

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of October 12, 2016**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated September 7, 2016 was circulated. New matters/proceedings since the last Report are preceded by an asterisk ‘\*’. Page numbers precede the matter description.

**I. Complaints/Section 206 Proceedings** 


|     |  |                    |  |
|-----|--|--------------------|--|
| * 1 | NEPGA PER Adjustment Complaint (EL16-120)  | Sep 30<br>Oct 3-12 | NEPGA files complaint; comment date Oct 20<br>NEPOOL, ISO, NESCOE, ConEd, Exelon intervene   |
| 1   | NextEra/PSEG Complaint Seeking Market Rule Changes to Counter Potential Gas Pipeline-Related Price Suppression (EL16-93) | Sep 30             | Algonquin Gas Transmission requests rehearing of Aug 30 order dismissing Complaint; Eversource Energy files motion supporting Algonquin request  |
| 2   | Base ROE Complaint IV (2016) (EL16-64)   | Sep 20<br>Oct 4    | FERC establishes hearing and settlement judge procedures (and sets a refund effective date of Apr 29, 2016)<br>Chief Judge Cintron designates Judge Jennifer Long as the settlement judge in these proceedings |

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

*No Activity to Report*

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

|     |  |  |   |
|-----|--|--|---|
| * 5 | Resource Dispatchability Changes (ER17-68)                                 | Oct 12                                     | ISO-NE and NEPOOL jointly file changes; comment date Nov 2  |
| 6   | Dual-Fuel Audit NCPD Calculation Revisions (ER16-2529)                     | Sep 19-22                                  | Dominion, Eversource, Exelon, National Grid intervene   |
| 6   | FCM Enhancements (ER16-2451)   | Sep 9<br>Sep 9-20<br>Sep 23-26<br>Oct 6-12 | NYISO, Indicated NYTOs, City of New York and Multiple Intervenor file protests<br>Additional interventions filed by Brookfield, Dominion, LIPA, NESCOE, Roseton Generating<br>NEPOOL, ISO-NE, IPPNY/NEPGA, NRG, Roseton answer New York Commenters’ protests<br>Indicated NYTOs and NYISO answer protests |
| 7   | Waiver Request: DER FCM Qualification Reqs (Genbright) (ER16-2283)         | Sep 9<br>Sep 23                            | Genbright answers ISO-NE Aug 16 protest<br>FERC denies waiver request   |
| 7   | FCM Composite Offers & Price Lock Mechanisms (FERC Compliance) (ER16-2126) | Oct 5                                      | Markets Committee supports proposed changes; Participants Committee consideration scheduled for Oct 14  |
| 7   | Waiver Request: RTEG Resource Type/De-List (ISO-NE) (ER16-1904)            | Oct 7                                      | FERC issues tolling order affording it additional time to consider CPower’s request for rehearing of the <i>ISO RTEG Waiver Request Order</i>   |

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

|     |  |        |   |
|-----|--|--------|---|
| * 9 | Orders 827/828 Compliance Filing (ER16-2695) | Sep 29 | ISO-NE, NEPOOL, PTO AC jointly file revisions to OATT Schedules 22 and 23 to comply with FERC Orders 827 and 828; comment date Oct 20 |
|-----|--|--------|---|

- |   |   |        |  |
|---|---|--------|--|
| 9 | IRS Normalization Requirements changes to OATT Attachment F (ER16-2378) | Sep 26 | FERC accepts changes, eff. Jun 1, 2016 |
|---|---|--------|--|

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

*No Activity to Report*

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

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|----|---|------------------|--|
| 10 | Schedule 21-UI: IRS Normalization ADIT Changes (ER16-2454)  | Sep 26           | FERC accepts changes, eff. Jul 1, 2016   |
| 10 | Schedule 21-CMP: IRS Normalization ADIT Changes (ER16-2386)   | Sep 26           | FERC accepts changes, eff. Jun 1, 2016   |
| 10 | Schedule 21-EM: Rate Adjustments for Anticipated Changes Compliance Filing (ER16-1301)                | Sep 9            | FERC accepts Jul 11 compliance filing  |
| 10 | Schedule 21-ES: Eversource Recovery of NU/NSTAR Merger-Related Costs (ER16-1023)                      | Oct 5            | 3rd settlement conf. held; 4th scheduled for Nov 9   |
| 11 | Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.) | Sep 13<br>Sep 22 | Settlement Judge Dring issues 2nd status report<br>2nd settlement conf. re-scheduled to Oct 25 |

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

*No Activity to Report*

**VIII. Regional Reports**

- |      |   |        |                                     |
|------|---|--------|-------------------------------------|
| 12   | Capital Projects Report - 2016 Q2 (ER16-2415)                 | Sep 28 | FERC accepts Q2 Report              |
| * 12 | Reserve Market Compliance (21st Semi-Annual Report (ER06-613) | Oct 3  | ISO submits 21st semi-annual report |

**IX. Membership Filings**

- |      |  |        |   |
|------|--|--------|---|
| * 13 | October 2016 Membership Filing (ER16-2721)   | Sep 30 | NEPOOL requests the FERC accept the Oct 1 memberships of Bloom Energy, Cricket Valley Energy Center, NTE Connecticut, Rhode Island State Energy Center, SWEB Development USA, and Farhad Aminpour |
| 13   | September 2016 Membership Filing (ER16-2535) | Sep 29 | FERC accepts Sep 1 memberships of Alphataraxia Nickel and Life Energy; Aug 1 termination of Cape Wind   |

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

- |    |   |        |   |
|----|---|--------|---|
| 14 | Revised Reliability Standards: IRO-018-1 & TOP-010-1 (RD16-6) | Sep 22 | FERC accepts Revised Standards, VSLs, and with two exceptions, VRFs; compliance filing with revised VRFs due Nov 22 |
| 14 | NOPR: Revised Rel. Standards: BAL-005-1 & FAC-001-3 (RM16-13) | Sep 22 | FERC issues <i>Frequency Control Changes NOPR</i> proposing to approve BAL-005-1 and FAC-001-3; comment date Nov 28 |
| 15 | <i>Order 830</i> : New Rel. Standard: TPL-007-1 (RM15-11)     | Sep 22 | FERC issues Final Rule, eff. Nov 29, 2016   |

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

|      |   |                                      |   |
|------|---|--------------------------------------|---|
| 17   | CFTC RTO/ISO Exemption Amendment (2016-11385)   | Sep 13                               | CFTC Chairman states that he will recommend that the CFTC abandon its proposal to allow rights of action against RTO/ISOs   |
| 17   | 203 Application: CPV Towantic (EC16-167)  | Sep 22                               | FERC authorizes change in CPV Towantic's upstream ownership to now include Ullico Infrastructure Master Fund, L.P.; parties notify the FERC that the transaction was consummated that same day  |
| 18   | 203 Application: ReEnergy Sterling (EC16-58)  | Sep 29                               | ReEnergy Sterling notifies FERC that the sale of 100% of its partnership interests was consummated on Sep 21, 2016  |
| * 18 | PURPA Complaint: Allco Finance Ltd. and Windham Solar v. CT PURA (EL16-115 et al.)                | Sep 12<br>Sep 26<br>Sep 14-30        | Allco/Windham Solar file petition for FERC enforcement of PURPA against CT PURA<br>Allco/Windham Solar file amended petition; comment date Oct 17<br>CT PURA, CT OCC, Eversource, SoCal Edison intervene  |
| * 18 | E&P Agreement: CL&P/Beacon Falls (ER16-2700)  | Sep 29                               | CL&P files Agreement in connection with interconnection of Beacon Falls' proposed 63.3 MW fuel cell project; comment date Oct 20  |
| * 19 | Agreements Cancellation: National Grid/Wheelabrator Saugus (ER16-2575)                            | Sep 9                                | National Grid files notice of cancellation of agreements with Wheelabrator Saugus superseded by an LGIA filed and accepted in ER16-760  |
| 19   | D&E Agreement Termination Notice: NSTAR/Exelon West Medway (ER16-2467)                            | Sep 28                               | NSTAR files correction to notice of cancellation; comment date Oct 19   |
| 19   | IA Amendment - CMP-Brookfield White Pine Hydro (ER16-2416)  | Sep 23                               | FERC accepts IA Amendment, eff. Aug 1, 2016   |
| 19   | E&P Agreement: CMP/FPL Wyman (ER16-2369)  | Sep 22                               | FERC accepts E&P Agreement, eff. Jul 1, 2016  |
| 19   | Facilities Use Agreement: National Grid/Deepwater Block Island Wind (ER16-2328)                   | Sep 13                               | FERC accepts agreement, eff. Jul 28, 2016   |
| 20   | Emera MPD OATT Changes (ER15-1429; EL16-13; ER12-1650) (consol.)                                  | Sep 15<br>Sep 21<br>Sep 22<br>Sep 22 | Judge Dring substituted in as settlement judge for these proceedings<br>Chief Judge Cintron grants ReEnergy's out-of-time intervention<br>Judge Dring issues status report recommending continuation of settlement procedures<br>4th settlement conf. scheduled for Oct 25  |
| 21   | MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844) | Sep 22                               | FERC issues <i>Opinion 550</i> finding the MISO/ITC proposal to allocate costs of ITC PARs to entities outside of MISO had not been demonstrated to be just and reasonable  |
| 22   | FERC Enforcement Action: Maxim Power et al. (IN15-4)  | Sep 26                               | FERC approves Stipulation and Consent Agreement with Maxim Power, requiring Maxim Power to pay a <b>\$4 million civil penalty</b> and to <b>disgorge \$4 million</b> to resolve the FERC's investigation into violations of its Anti-Manipulation and Market Behavior Rules |

