to consolidate this proceeding with 16-1024. On May 18, the Clerk issued an order setting a briefing schedule that calls for submissions as follows: Petitioner Brief, July 18; Intervenor for Petitioner Joint Brief; July 25; Respondent Brief, September 23; Intervenor for Respondent Joint Brief; September 30; Petitioner Reply Brief; October 31; Intervenor for Petitioner Joint Reply Brief, October 31; Deferred Appendix, November 14; Final Briefs, November 28.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>144</sup>**  
**Appellants: New England Transmission Owners**

The TOs filed a petition for review of the FERC’s orders in the 2012 and 2014 ROE complaint proceedings on July 13, 2015. On July 16, the Court issued a scheduling order directing, among other things, a

<sup>140</sup> 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

<sup>141</sup> 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

<sup>142</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

<sup>143</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

<sup>144</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

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 May 16, the parties filed their third 90-day status report, again indicating, ultimately, that the proceedings upon which the NETOs based their request for abeyance of this appeal remain ongoing.

- **Order 1000 Compliance Filings (15-1139, 15-1141\*\*) (consolidated)**  
**Underlying FERC Proceedings: ER13-193; ER13-196<sup>145</sup>**

**Appellants: New England Transmission Owners (NETOs); NESCOE/CT DEEP/CT PURA, et al.** NETOs<sup>146</sup> and NESCOE, *et al.*, filed a petition for review of the FERC's orders in the *Order 1000* Compliance Filing proceeding on May 15, 2015. 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 were filed. On July 2, the Court granted all motions to intervene. As previously reported, the States'<sup>147</sup> brief was filed on January 11, 2016; Brief for Respondent (TOs), March 11; Brief for Intervenors supporting Respondent (LSP Power, NHT), April 1; Reply briefs by the TOs and States, April 22. Since the last Report, the parties filed a corrected Joint Appendix on May 18; final briefs were filed on May 20, 2016 by the FERC, States, LSPower/NHT, and TOs; and final replay briefs, also on May 20, by the TOs and the States. Parties are to be notified separately of the oral argument date and composition of the merits panel.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121\*\*) (consolidated)**  
**Underlying FERC Proceeding: EL11-66<sup>148</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>149</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, 2015. On August 10, 2015, Petitioners filed an unopposed proposed briefing format and schedule. On October 6, 2015, the court issued an order setting the briefing schedule. On December 7, 2015, (i) "Customers"<sup>150</sup> and the TOs<sup>151</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. On March 4, briefs were filed on the issues of the ROE being too low and modification of incentive adders and by NETOs on the issue of the ROE being too high. On March 25, TOs and

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<sup>145</sup> 150 FERC ¶ 61,209 (Mar. 19, 2015); 143 FERC ¶ 61,150 (May 17, 2013).

<sup>146</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>147</sup> "States" are NESCOE and the State Agencies – CT DEEP, CT PURA, MA DPU, RI PUC, NHPUC, and the VT DPS.

<sup>148</sup> 150 FERC ¶ 61,165 (Mar. 3, 2015); 149 FERC ¶ 61,032 (Oct. 16, 2014); 147 FERC ¶ 61,234 (June 19, 2014).

<sup>149</sup> "EMCOS" are Taunton, Reading, Hingham, and Braintree.

<sup>150</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>151</sup> In this case, TOs are CMP, Emera Maine, Eversource, National Grid, NHT, UI, and Vermont Transco.

EMCOs filed their reply briefs. The deferred appendix was filed on April 15. Final briefs were filed April 26, 2016 by the FERC, and April 29 by TOs and Customers. On May 18, CT PURA supplemented the deferred appendix. All briefing is complete. This matter is pending before the Court.

- **FCM Pricing Rules Complaints (15-1071\*\*, 16-1042) (consol.)**  
**Underlying FERC Proceeding: EL14-7,<sup>152</sup> EL15-23<sup>153</sup>**  
**Petitioners: NEPGA, Exelon**

On March 31, 2015, NEPGA filed a petition for review of the FERC's orders on NEPGA's FCM Administrative Pricing Rules Complaint. 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 were 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. Following the FERC's decision in EL15-23 and Exelon's appeal of that case (16-1042), 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 on a consolidated basis with 16-1042.