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

|    |   |        |   |
|----|---|--------|---|
| 23 | Competitive Transmission Development Rates (AD16-18)      | Oct 3  | Over 60 parties file post-technical conference comments                   |
| 23 | Reactive Supply Compensation in RTO/ISO Markets (AD16-17) | Sep 21 | PJM IMM files reply comments to AWEA's Jul 28 comments                    |
| 23 | PURPA Implementation (AD16-16)                            | Sep 14 | Industrial Energy Consumers of America files comments; comment date Nov 7 |

|    |   |                 |   |
|----|---|-----------------|---|
| 24 | NOPR: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)   | Sep 19          | Over 30 parties file post-technical conference comments   |
| 24 | NOPR: Regulations Implementing FAST Act and Amending CEII Regulations (RM16-15) | Sep 12          | ISO-NE/SPP respond to PJM reply comments  |
| 26 | Order 827: Reactive Power Reqs. for Non-Synchronous Generation (RM16-1)         | Sep 21<br>Oct 3 | Order 827 becomes effective<br>FERC grants in part and denies in part CAISO's request for clarification and/or rehearing of Order 827 |

**XIII. Natural Gas Proceedings**

|    |   |                            |   |
|----|---|----------------------------|---|
| 27 | Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)                            | Sep 23<br>Sep 30           | Algonquin submits compliance filing<br>ConEd and O&R request clarification of Aug 31 order  |
| 28 | Section 5 Investigations: Columbia (RP16-302); Empire (RP16-300); Iroquois (RP16-301); Tuscarora (RP16-299) | Sep 12<br>Sep 22<br>Sep 22 | Iroquois: ALJ certifies settlement to Commission<br>Columbia: Commission approves uncontested settlement<br>Tuscarora: Commission approves uncontested settlement   |
| 29 | Natural Gas-Related Enforcement Actions (BP (IN13-15))  | Sep 7<br>Sep 8<br>Sep 9    | BP requests modification of payment directive<br>FERC issues tolling order affording it additional time to consider BP's request for rehearing of BP Penalties Order<br>BP appeals May 14, 2014 Hearing Order and BP Penalties Order to 5th Circuit |
|    | Total Gas & Power North America, Inc. et al. (IN12-17)  | Sep 12                     | FERC stays disgorgement directive   |
|    |   | Sep 23                     | OE Staff replies to Respondents' Jul 12 answer  |
| 30 | New England Pipeline Proceedings (AIM Project) (CP14-96)  | Oct 6                      | FERC issues order amending certificate of public convenience and necessity (amending initial rates to reflect an overall increase in the cost of construction of the AIM facilities)  |

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

*No Activity Reported*

**XV. Federal Courts**

|    |  |                           |  |
|----|--|---------------------------|--|
| 33 | NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)                                | Sep 23<br>Sep 30          | FERC files Respondent Brief<br>NESCOE files Intervenor for Respondent Joint Brief<br>NEPGA informs Court of its latest PER Complaint           |
| 33 | Order 1000 Compliance Filings (15-1139, 15-1141**) (consol.)   | Oct 4                     | Oral argument set for Jan 13, 2017   |
| 34 | Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consol.)  | Oct 3                     | Oral argument set for Dec 6, 2016  |
| 34 | FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)  | Sep 20<br>Oct 7<br>Oct 11 | NEPGA files Reply Brief<br>PSEG advises that it will not file a Reply Brief<br>Parties file joint appendix; Final Briefs to be filed on Oct 25 |
| 35 | Entergy Nuclear Fitzpatrick, LLC et al. v. Zibelman et al. (NY PSC Commissioners) (NDNY 5:15-cv-00230-DNH-TWD) | Sep 22                    | Mediation deadline extended to Nov 1, 2016   |

## MEMORANDUM

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

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

**DATE:** October 12, 2016

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures through October 12, 2016. If you have questions, please contact us.<sup>1</sup>

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| <b>I. Complaints/Section 206 Proceedings</b> |
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- **NEPGA PER Complaint (EL16-120)**

On September 30, NEPGA filed a complaint asking the FERC (i) to find the ISO Tariff's Peak Energy Rent (“PER”) Adjustment provisions unjust & unreasonable; (ii) to direct the ISO to file revisions to the PER Adjustment sections of the Tariff that return the PER Adjustment to a just & reasonable level; (iii) to establish a refund effective date of September 30, 2016; and (iv) to issue an order granting the complaint by November 29, 2016. Comments on the PER Complaint are due on or before October 20. Thus far, doc-less interventions have been filed by NEPOOL, ISO, NESCOE, ConEd, and Exelon. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

Rehearing has been requested of the FERC’s August 31 order dismissing the complaint filed by NextEra Energy Resources (“NextEra”) and the PSEG Companies (“PSEG”, and together with NextEra, “Complainants”).<sup>2</sup> As previously reported, the Complaint sought a FERC order that would have (i) directed 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) established a post-filing technical conference to address the proposed changes/issues. Complainants further sought to have the Tariff changes effective for FCA11. The FERC dismissed the Complaint, finding Complainants’ allegations speculative and the Complaint lacking sufficient evidence of harm.<sup>3</sup> The FERC found that, as a result of recent events,<sup>4</sup> the electric distribution

<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> *NextEra Energy Resources, LLC and PSEG Companies v. ISO New England Inc.*, 156 FERC ¶ 61,150 (Aug. 31, 2016).

<sup>3</sup> *Id.* at P 16.

<sup>4</sup> Notably, the Massachusetts SJC decision essentially prohibiting the MA DPU from approving cost recovery for the precedent agreements absent a legislative remedy, which is unlikely to occur this year; the Aug. 22, 2016 withdrawal of Eversource’s and National Grid EDCs’ petitions for MA DPU approval of the Access Northeast Project-related long-term contracts; and the FERC’s order in Docket No. RP16-618 rejecting an aspect of Algonquin’s proposal

companies were unable to recover costs from ratepayers or release capacity on the Access Northeast Project under the proposed capacity release exemption. In addition, the size and scope of the Access Northeast Project was as yet unknown.<sup>5</sup> Accordingly, the FERC found that it did not have “before it the concrete facts necessary to determine whether the tariff will be unjust and unreasonable,” and that Complainants failed to meet the requirements of section 206(a) of the Federal Power Act (“FPA”).<sup>6</sup>

On September 30, Algonquin Gas Transmission requested rehearing of the August 31 order. Algonquin stated: “The Commission should grant rehearing, address the merits of the Complaint and dismiss it based on the arguments laid out in Algonquin’s responsive pleadings—namely, that the Commission should not intrude on state jurisdiction; that the Complaint is deficient and cannot be cured; and that the Complaint is an anti-competitive use of the Commission’s processes.” Eversource Energy Service Company filed a motion supporting Algonquin’s request. The Algonquin request is pending, with FERC action required on or before October 31 or Algonquin’s request will be deemed denied. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)), Jamie Blackburn (202-218-3905; [jblackburn@daypitney.com](mailto:jblackburn@daypitney.com)), or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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

On September 20, the FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint.<sup>7</sup> As previously reported, EMCOS<sup>8</sup> filed the 4th ROE complaint on April 29, 2016. The Complaint asks the FERC to reduce the TOs’ current 10.57% return on equity (“Base ROE”) to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. EMCOS identified three main considerations requiring submission of this 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 “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.”

In setting the complaint for hearing and settlement judge procedures, the FERC found that the Complaint “raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order.”<sup>9</sup> The FERC also found “unpersuasive the assertions of New England TOs and EEI that the Commission should dismiss the Complaint because the New England TOs’ base ROE continues to fall within the zone of reasonableness. The Commission has repeatedly rejected the assertion that every ROE within the zone of reasonableness must be treated as an equally just and reasonable ROE.”<sup>10</sup> Further, the FERC rejected arguments as to the propriety of

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to establish a blanket exemption from bidding for capacity releases by EDCs contracting under a state-regulated electric reliability program (or their agents or asset managers) to natural gas-fired electric generators serving ISO-NE (*see* Section XIII).

<sup>5</sup> Algonquin’s project is currently in the Commission’s pre-filing process, and Algonquin expects to make its section 7 certificate application in the fourth quarter of 2016. *See* Docket No. PF16-1-000.

<sup>6</sup> *NextEra et. al. v. ISO New England Inc.*, 156 FERC ¶ 61,150 at P 15.

<sup>7</sup> *Belmont Mun. Light Dept. et al. v. Central Me. Power Co. et al.*, 156 FERC ¶ 61,198 (Sep. 20, 2016).

<sup>8</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.

<sup>9</sup> *Belmont Mun. Light Dept. et al. v. Central Me. Power Co. et al.*, 156 FERC ¶ 61,198 at P 37.

<sup>10</sup> *Id.* at P 38.

allowing a fourth complaint against the TOs' ROE after three previous complaints have been filed since 2011. As it did when it allowed Complaints II and III to go forward, the FERC found that Complaint IV was properly set for hearing as it is based on newer, more current data than prior Complaints subsequent hearings.<sup>11</sup> The FERC is "initiating an entirely new proceeding, based on an entirely separate factual record, that may or may not reach the same conclusions as those reached in the earlier ROE proceeding."<sup>12</sup> The FERC estimated that, if this case does not settle and goes to hearing, the Commission's ultimate decision would be issued on or before June 30, 2018.<sup>13</sup>

**Settlement Judge Procedures.** On October 4, Chief Judge Cintron designated Judge Jennifer Long, the FERC's newest ALJ, as the Settlement Judge. An order establishing a first settlement conference will be issued in due course.

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)).

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

The request for rehearing of the *Manchester Street FCA10 Order* remains pending before the FERC. As previously reported, the FERC issued the *Manchester Street FCA10 Order* on May 2, 2016 (1) finding the ISO 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 Forward Capacity Auction ("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>14</sup> The FERC directed the ISO to submit a compliance filing 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>15</sup> That compliance filing was submitted on July 1 in Docket ER16-2126 (*see* Section III below). 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)).

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

Settlement discussions in this proceeding are on-going. As previously reported, the FERC instituted this Section 206 proceeding on December 28, 2015, finding that the ISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff "lacks adequate transparency and challenge procedures with regard to the formula rates" for Regional Network Service ("RNS") and Local Network Service ("LNS").<sup>16</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

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<sup>11</sup> Complaint IV was filed 21 months after the July 31, 2014 filing of Complaint III, nearly nine months after the July 2, 2015 close of the Complaint III evidentiary hearing record, and six months after the end of the Complaint III refund period.

<sup>12</sup> *Belmont Mun. Light Dept. et al. v. Central Me. Power Co. et al.*, 156 FERC ¶ 61,198 at P 40.

<sup>13</sup> *Id.* at P 44.

<sup>14</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>15</sup> *Id.* at PP 22-23.

<sup>16</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).

an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”.<sup>17</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>18</sup> Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.<sup>19</sup> The FERC-established refund date is January 4, 2016.<sup>20</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. Four settlement conferences have thus far been held: January 19, March 24, April 28, and August 30. Judge Dring issued his latest status report on August 30 indicating that the parties are making progress toward settlement and recommending that the settlement procedures be continued. The August 30 notice also indicated that a 5th (telephonic) settlement conference is scheduled for November 18, 2016. The Transmission Committee is being kept apprised of settlement efforts.

- **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>21</sup> and third (EL14-86)<sup>22</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>23</sup> the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,<sup>24</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>25</sup> The

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<sup>17</sup> *Id.* at P 8.

<sup>18</sup> *Id.* at P 11.

<sup>19</sup> *Id.*

<sup>20</sup> The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

<sup>21</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>22</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>23</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>24</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>25</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).



TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.<sup>26</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>27</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)).

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

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

Requests for rehearing of the FERC’s June 16, 2016 order accepting the results of the tenth FCA (“FCA10”),<sup>28</sup> filed by Dominion and UWUA Local 464, remain pending. Dominion requested rehearing in order to preserve its rights while its request for rehearing of the *Manchester Street FCA10 Order* is pending (*see* Section I above). As it did there, Dominion asked the FERC to direct the ISO to award the 21 MWs of incremental capacity at Manchester Street Station a Capacity Supply Obligation (“CSO”) for 2019-2020 Capacity Commitment Period and six subsequent Capacity Commitment Periods at the FCA 10 Capacity Clearing Price of \$7.03/kW-month. For its part, UWUA Local 464 raised the same arguments it raised in the FCA8 and FCA9 proceedings, and argued, additionally, that in the FCA 10 proceeding, because there was no independent analysis of retiring units’ actual costs, and inclusion of such units’ capacity in the FCA at those costs, there was no assurance that the auction was workably competitive and the results just and reasonable. On August 11, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain 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)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

- **Resource Dispatchability Changes (ER17-68)**

On October 12, 2016, the ISO and NEPOOL jointly filed changes to the Tariff that broaden the range of resources that are subject to economic dispatch in the Real-Time Energy Market and that make other ancillary changes to improve overall Energy Market price formation (the “Resource Dispatchability Changes”). More specifically, the Resource Dispatchability Changes (i) broaden the range of resources that are capable of responding to electronic Dispatch Instructions to increase or decrease output, both in response to price signals and for reliability purposes (to be effective December 12, 2016, with completed installation

<sup>26</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>27</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*”).

<sup>28</sup> *ISO New England Inc.*, 155 FERC ¶ 61,273 (June 16, 2016) (“*FCA10 Results Order*”), *reh’g requested*.

and dispatchability required by January 15, 2018); (ii) require capacity suppliers with dispatchable Intermittent Power Resources that participate in the FCM to offer the available energy from an intermittent resource into the Day-Ahead Energy Market (to be effective June 1, 2020); and (iii) create a way for alternative technologies that both consume and inject energy to participate as Energy Market dispatchable resources (to be effective December 1, 2018). The Resource Dispatchability Changes were supported unanimously by the Participants Committee by way of the August 5 Consent Agenda (Item #1). Comments on this filing are due on or before November 2, 2016. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Dual-Fuel Audit NCPC Calculation Revisions (ER16-2529)**

On September 1, 2016, the ISO and NEPOOL jointly filed changes to the Tariff to revise how a resource's Net Commitment Period Compensation ("NCPC") is calculated when it is subject to a dual-fuel audit using a higher-priced fuel than the fuel that provided the basis for the generator's Day-Ahead Energy Market Supply Offer ("Dual-Fuel NCPC Audit Changes"). The Dual-Fuel NCPC Audit Changes were supported unanimously by the Participants Committee – Reliability Committee-recommended changes at its June 23 Summer Meeting (Consent Agenda Item #2) and Markets Committee-recommended changes at its August 5 meeting (Consent Agenda Item #2). A November 1, 2016 effective date was requested. Comments on this filing were due on or before September 22, 2016; none were filed. Interventions were filed by Dominion, Eversource, Exelon, and National Grid. 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)).

- **FCM Enhancements (ER16-2451)**

On August 19, 2016, the ISO and NEPOOL jointly filed changes to the Tariff to increase liquidity in the FCM by increasing Market Participant opportunities to enter into reconfiguration auctions and bilateral contracts for the exchange of CSOs ("FCM Enhancements"). Specifically, the FCM Enhancements (i) modify certain FCM qualification rules to facilitate the ability of New Capacity Resources to supply capacity beginning four months after participating in their first FCA; (ii) provide Import Capacity Resources backed by one or more External Resources the opportunity (currently available to generators and demand response) to provide capacity beginning one or two years after participating in their first FCA; and (iii) establish a new form of bilateral contracting in which Market Participants can, as the Capacity Commitment Period approaches, trade CSOs for a seasonal strip of CSOs. The FCM Enhancements include several smaller improvements as well, including the elimination of a requirement that the ISO make a FERC filing in order to terminate the CSO of a resource that has voluntarily withdrawn from the FCM resource development process. The FCM Enhancements were supported unanimously by the Participants Committee at its June 23 Summer Meeting. An October 19, 2016 effective date was requested.

Comments on this filing were due on or before September 9, 2016, and were filed by the New York ISO ("NYISO"), New York State Public Service Commission ("NYSPSC"), City of New York and Multiple Intervenors, and Indicated NYTOs<sup>29</sup> (collectively, "New York Commenters"). Doc-less interventions were filed by Brookfield, ConEd, Dominion, Emera Energy Services, Entergy, Eversource, Exelon, LIPA, National Grid, NESCOE, NRG, and Roseton Generating. Answers to the New York Commenters were filed by NEPOOL, the ISO, IPPNY/NEPGA, NRG, and Roseton. On October 6, Indicated NYTOs answered the NRG and Roseton Answers, reiterating and with support for its request that the FERC delay the effective date of the FCM Enhancements. On October 12, NYISO answered the protests stating that the answers "overstate the progress that the NYISO and its stakeholders have made towards resolving the issues raised", the requested deferral is consistent with open and efficient competitive markets, and the FERC has the authority to grant the requested deferral. 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)).

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<sup>29</sup> "Indicated NYTOs" are Central Hudson Gas & Electric, Consolidated Edison Co. of New York, New York Power Authority, New York State Electric & Gas, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric.

- **Waiver Request: DER FCM Qualification Reqs (Genbright) (ER16-2283)**

On September 23, the FERC denied the limited waiver of FCM qualification requirements<sup>30</sup> requested by Genbright.<sup>31</sup> In denying the waiver request, the FERC found that Genbright's request did not meet its criteria for granting waiver requests.<sup>32</sup> In addition, the FERC found "Genbright's additional argument, that the request for waiver will not have undesirable consequences because these small scale Distributed Energy Resources would still be providing superior qualification information than Demand Resources, to be inapposite."<sup>33</sup> Unless the September 23 order is challenged, with any challenges due on or before October 23, this proceeding will be concluded. 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)).

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

As previously reported, on August 30, the FERC conditionally accepted the July 1, 2016 compliance filing directed by the *Manchester Street FCA10 Order*.<sup>34</sup> Persuaded by Dominion and NEPGA protests in response to that compliance filing, however, the FERC directed the ISO to submit a further compliance filing with Tariff language (i) requiring the ISO to automatically match new winter incremental capacity with excess existing summer qualified capacity at the same resource, and (ii) allow new incremental capacity and the corresponding matched excess existing capacity at the same resource to elect the price lock-in.<sup>35</sup> Revised Tariff language was considered by the Markets Committee at its October 5 meeting and unanimously recommended for Participants Committee support at the October 14 meeting (Agenda Item #7). 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)**

CPower's request for rehearing of the *ISO RTEG Waiver Request Order* remains pending. As previously reported, the FERC granted the limited waiver requested by the ISO of Tariff Sections III.13.1.4.2.5.2, III.13.1.4.3.1.2 & III.13.1.2.3.1.1.<sup>36</sup> The waiver allows 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, 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. In granting the waiver, the FERC rejected CPower's request for limited modifications thereto, finding CPower's proposed modification "beyond the scope of ISO-NE's instant proposal," and that it "would decrease incentives for RTEG market participants to exhaust existing remedies". The FERC also found "speculative CPower's characterization that applying the FCA Starting Price to the Third Annual Reconfiguration Auction, rather than the FCA Payment Rate, would essentially cause a 'penalty'."<sup>37</sup> On September 7, CPower requested rehearing of the *ISO RTEG Waiver*

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<sup>30</sup> Genbright requested waiver of site control and one line diagram requirements for battery and solar projects under five MW that are classified as Generators. Genbright stated that the waiver would facilitate the qualification of an aggregation of Distributed Energy Resources ("DER"), including solar and battery storage, for FCA11.

<sup>31</sup> *Genbright LLC*, 156 FERC ¶ 61,128 (Sep. 23, 2016).

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

<sup>33</sup> *Id.* at P 17.

<sup>34</sup> *ISO New England Inc.*, 156 FERC ¶ 61,144 (Aug. 30, 2016).

<sup>35</sup> *Id.* at PP 19, 25.

<sup>36</sup> *ISO New England Inc.*, 156 FERC ¶ 61,096 (Aug. 8, 2016) ("*ISO RTEG Waiver Request Order*"), *reh'g requested*.

<sup>37</sup> *Id.* at P 19.

*Request Order.* On October 7, the FERC issued a tolling order affording it additional time to consider the CPower request, which as noted above remains 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)).