On June 16, NEPGA and Exelon filed Petitioners' Briefs. Remaining submissions are to be submitted as follows: Intervenor for Petitioner Brief, July 7; Respondent (FERC) Brief, August 15; Intervenor for Respondent Brief, September 6; Petitioners' Reply Brief, September 20; Intervenor for Petitioner, October 4; deferred appendix, October 11; Final Briefs, October 25.

- **FCA8 Results (14-1244, 14-1246 (consolidated))**  
**Underlying FERC Proceeding: ER14-1409<sup>154</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>155</sup> and Public Citizen taking the opposing view) has now been completed. The parties filed a joint appendix (reflecting all filings and issuances in ER14-1409) on December 16, 2015. 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, 2015, as was the final brief of Joint Intervenor for Respondent (EPSA, GenOn Energy Management, HQUS, NRG, and NEPGA). As reported at the Summer Meeting, oral argument has been set for September 6, 2016. The composition of the argument panel will be identified approximately 30 days prior to oral argument.

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

Entergy<sup>156</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 NY PSC Commissioners' order

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<sup>152</sup> 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

<sup>153</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

<sup>154</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>155</sup> For purposes of this proceeding, "Connecticut" means the CT AG, CT PURA and CT OCC.

<sup>156</sup> Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

(“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>157</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 Supreme Court’s *Hughes*<sup>158</sup> decision summarized in earlier Reports.

As previously reported, the Court dismissed, on March 7, 2016, a NYPSC motion to dismiss Entergy’s claim that its Order is both field- and conflict-preempted by the FPA, finding that “Entergy has timely asserted claims of harm flowing from state action to an interstate market in which it participates”. Since the last Report, briefing on how *Hughes* impacts discovery and the issue of a stay in this case was filed on May 6. Also on May 6, the Parties filed updated Civil Case Management Plans. On May 10, the trial judge issued a protective order adopting a confidentiality agreement should discovery proceed. On May 20, 2016, the NYPSC requested that the stay of discovery be continued to afford the NYSPC the opportunity to consider in a separate proceeding the impact of the *Hughes* case and other developments on the NYPSC’s prior authorization of the Term Sheet, subject to reporting to this Court, advising the Court that it had contemporaneously solicited comments in in NYPSC Case 12-E-0577.<sup>159</sup>

On June 3, the Court found this case appropriate for referral to and order the case to the Mandatory Mediation Program. The Mediator will encourage and assist the parties in reaching a resolution to their dispute, but may not compel or coerce the parties to settle. Mediation Reports are to be filed within seven days after the close of each mediation session. The deadline for completion of mediation is October 3, 2016.

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<sup>157</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.

<sup>158</sup> *Hughes v. Talen Energy Marketing LLC*, 578 U.S. \_\_\_\_ (2016) (“*Hughes*”).

<sup>159</sup> The NYPSC asked for comments on whether “National Grid should still be authorized to recover costs under the Term Sheet given various intervening events subsequent to the Commission’s approval. In particular, NRG/Dunkirk mothballed the Dunkirk facility in January 2016, and has not taken the actions necessary to add natural gas firing capability at the Dunkirk facility by September 1, 2015, or otherwise. Meanwhile, National Grid has completed certain transmission upgrades that it previously could defer and avoid, in contemplation of the refueled Dunkirk facility being available. Moreover, on April 19, 2016, the United States Supreme Court issued a decision with respect to preemption of a State-ordered contract for the sale of electric generation capacity, which may implicate the Dunkirk/National Grid Term Sheet. *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288 (2016) (*Hughes*). For instance, would *Hughes* require modification of the Term Sheet? Similarly, would *Hughes* be considered a “Change of Law” under the provisions of the Term Sheet providing for termination?

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