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

Rehearing remains pending of the FERC's *Resource Retirement Reforms Order*.<sup>38</sup> As previously reported, the FERC conditionally accepted, effective March 1, 2016, changes to the FCM rules for resource retirements proposed by the ISO and its Internal Market Monitor ("IMM") (the "ISO/IMM Proposal"). 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>39</sup> which were filed with and accepted by the FERC.<sup>40</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. 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 remains pending of the FERC's April 8, 2016 *Demand Curve Remand Order*.<sup>41</sup> As previously reported, the FERC conditionally accepted, on May 30, 2014, revisions to the FCM rules that establish a system-wide sloped demand curve ("Demand Curve Changes").<sup>42</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>43</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>44</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, accepted, and became effective on May 2, 2015.<sup>45</sup> NextEra, NRG and PSEG petitioned the DC Circuit

<sup>38</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>39</sup> *Id.* at P 62.

<sup>40</sup> *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) ("Resource Retirement Reforms Compliance Order").

<sup>41</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>42</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("Demand Curve Order").

<sup>43</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>44</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>45</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.

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, 2016. On June 3, NESCOE answered the NextEra/PSEG/NRG rehearing request. On June 8, 2016, 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)**

On August 8, 2016, the FERC issued its long-awaited remand order.<sup>46</sup> As previously reported, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable), and directing the FERC to either offer a reasoned justification for the order in ER13-2266 or revise its disposition to ensure that the Program rates are just and reasonable.<sup>47</sup> In the *2013/14 Winter Reliability Program Remand Order*, the FERC directed the ISO to request from Program participants the basis for their bids, including the process used to formulate the bids, and to file with the FERC, by December 6, 2016, a compilation of that information, an IMM analysis of that information, and the ISO's recommendation as to the reasonableness of the bids, so that the FERC can further consider the question of whether the Bid Results were just and reasonable.<sup>48</sup> 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

- **Orders 827/828 Compliance Filing (ER16-2695)**

On September 29, 2016, the ISO, NEPOOL and PTO AC jointly filed revisions to Schedules 22 and 23 of the ISO OATT to comply with the FERC Order Nos. 827<sup>49</sup> and 828.<sup>50</sup> Schedules 22 and 23 were revised to incorporate the *pro forma* revisions set forth in *Orders 827* and *828* with variations necessary to recognize New England reactive power requirements and overall structure previously accepted under the "independent entity variation" standard and to make certain enhancements "consistent with or superior to" the *pro forma* revisions. An October 5, 2016 effective date was requested. The compliance filing changes were supported by the Participants Committee at its September 9 meeting. Comments on this filing are due on or before October 20, 2016. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **IRS Normalization Requirements changes to OATT Attachment F (ER16-2378)**

On September 26, 2016, the FERC accepted PTOs' revisions to modify the calculation of transmission-related Accumulated Deferred Income Taxes ("ADIT") related to accelerated depreciation in the

<sup>46</sup> *ISO New England*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("2013/14 Winter Reliability Program Remand Order").

<sup>47</sup> *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

<sup>48</sup> *2013/14 Winter Reliability Program Remand Order* at P 17.

<sup>49</sup> *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 (June 16, 2016) ("Order 827"), *order on clarification and reh'g*, 157 FERC 61,003 (Oct. 3, 2016).

<sup>50</sup> *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) ("Order 828").

Attachment F RNS formula rate (consistent with recent Internal Revenue Service (“IRS”) guidance) (“Normalization Rules”). The revisions were accepted effective as of June 1, 2016, as requested. Unless the September 26 order is challenged, this proceeding will be concluded. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

## V. Financial Assurance/Billing Policy Amendments

*No Activity to Report*

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

- **Schedule 21-UI: IRS Normalization ADIT Changes (ER16-2454)**

On September 26, the FERC accepted UI’s revisions to Schedule 21-UI modifying the calculation of transmission-related ADIT to maintain compliance with accelerated depreciation normalization requirements, consistent with recent IRS guidance. The revisions were accepted effective as of July 1, 2016, as requested. Unless the September 26 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-CMP: IRS Normalization ADIT Changes (ER16-2386)**

Also on September 26, the FERC accepted CMP’s revisions to Schedule 21-CMP Attachment K modifying the calculation of transmission-related ADIT to maintain compliance with accelerated depreciation normalization requirements, consistent with recent IRS guidance. These revisions were accepted effective as of June 1, 2016, as requested. Unless the September 26 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-EM: Rate Adjustments for Anticipated Changes Compliance Filing (ER16-1301)**

On September 9, the FERC accepted<sup>51</sup> Emera Maine’s July 11 compliance filing that, in response to the May 31 order conditionally accepting Emera Maine’s Schedule 21 changes,<sup>52</sup> provides for an annual true-up to the extent that actual load, revenue or sales data differs from any adjusted data included in Emera Maine’s rate calculations.<sup>53</sup> The September 9 order was not challenged and is final and unappealable. This proceeding is now concluded. If you have any questions, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

This proceeding is subject to hearing and settlement judge procedures, which are on-going. As previously reported, 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

<sup>51</sup> *ISO New England Inc. and Emera Maine*, Docket No. ER16-1301-001 (Sep. 9, 2016) (unpublished letter order).

<sup>52</sup> *ISO New England Inc. and Emera Maine*, 155 FERC ¶ 61,212 (May 31, 2016).

<sup>53</sup> The additional tariff language reads “To the extent any such adjusted data used in the annual calculation of charges differs from actual data for the Forecast Period, Emera Maine will apply a true-up (equal to the difference between adjusted and actual data multiplied by the applicable tariff rate), with interest, through the Annual True-Up with Interest provided for in Section III.N, herein.”

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

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.** Judge Patricia E. Hurt is the Settlement Judge in this proceeding. There have been three settlement conferences: May 26; August 16; and October 5. The next settlement conference is scheduled for November 9, 2016. If you have any questions concerning these proceedings, 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, 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

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<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) (“*June 2 Order*”).

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

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

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.** ALJ John Dring is the settlement judge for these proceedings. A first settlement conference was held on June 29. A second settlement conference, scheduled for September 27, was re-scheduled to October 25. On July 14, Settlement Judge Dring reported that the parties are making progress toward settlement and recommended that the settlement procedures be continued. On July 22, Chief Judge Cintron issued an order continuing settlement judge procedures. If you have any questions concerning these matters, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

## VII. NEPOOL Agreement/Participants Agreement Amendments

*No Activity to Report*

## VIII. Regional Reports

- **Capital Projects Report - 2016 Q2 (ER16-2415)**

On September 28, the FERC accepted the ISO's Capital Projects Report and Unamortized Cost Schedule covering the second quarter ("Q2") of calendar year 2016 (the "Report"). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights included the following new projects: (i) Market Enhancements for Dispatchable Asset Related Demand Pumps (\$2.7 million); (ii) Energy Management System ("EMS") Alarm Presentation Enhancements (\$175,000); and (iii) Phasor Measurement Unit External Data Exchange (\$160,000). Projects with significant changes (decreases reallocated to 2017) included: (i) Sub-Hourly Settlements (\$400,000 decrease); Zonal Load Forecast (\$300,000 decrease); (ii) Transmart Technical Architecture Update (\$225,000 decrease); and (iv) FCA11 (\$160,500 increase); and FTR Clearing Submission (\$1.8 million decrease, with \$96,400 in actual planning costs written off). Unless the September 28 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)).

- **Reserve Market Compliance (21<sup>st</sup>) Semi-Annual Report (ER06-613)**

As directed by the original ASM II Order,<sup>63</sup> as modified,<sup>64</sup> the ISO submitted its 21st semi-annual reserve market compliance report on October 3, 2016. In the 21st report, the ISO explained, as in its prior compliance reports, that work on the forward TMSR market issues continues to be on hold due to its efforts on other priority projects. Due to the ISO's efforts on other priority projects, work on the forward TMSR market issues is on hold, and the ISO reports that it does not contemplate revisiting this issue until at least 2018. If there are questions on this matter, please contact Dave Doot (860-275-0102; [dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)).

- **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

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

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

<sup>63</sup> See *NEPOOL and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006) ("*ASM II Order*") (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh'g denied* 117 FERC ¶ 61,106 (2006).

<sup>64</sup> See *NEPOOL and ISO New England Inc.*, 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve ("*TMSR*").



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>65</sup> and *531-B*.<sup>66</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)).

## IX. Membership Filings

- **October 2016 Membership Filing (ER16-2721)**

On September 30, NEPOOL requested that the FERC accept (i) the memberships of Bloom Energy (AR Sector, DG Sub-Sector, Small Group Member); Cricket Valley Energy Center (Generation Sector [Related Person to Advanced Power Services, Generation Group Seat]); NTE Connecticut (Provisional Member Group Seat); Rhode Island State Energy Center (Generation Sector [Related Person to Essential Power companies]); SWEB Development USA (AR Sector, RG Sub-Sector); and Farhad Aminpour (End User Sector, Governance Only Member). Comments on this filing are due on or before October 21.

- **September 2016 Membership Filing (ER16-2535)**

On September 29, the FERC accepted (i) the September 1, 2016 memberships of Alphataraxia Nickel (Supplier Sector) and LifeEnergy (AR Sector [Related Person of Jericho Power, Wallingford Energy and New England Energy Connection]); and (ii) the August 1, 2016 termination of the Participant status of Cape Wind.

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

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

- **Revised Reliability Standard: COM-001-3 (RD16-9)**

On August 15, NERC requested that the FERC approve proposed Reliability Standard COM-001-3 (Communications), its associated Implementation Plan, Violation Risk Factors (“VRFs”) and Violation Severity

<sup>65</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

<sup>66</sup> *Martha Coakley, Mass. Att’y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

Levels (“VSLs”) (associated with new Requirements R12 and R13) (“COM-001-3 Changes”). The COM-001-3 Changes were developed in response to the FERC’s directive in *Order 808* that NERC address “concerns regarding ensuring the adequacy of internal communications capability whenever internal communications could directly affect the reliable operation of the Bulk-Power System.” An effective date that is the first day of the first calendar quarter that is 9 months after the effective date of a FERC order approving COM-001-3 Changes was requested. Comments on this filing were due on or before September 14 and none were filed. This matter is pending before the FERC.

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

On September 22, 2016, the FERC conditionally accepted NERC’s May 26 filing requesting approval of 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, VSLs, and, with two exceptions noted below, VFRs (together, the “Real-Time Situational Awareness Changes”).<sup>67</sup> As previously reported, 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. In accepting the revised Standards, the FERC directed NERC to submit a compliance filing, on or before November 21, to modify the VRF designations for IRO-018-1 Requirement R1 and TOP-010-1 Requirements R1 and R2 to “high.”<sup>68</sup> Challenges, if any, to the *September 22 Order* are due on or before October 22, 2016.

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

On September 2, 2016, NERC filed for approval (i) two new Reliability Standards -- PRC-027-1 (Coordination of Protection Systems for Performance During Faults) and PER-006-1 (Specific Training for Personnel), (ii) associated Glossary definitions, (iii) an implementation plan, (iv) VRFs and VSLs, and (v) the retirement of PRC-001-1.1(ii) (together, the “Protection System Changes”). NERC stated that the purpose of the Protection System Changes is to: (1) maintain the coordination of Protection Systems installed to detect and isolate Faults on Bulk Electric System (“BES”) Elements, such that those Protection Systems operate in the intended sequence during Faults; and (2) require registered entities to provide training to their relevant personnel on Protection Systems and Remedial Action Schemes (“RAS”) to help ensure that the BES is reliably operated. NERC requested that the new Standards and definitions become effective on the first day of the first calendar quarter that is 24 months following the effective date of the FERC’s order approving the Standards. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

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

On September 22, the FERC issued a NOPR proposing to approve 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”).<sup>69</sup> As previously reported, 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

<sup>67</sup> *N. Amer. Elec. Rel. Corp.*, 156 FERC ¶ 61,207 (Sep. 2, 2016) (“*September 22 Order*”).

<sup>68</sup> *September 22 Order* at P 2.

<sup>69</sup> *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Rel. Standards*, 156 FERC ¶ 61,210 (Sep. 22, 2016) (“*Frequency Control Changes NOPR*”).

approving the Standard, pursuant to the Implementation Plans included with the Changes. Comments on the *Frequency Control Changes NOPR* are due on or before November 28, 2016.<sup>70</sup>

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

The *BAL Changes NOPR* remains pending before the FERC. As previously reported, the FERC issued a NOPR. on May 19, 2016, 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>71</sup> 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 MSSC as the upper bounds for events that qualify as Reportable Balancing Contingency Events (“RBCE”) under Reliability 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* were due on or before July 25, 2016<sup>72</sup> and were filed by APS, IESO, NaturEner USA, the Canadian Electricity Association, Idaho Power, TVA, NRECA, NERC, Bonneville, EEI, and jointly by the Alberta Electric System Operator (“AESO”), the California Independent System Operator (“CAISO”), Electric Reliability Council of Texas, Inc. (“ERCOT”), the Independent Electricity System Operator of Ontario, Inc. (“IESO”), Midcontinent Independent System Operator, Inc. (“MISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”). The *BAL Changes NOPR* is pending before the FERC.

- **Order 830: New Reliability Standard: TPL-007-1 (RM15-11)**

On September 22, 2016, the FERC issued a final rule approving a new Reliability Standard -- TPL-007-1 (Geomagnetic Disturbance (“GMD”) Operations) -- and one new definition (Geomagnetic Disturbance Vulnerability Assessment), associated VRFs and VSLs (“*Order 830*”).<sup>73</sup> In addition, the FERC directed 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, (ii) to require the collection of necessary geomagnetically-induced current monitoring and magnetometer data and to make such data publicly available; and (iii) to include a one-year deadline for the development of corrective action plans and two and four-year deadlines to complete mitigation actions involving non-hardware and hardware mitigation, respectively. The FERC also directed NERC to submit a work plan and, subsequently, one or more informational filings that

<sup>70</sup> The *Frequency Control Changes NOPR* was published in the *Fed. Reg.* on Sep. 28, 2016 (Vol. 81, No. 188) pp. 66,555-66,562.

<sup>71</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*”).

<sup>72</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>73</sup> *Rel. Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events*, 151 FERC ¶ 61,134 (May 14, 2015) (“*TPL-007 NOPR*”).

address specific GMD-related research areas. As previously reported, NERC stated that the new Standard and related changes addressed the FERC's directive in *Order 779* that NERC develop a Reliability Standard that requires owners and operators of the BPS to conduct initial and on-going vulnerability assessments of the potential impact of benchmark GMD events on BPS equipment and the BPS as a whole.<sup>74</sup> *Order 830* will become effective November 29, 2016.<sup>75</sup>

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

The *ATC NOPR* remains pending before the FERC. As previously reported, the FERC's June 19, 2014, NOPR<sup>76</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>77</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>78</sup> and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, NAESB supplemented its comments with a report on its efforts to develop WEQ Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the *ATC NOPR* remains pending before the FERC.

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

The *BAL-002-1a Interpretation Remand NOPR*<sup>79</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

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

<sup>75</sup> *Order 830* was published in the *Fed. Reg.* on Sep. 30, 2016 (Vol. 81, No. 190) pp. 67,120-67,140.

<sup>76</sup> *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) ("*ATC NOPR*").

<sup>77</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>78</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>79</sup> *Elec. Rel. Org. Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("*BAL-002-1a Interpretation Remand NOPR*").

Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,<sup>80</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.

## XI. Misc. - of Regional Interest

- **CFTC RTO/ISO Exemption Amendment (2016-11385)**

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>81</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.

Since the last Report, CFTC Chairman Timothy Massad wrote in a September 13, 2016 letter to the Honorable John N. Boozman, Chairman of the US Senate’s Financial Services and General Government Subcommittee of the Committee on Appropriations, that he plans to recommend to his two fellow Commissioners that the final order in this proceeding exempt RTOs and ISOs from all private rights of action under Section 22 of the CEA.<sup>82</sup> With two of the three Commissioners now on the record as opposing private rights of action against ISO/RTOs, it appears that, when finalized, the proposed amendment will not go forward. No formal action has yet been taken and this matter remains 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: CPV Towantic (EC16-167)**

On September 22, the FERC authorized, as requested, a transaction that will result in Ullico Infrastructure Master Fund, L.P. (“Ullico”) acquiring a 13.7% indirect upstream ownership interest in CPV Towantic.<sup>83</sup> CPV and Ullico notified the FERC within on September 27, 2016 that the transaction was consummated the day it was authorized, or September 22. This proceeding is now concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **203 Application: Belmont/NSTAR (EC16-145)**

NSTAR’s July 8, 2016 request for authorization to acquire from the Town of Belmont, MA, limited jurisdictional transmission facilities associated with Belmont’s construction of a new 115 kV/13.8 kV substation in Belmont remains pending. As previously reported, the portion of the facility under construction that comprises

<sup>80</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>81</sup> The CFTC Proposed Amendment was published in the *Fed. Reg.* on May 16, 2016 (Vol. 81, No. 94) pp. 30,245-30,255.

<sup>82</sup> See <http://www.boozman.senate.gov/public/index.cfm/2016/9/boozman-receives-commitment-from-cftc-to-reduce-regulatory-uncertainty>.

<sup>83</sup> *CPV Towantic, LLC*, 156 FERC ¶62,208 (Sep. 22, 2016).

distribution facilities will remain with Belmont. The ISO would be given operational control of the transmission facilities. Comments on this filing were due on or before July 29; none were filed. Belmont Municipal Light Department filed a motion to intervene out-of-time. As noted above, his matter remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

The March 25, 2016 request by 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, for authorization to acquire of GDF Suez Energy Resources remains pending. Also pending, in a separate proceeding (EC16-94), is the Dynergy and ECP III request 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 was filed on July 8. 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. Comments on the July 8 response were due on or before July 29. On July 29, Public Citizen filed a protest. Atlas answered Public Citizen’s protest on August 4, and Public Citizen answered Atlas’ answer on August 9. This matter remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On September 29, ReEnergy Sterling CT Limited Partnership (“ReEnergy Sterling”) informed the FERC that the sale of 100% of its partnership interests to Empire Tire of Edgewater 2, LLC (“Empire Tire”), authorized on March 9, 2016,<sup>84</sup> was consummated on September 21, 2016. As previously noted, with the consummation of that transaction, ReEnergy Sterling is no longer a Related Person to ReEnergy Stratton, Dartmouth Power or TrailStone Power. This proceeding is now concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **PURPA Complaint: Allco Finance Ltd. and Windham Solar v. CT PURA (EL16-115 et al.)**

On September 12, 2016, as amended on September 26, 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”).<sup>85</sup> This petition is Allco’s third petition for enforcement filed against Connecticut within the past year. Allco states that this petition is the result of the final decision by CT PURA, on August 24, 2016, denying Windham’s petition for a power purchase agreement (“PPA”) for various solar facilities that are 1 to 2 megawatts in size. Allco seeks a FERC order declaring invalid, and to enforce PURPA against CT PURA to invalidate and permanently enjoin, Connecticut’s rules, which prevented Allco from securing the PPAs. Comments on the amended petition are due on or before October 17. Thus far, doc-less interventions were filed by CT PURA, CT OCC, Eversource and Southern California Edison Company. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **E&P Agreement: CL&P/Beacon Falls (ER16-2700)**

On September 29, Eversource filed on behalf of CL&P an Engineering, Design and Procurement Services (“E&P Agreement”) between CL&P and Beacon Falls Energy Park, LLC (“Beacon Falls”) that sets forth the terms and conditions under which CL&P will provide design and/or engineering necessary to complete a cost estimate for the modification of CL&P’s Beacon Falls substation and to interconnect the

<sup>84</sup> *ReEnergy Sterling CT Limited Partnership*, 154 FERC ¶ 62,167 (Mar. 9, 2016).

<sup>85</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.

proposed 63.3 megawatt fuel cell project's switchyard. CL&P stated that it and Beacon Falls are in the process of completing a Standard Large Generator Interconnection Agreement ("LGIA") under Schedule 22 of the ISO's Tariff. An effective date of September 29, 2016 was requested. Comments on this filing are due on or before October 20, 2016. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Agreements Cancellation: National Grid/Wheelabrator Saugus (ER16-2575)**

On September 8, 2016, National Grid filed a notice of cancellation of two agreements with Wheelabrator Saugus that were superseded and replaced by an LGIA between National Grid and Wheelabrator Saugus (the "Saugus LGIA"), accepted in ER16-760. A November 9, 2016 effective date was requested. Comments on this filing were due on or before September 30; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement Termination Notice: NSTAR/Exelon West Medway (ER16-2467)**

On August 24, NSTAR filed a notice of cancellation of a Design and Engineering Agreement ("D&E Agreement") between NSTAR and Exelon West Medway (designated as service agreement IA-NSTAR-32). The D&E Agreement, which set forth the terms and conditions under which NSTAR would undertake certain design and engineering activities on the Interconnection Facilities, was superseded by the non-conforming LGIA between the ISO, NSTAR and Exelon West Medway II filed and accepted in ER16-2024. NSTAR requested that the notice become effective as of June 14, 2016, the effective date of the LGIA. Comments on this filing were due on or before September 14. Exelon filed a doc-less intervention, but no comments were filed. On September 28, NSTAR submitted a filing to correct an error in the requested effective date (which should have been June 14, 2016) reflected in the August 24 eTariff filing. Comments on that correction filing may be made on or before October 19. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **IA Amendment - CMP-Brookfield White Pine Hydro (ER16-2416)**

On September 23, the FERC accepted an amendment to Central Maine Power's ("CMP") Continuing Site/Interconnection Agreement with Brookfield White Pine Hydro LLC ("Amended IA").<sup>86</sup> As previously reported, the Amended IA is principally to reflect that certain generating facilities subject to the current IA (namely, "Androscoggin Lower", "Bates Upper", "Bates Lower", "Hill Mill", "Continental Mill" and "Lewiston Canal") are no longer owned by Brookfield, are no longer generating electricity, and therefore no longer require interconnection service pursuant to the CSIA. The Amended IA was accepted effective as of August 1, 2016, as requested. Unless the September 23 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **E&P Agreement: CMP/FPL Wyman (ER16-2369)**

On September 22, the FERC accepted an Engineering and Procurement Agreement ("E&P Agreement") between CMP and FPL Energy Wyman LLC ("FPL Wyman") that authorizes CMP to begin engineering and procurement of long lead-time items necessary for establishment of the interconnection of FPL Wyman's proposed 16.7 MW battery storage project to be located on Cousin's Island in Yarmouth, Maine. The E&P Agreement was accepted as of July 25, 2016, as requested. Unless the September 22 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Facilities Use Agreement: National Grid/Deepwater Block Island Wind (ER16-2328)**

On September 16, the FERC accepted a Facilities Use Agreement between New England Power Company ("National Grid") and Deepwater Block Island Wind, LLC ("Deepwater") under which National

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<sup>86</sup> *Central Me. Power Co.*, Docket No. ER16-2416, (Sep. 23, 2016) (unpublished letter order).

Grid will operate and maintain, and Deepwater will use, a portion of certain interconnection facilities to be constructed and owned by The Narragansett Electric Company, in order to facilitate the construction and future commercial operation of the offshore Block Island Wind Farm (“BIWF”). The Narragansett interconnection facilities will be used to deliver power to the BIWF on a temporary basis for the purpose of installing, testing, and commissioning equipment prior to the BIWF’s commercial operation date. The Agreement was accepted for filing as of July 28, 2016, as requested. Unless the September 16 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Emera MPD OATT Changes (ER15-1429; EL16-13, ER12-1650)**

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>87</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 (ER15-1429).** 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>88</sup> filed a motion to reject (“Motion to Reject”) the April 1 Filing, asserting the April 1 Filing was deficient because, rather than actual rates, it included proxy rates that MPD said would be replaced with 2014 Form 1 numbers when MPD’s 2014 Form 1 was available. On April 22, the Maine PUC and the Maine Customer Group protested the filing. The MPUC challenged three aspects of the filing: (i) the proposed increase of ROE from 9.75% to 10.20% based on anomalous economic conditions; (ii) the change from a measured loss factor calculation to a fixed loss factor; and (iii) the use of end-of-year account balances, rather than average 13-month account balances, for determination of facilities that are included in rate base. In addition to those aspects, the Maine Customer Group further challenged: (iv) inclusion of an out-of-period adjustment to rate base for forecasted transmission; (v) the proposed capital structure, which they assert is artificially distorted to accommodate a requirement resulting from the merger of Emera Maine’s predecessor companies; and (vi) the proposed new cost allocation scheme. On April 24, Emera Maine answered the Maine Customer Group’s Motion to Reject. On April 29, the Maine Customer Group answered Emera Maine’s April 24 answer. On May 1, Emera Maine filed an amendment and errata to its April 1 filing, in part reflecting 2014 FERC Form 1 data rather than estimated data. On May 7, Emera Maine answered the April 22 Maine PUC and MCG protests and the MCG’s April 29 answer. On May 8, MCG moved to compel revision to Emera’s May 1 filing, asserting that it was not filed in accordance with Emera’s OATT, and specifically the Protocols for Implementing and Reviewing Charges Established by the Attachment J Rate Formulas (the “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

<sup>87</sup> *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

<sup>88</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”).



judge procedures.<sup>89</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. Emera Maine requested rehearing of the June 2 order on July 5. On August 2, the FERC issued a tolling order affording it additional time to consider the Emera Maine request for rehearing, which remains pending before the FERC.

**Compliance Filing (ER12-1650).** On July 5, Emera Maine submitted the compliance filing directed in the June 2 order. On July 18, the Maine Customer Group protested the compliance filing, asserting that Emera's compliance filing was incorrect as to two of the three refund issues, and Emera should be ordered to pay immediate refunds in accordance with the corrected revised formula rate it proposed. Emera Maine answered the July 18 answer on August 1, concluding that the Maine Customer Group's July 18 answer should be denied and its July 5 compliance filing found to comply fully with the June 2 Order. And, since the last Report, ReEnergy Biomass Operations LLC submitted a motion to intervene out-of-time. The compliance filing remains pending before the FERC.

**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, 2015 and settlement conferences before Judge Johnson were held on January 5, March 3, and April 26, 2016. On September 15, Chief Judge Cintron issued an order substituting Judge Dring in the place of Judge Johnson, who will not be available for further proceedings in this matter. Reporting on September 22 that the parties are making progress toward settlement, Judge Dring recommended settlement procedures be continued and reported that a next settlement conference is scheduled for October 25. If you have any questions concerning these matters, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On September 22, 2016, the FERC issued *Opinion 550*,<sup>90</sup> which found that the Midcontinent Independent System Operator, Inc. ("MISO") and International Transmission Company ("ITC") had not demonstrated that their proposal to allocate costs of ITC Phase Angle Regulating Transformers ("PARs") to entities outside of MISO, including to entities in NYISO or PJM, was just and reasonable. *Opinion 550* affirmed in part, and reversed in part, certain determinations of the Presiding Administrative Law Judge Sterner,<sup>91</sup> and dismissed Judge Sterner's remaining determinations as moot. Consistent with these actions, the FERC also dismissed as moot requests for rehearing of Judge Sterner's *MISO Hearing Order*. Unless *Opinion 550* is challenged, with any challenges due on or before October 22, 2016, this proceeding will finally be concluded. 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

<sup>89</sup> *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh'g requested*.

<sup>90</sup> *Midwest Indep. Trans. Sys. Op., Inc.*, 156 FERC ¶ 61,202 (Sep. 22, 2016) ("*Opinion 550*").

<sup>91</sup> *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) ("*MISO Hearing Order*"), *reh'g denied*, 156 FERC ¶ 61,202 (Sep. 22, 2016).

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: Maxim Power (IN15-4)**

On September 26, the FERC approved a Stipulation and Consent Agreement<sup>92</sup> that resolves its investigation into (and subsequent litigation in the US District Court for the District of Massachusetts<sup>93</sup> regarding) whether Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Co., LLC, and Pittsfield Generating Company, LP (collectively, "Maxim")<sup>94</sup> violated the FERC's Anti-Manipulation and Market Behavior Rules through a scheme to obtain payments for reliability dispatches based on the price of expensive fuel oil when Maxim in fact burned much less costly natural gas.<sup>95</sup> Under the Settlement, in which Maxim neither admits nor denies the alleged violations, Maxim agreed to **disgorge \$4 million** to ISO New England and pay a **\$4 million civil penalty** to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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.

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<sup>92</sup> *Maxim Power Corp. et al.*, 156 FERC ¶ 61,223 (Sep. 26, 2016).

<sup>93</sup> *FERC v. Maxim Power Corp. et al.*, No. 3:15-cv-30113-MGM (D. Mass.).

<sup>94</sup> Maxim's Related Person, Pawtucket Power Holding Company, is a member of the Generation Sector Group Seat. In addition to Pawtucket, Maxim operates units in Pittsfield, MA and Hartford, CT (Capitol District Energy Center Cogeneration Associates).

<sup>95</sup> As previously reported, the FERC found that Maxim engaged in three schemes in New England that violated the FERC's Anti-Manipulation Rule. In the first, during 2012-13, Maxim received millions of dollars of inflated make-whole payments from the ISO by gaming Market Rules intended to mitigate the market power of generators needed for reliability; in the second, July-August 2010, Maxim told the ISO it needed to offer based on high oil prices because of supposed gas supply problems, and collected make-whole payments based on those high prices, but in fact burned much less expensive gas. In many cases Maxim had already purchased gas when it submitted Day-Ahead offers based on oil prices because of supposed gas supply issues; in the third, 2010- 2013, Maxim obtained inflated capacity payments by artificially raising the reported output of three of its plants by employing extraordinary measures during capacity tests that it did not use, and did not intend to use, during the ordinary operation of the plants. Based on these findings, the FERC had previously assessed civil penalties to Maxim and its affiliates totaling \$5 million (no disgorgement). *Maxim Power Corp. et al.*, 151 FERC ¶ 61,094 (May 1, 2015) ("*Maxim Penalties Order*"). At Maxim's election, the *Maxim Penalties Order* proceeded to a *de novo* review before the federal district court in Massachusetts, which was the first to find that *de novo* review would be conducted according to the same procedures applicable to an ordinary civil action (e.g. permitting defendants to seek discovery from witnesses interviewed by FERC or presenting their own witnesses during the civil trial) rather than be limited, as FERC argued, to a review of the full record developed in the underlying FERC proceeding.

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

- **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. On August 3, the FERC issued a notice inviting post-technical conference comments on questions listed in the attachment to the notice. Following requests by Utility Trade Associations<sup>96</sup> and the New Jersey BPU, the deadline for comments was extended to October 3, 2016. Comments were filed by over 60 parties, including: ISO-NE, Avangrid, AWEA, BHE US Transmission, EDF Renewables, EEI, ELCON, Eversource, Exelon, LSP Transmission Holdings, MMWEC, National Grid, NESCOE, NextEra, and PSEG.

- **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. Technical conference materials are available on the FERC’s e-Library. Written comments were due on or before July 28, 2016, and were filed by, among others, NYISO, PJM, the PJM IMM, AWEA, EEI, EPSA, EDF Renewables, Talen, Essential Power, and Exelon. EDF Renewables filed reply comments on August 19. Since the last Report, the PJM IMM filed comments answering and objecting to AWAE’s July 28 comments suggesting that wind units should receive cost of service compensation for reactive capability apart from how the rules apply to other types of generators. This matter remains pending before the FERC.

- **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. On September 6, the FERC issued a

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<sup>96</sup> The “Utility Trade Associations” are APPA, EEI, Large Public Power Council, National Rural Electric Cooperative Association (“NRECA”), and Transmission Access Policy Study Group (“TAPS”).

notice inviting post-technical conference comments to be filed. Such comments may address (1) the use of the “one-mile rule” to determine the size of an entity seeking certification as a small power production qualifying facility (“QF”); and (2) minimum standards for PURPA-purchase contracts and should be filed on or before November 7, 2016. Since the last Report, comments were filed by Industrial Energy Consumers of America.

- **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>97</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>98</sup> and were filed by over 25 parties, including Exelon, EEI, and EPSA. This matter is pending before the FERC.

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

On July 21, 2016, the FERC issued a NOPR, which supersedes both its *Connected Entity NOPR* (RM15-23) and *Ownership NOPR* (RM16-3), proposing to collect certain data for analytics and surveillance purposes from market-based rate (“MBR”) sellers and entities trading virtual products or holding FTRs and to change certain aspects of the substance and format of information submitted for MBR purposes.<sup>99</sup> The *Data Collection NOPR* presents substantial revisions from what the FERC proposed in the *Connected Entity NOPR*, and responds to the comments and concerns submitted by NEPOOL in that proceeding. Among other things, the changes proposed in the *Data NOPR* include: (i) a different set of filers; (ii) a reworked and substantially narrowed definition of Connected Entity; and (iii) a different submission process. With respect to the MBR program, the proposals include: (i) adopting certain changes to reduce and clarify the scope of ownership information that MBR sellers must provide; (ii) reducing the information required in asset appendices; and (iii) collecting currently-required MBR information and certain new information in a consolidated and streamlined manner. The FERC also proposes to eliminate MBR sellers’ corporate organizational chart submission requirement adopted in *Order 816*. Comments on the *Data Collection NOPR* were due on or before September 19, 2016<sup>100</sup> and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

- **NOPR: Regulations Implementing FAST Act and Amending CEII Regulations (RM16-15)**

On June 16, the FERC issued a NOPR proposing to amend its regulations to implement provisions of the Fixing America’s Surface Transportation (“FAST”) Act that pertain to the designation, protection and sharing of Critical Electric Infrastructure Information (“CEII”) and to amend its regulations that pertain to CEII.<sup>101</sup>

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<sup>97</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>98</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 was 30 days after the filing of the last of the reports, the SPP report, on Mar. 7.

<sup>99</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

<sup>100</sup> The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

<sup>101</sup> *Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information*, 155 FERC ¶ 61,278 (June 16, 2016) (“*FAST Act/CEII NOPR*”).

Comments on the *FAST Act/CEII NOPR* were due on or before August 19, 2016,<sup>102</sup> and were filed by over 20 parties including joint comments by ISO-NE/SPP, APPA, INGA, MISO, NERC, NRC, and NRECA. In its comments with SPP, the ISO requested that the FERC, as part of efforts in this proceeding, ease through a blanket rule the burden of CEII information sharing among RTOs, ISOs, and other FERC-regulated entities (sharing undertaken for purposes of ensuring interregional reliability and effective long-term planning). The ISO-NE/SPP request raised some concerns for PJM, which in reply comments suggested that “a voluntary collaborative approach would be preferable to the ... language proposed by ISO-NE and SPP.” To the extent changes/reforms to the CEII information sharing process may be warranted, PJM suggested that the FERC task the EIPC to further study and report back on this issue (as it applies to the Eastern Interconnection). On September 12, ISO-NE/SPP responded to PJM’s comments, and reiterated their request that the FERC ease the burden of sharing planning and operational information among Commission-regulated entities for purposes of ensuring interregional reliability and effective long-term planning. This matter is pending before the FERC.

- **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. Speaker materials are posted on the FERC’s eLibrary. Post-technical conference comments were invited and filed by nearly 30 parties, including comments by AWEA, the ISO, Public Power (APPA, LPPC, NRECA), NextEra, EEI, Avangrid, and the Energy Storages Association (“ESA”), and are available on the FERC’s eLibrary.

- **Order 828: Small Generator Ride Through Requirements (RM16-8)**

On July 21, the FERC issued Order 828<sup>103</sup> which modifies the *pro forma* SGIA to require newly interconnecting small generating facilities (< 20 MW), as large generators must under the *pro forma* LGIA, to “ride through”<sup>104</sup> abnormal frequency and voltage events and not disconnect during such events.<sup>105</sup> The specific ride through settings must be consistent with Good Utility Practice and any standards and guidelines applied by the transmission provider to other generating facilities on a comparable basis. These requirements will apply to new interconnection customers, and to existing interconnection customers, pursuant to a new interconnection request, that execute or request the unexecuted filing of an SGIA on or after October 5, 2016 (the effective date of *Order 828*).<sup>106</sup> Transmission Provider (including ISO-NE) compliance filings must also be submitted by October 14, 2016 and must be combined in a single filing with the compliance filing required under *Order 827* (Reactive Power Requirements for Non-Synchronous Generation).<sup>107</sup>

<sup>102</sup> The *FAST Act/CEII NOPR* was published in the *Fed. Reg.* on July 5, 2016 (Vol. 81, No. 128) pp. 43,557-43,567.

<sup>103</sup> *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (July 21, 2016) (“*Order 828*”).

<sup>104</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>105</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>106</sup> *Order 828* was published in the *Fed. Reg.* on Aug. 1, 2016 (Vol. 81, No. 147) pp. 50,290-50,298.

<sup>107</sup> *Id.* at P 45.

- **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>108</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>109</sup> Comments on the *Frequency Response NOI* were due on or before April 25, 2016<sup>110</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.

- **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>111</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>112</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 *Order 827* eliminating the exemptions for wind generators from the requirement to provide reactive power. 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. *Order 827* 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. On July 18, CAISO requested clarification and/or rehearing of *Order 827*. In particular CAISO

<sup>108</sup> *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) (“*Frequency Response NOI*”).

<sup>109</sup> *Frequency Response NOI* at P 2.

<sup>110</sup> The *Frequency Response NOI* was published in the *Fed. Reg.* on Feb. 24, 2016 (Vol. 81, No. 36) pp. 9,182-9,192.

<sup>111</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>112</sup> The *Price Cap NOPR* was published in the *Fed. Reg.* on Feb. 4, 2016 (Vol. 81, No. 23) pp. 5,951-5,965.

asked the FERC to clarify “that a repowering of an existing facility that requires new inverters and an interconnection study constitutes a newly interconnecting facility under Order No. 827”.

On October 3, 2016, the FERC granted in part, and denied in part, CAISO’s request.<sup>113</sup> The FERC clarified that *Order 827* does not preclude a public utility transmission provider from seeking to adopt a tariff provision defining “newly interconnecting non-synchronous generator” as including a repowering of an existing generator. However, the FERC declined to grant CAISO’s request to clarify that *any* repowering of an existing generator that requires new inverters and an interconnection study constitutes a “newly interconnecting non-synchronous generator” subject to *Order 827*. Instead, the FERC required that sufficiently detailed and narrow tariff provisions defining what constitutes a repowering of an existing generator capable of providing reactive power be adopted and reviewed and approved by the FERC, either as part of an *Order 827* compliance filing or as part of a Section 205 filing.<sup>114</sup>

Per *Order 828*, as extended by the FERC’s August 8 notice, compliance filings in response to *Order 827* must be combined in a single filing with *Order 828* compliance filings and are due on or before October 14, 2016. *Order 827* became 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>115</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>116</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 filing date for the tariff changes implementing shortage pricing reforms to be effective. As previously noted, the ISO’s and NEPOOL’s jointly filed Sub-Hourly Settlement Changes, which changed to five minutes the settlement interval in the Real-Time Energy and Reserves Markets, was filed and accepted by 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>117</sup> As previously reported, Algonquin stated that the modifications were

<sup>113</sup> *Reactive Power Requirements for Non-Synchronous Generation*, 157 FERC ¶ 61,003 (Oct. 3, 2016).

<sup>114</sup> *Id.* at P 8.

<sup>115</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>116</sup> *Order 825* was published in the *Fed. Reg.* on June 30, 2016 (Vol. 81, No. 126) pp. 42,882-42,910.

<sup>117</sup> *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

consistent with the FERC's current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies ("LDCs") from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC's initiatives related to gas-electric coordination. On May 9, 2016, the FERC held a technical conference to examine "concerns raised regarding the basis and need for the waiver." Initial comments were due May 31. Almost two dozen sets of initial comments were filed, raising numerous issues both in support and in opposition to the Algonquin proposal. Reply comments were due June 10, 2016 and were filed by Algonquin Gas Transmission, Sequent Energy Management, L.P. and Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG.

On August 31, 2016, the FERC issued an order in which it rejected Algonquin's request for a waiver that would have exempted gas-fired generators from capacity release bidding requirements but accepted Algonquin's proposal to exempt from bidding an EDC's capacity release to an asset manager who is required to use the released capacity to carry out the EDC's obligations under the state-regulated electric reliability program.<sup>118</sup> The FERC explained that its capacity release regulations seek to balance the interests of the releasing shipper in releasing capacity to a replacement shipper of its choosing while still ensuring that allocative efficiency is enhanced by ensuring the capacity is used for its highest valued use.<sup>119</sup> Algonquin's proposal, whereby any gas-fired generator to whom EDCs release capacity would be a pre-arranged replacement shipper, failed to meet the standard of "improving the competitive structure of the natural gas industry" as formulated by the FERC in granting bidding exemptions for state-regulated retail access programs.<sup>120</sup> Furthermore, the FERC found that exemption proponents had not shown why such a broad exemption was necessary in order for EDCs to have a sufficient ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.<sup>121</sup> On September 30, 2016, ConEd and Orange & Rockland Utilities, Inc. ("O&R") requested clarification of the *Algonquin Order Following Technical Conference*, asking the FERC to clarify certain aspects of its approval exempting from bidding an EDC's capacity release to an asset manager.

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

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

On January 21, 2016, 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>122</sup>
- ◆ Empire Pipeline, Inc. (Docket No. RP16-300);<sup>123</sup>
- ◆ Iroquois Gas Transmission System, LP (Docket No. RP16-301);<sup>124</sup> and
- ◆ Tuscarora Gas Transmission Company (Docket No. RP16-299);<sup>125</sup>

<sup>118</sup> *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

<sup>119</sup> *Id.* at P 27.

<sup>120</sup> *Id.* at P 34.

<sup>121</sup> *Id.* at P 35

<sup>122</sup> *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,027 (2016), *reh'g denied*, 154 FERC ¶ 61,275 (Mar. 31, 2016).

<sup>123</sup> *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016), *reh'g denied*, 154 FERC ¶ 61,274 (Mar. 31, 2016).

<sup>124</sup> *Iroquois Gas Transmission Sys., LP*, 154 FERC ¶ 61,028 (2016).



On September 22, 2016, the Commission approved the uncontested settlements in the Tuscarora<sup>126</sup> and Columbia Gulf<sup>127</sup> proceedings. Offers of settlement in the Empire and Iroquois proceedings have been certified to the Commission.

- **Natural Gas-Related Enforcement Actions**

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

**BP (IN13-15).** On July 11, 2016, the FERC issued *Opinion 549*<sup>128</sup> affirming Judge Cintron’s August 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, “BP”) violated Section 1c.1 of the Commission’s regulations (“Anti-Manipulation Rule”) and section 4A of the Natural Gas Act (“NGA”).<sup>129</sup> Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP’s Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel (“HSC”) trading point in order to benefit correspondingly long position at the Henry Hub trading point. The FERC agreed, finding that the “record shows that BP’s trading practices during the Investigative Period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions.”<sup>130</sup> Accordingly, the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in “unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index.” The \$20.16 million civil penalty was at the top of the FERC’s Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP’s violation of a FERC order within 5 years of the scheme. BP’s penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP’s request for rehearing of the order establishing a hearing in this proceeding.<sup>131</sup> BP was directed to pay the civil penalty and disgorgement amount within 60 days of the *BP Penalties Order*. On August 10, BP requested rehearing of the *BP Penalties Order*. On September 8, the FERC issued a tolling order, affording it additional time to consider BP’s request for rehearing of the *BP Penalties Order*, which remains pending.

On September 7, BP submitted a motion for modification of the *BP Penalties Order*’s disgorgement directive because it cannot comply with the disgorgement directive as ordered. BP explained that the entity to which disgorgement was to be directed, the Texas Low Income Home Energy Assistance Program (“LIHEAP”), is not set up to receive or disburse amounts received from any person other than the Texas Legislature. In response, on September 12, the FERC stayed the disgorgement directive (until an order on BP’s pending request for rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.<sup>132</sup>

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<sup>125</sup> *Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,030 (2016), *reh’g denied, clarif. granted*, 154 FERC ¶ 61,273 (Mar. 31, 2016).

<sup>126</sup> *Tuscarora Gas Transmission Co.*, 156 FERC ¶ 61,188 (2016).

<sup>127</sup> *Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,189 (2016).

<sup>128</sup> *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) (“*BP Penalties Order*”).

<sup>129</sup> *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”).

<sup>130</sup> *BP Penalties Order* at P 3.

<sup>131</sup> *BP America Inc. et al.*, 147 FERC ¶ 61,130 (May 15, 2014) (“*BP Hearing Order*”), *reh’g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

<sup>132</sup> *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) (“*Order Staying BP Disgorgement*”).

**Total Gas & Power North America, Inc. et al. (IN12-17).** On April 28, 2016, the FERC issued a show cause order<sup>133</sup> in which it directed Total Gas & Power North America, Inc. (“TGPNA”) and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen (“Tran”) and Aaron Hall (collectively, “Respondents”) to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC’s Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.<sup>134</sup>

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

- **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>135</sup> Order Denying Rehearing and Dismissing Stay Request issued Jan. 28, 2016. FERC orders appealed to DC Circuit. Order Amending Certificate issued October 6, 2016.<sup>136</sup>

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<sup>133</sup> *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

<sup>134</sup> The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE’s case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission’s Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during 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.

<sup>135</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).

<sup>136</sup> *Algonquin Gas Transmission LLC*, 157 FERC ¶ 61,011 (Oct. 6, 2016). The order amends Algonquin’s certificated initial reservation charges to reflect increases in the estimated construction costs of the AIM Project and West Roxbury Lateral. Specifically, the initial reservation charge for the AIM Project was increased from an estimated \$42.5748 per Dth to \$48.507 per Dth for Rate Schedule AFT-1 service and the initial reservation charge for the West Roxbury Lateral was increased from an estimated \$18.1976 per Dth to \$24.378 per Dth for Rate Schedule AFT-CL

- ▶ Construction began May 2015.
- ▶ Partially in-service; expected to be fully in-service in 4th quarter 2016.
- **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.
- **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>137</sup>
  - ▶ Construction expected to begin 4th Quarter 2016.
  - ▶ In-service: Nov. 2017 (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.
  - ▶ 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

service. The proposed initial rates reflect a first-year cost of service of \$199,074,096 and \$29,253,221 for the AIM Project and West Roxbury Lateral, respectively. A commodity charge of \$0.0069 per Dth for Rate Schedule AFT-1 to recover \$603,667 in variable costs was also added.

<sup>137</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).

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.

- ▶ Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays.
  - On September 30, 2016, Constitution submitted to FERC a request for partial Notice to Proceed to remove the felled trees in Pennsylvania.
- **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>138</sup>
  - ▶ Construction began in May 2015.
  - ▶ In-Service: November 2016 (anticipated).

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

Robert Clark and UWUA Local 464 ("Petitioners") 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 July 25, 2016, Petitioners filed an unopposed motion requesting that the Court stay briefing of this appeal until 45 days after the Court rules on the FCA8 Results appeal (*see* 14-1244, 14-1246 (consolidated) below), which is currently scheduled for oral argument on September 6, 2016. The Court granted. On July 27, the Court granted Petitioners' motion, ordering that this case be held in abeyance pending further order of the Court. The Court directed the parties to file motions to govern future proceedings in this case within 45 days of the disposition of the FCA8 Results appeal proceeding (14-1244).

<sup>138</sup> Order Issuing Certificate, *Algonquin Gas Transmission LLC*, 151 FERC ¶ 61,118 (May 14, 2015).

<sup>139</sup> 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**  
**Underlying FERC Proceeding: ER14-1050;<sup>140</sup> EL14-52;141 EL15-25<sup>142</sup>**  
**Petitioner: NEPGA**

As previously reported, NEPGA filed, on January 19, 2016, a petition for review of the FERC's orders on NEPGA's first PER Complaint. 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 July 18, NEPGA submitted its Petitioner Brief. On July 25, Entergy indicated that it would not file an Intervenor for Petitioner Joint Brief. FERC filed Respondent's Brief on September 23; NESCOE filed Intervenor for Respondent Brief on September 30. Remaining submissions are to be filed as follows: Petitioner Reply Brief, October 31; Intervenor for Petitioner Joint Reply Brief, October 31; Deferred Appendix, November 14; Final Briefs, November 28. On October 4, NEPGA informed Court of its latest PER Complaint (*see* EL16-120 in Section I above), which it stated would not resolve the issues in this proceeding even if FERC ruled in its favor in that proceeding.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**  
**Underlying FERC Proceedings: EL13-33; EL14-86<sup>143</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 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 August 15, the parties filed their fourth 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>144</sup>**  
**Appellants: New England Transmission Owners (NETOs); NESCOE/CT DEEP/CT PURA, et al.**

As previously reported, NETOs<sup>145</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. Briefing has been completed. However, since the last Report, the FERC filed supplemental authority with respect to *Oklahoma Gas & Electric Co. v. FERC*, No. 14-1281 (D.C. Cir. July 1, 2016). On July 22, Counsel for LS Power and NextEra responded to the FERC's *Oklahoma Gas* authorities submission. On October 4, the Court scheduled the case for oral argument on January 13, 2017, at 9:30 a.m. The composition of the argument panel will usually be revealed 30 days prior to the date of oral argument.

<sup>140</sup> 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

<sup>141</sup> 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

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

<sup>143</sup> 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

<sup>144</sup> 150 FERC ¶ 61,209 (Mar. 19, 2015); 143 FERC ¶ 61,150 (May 17, 2013).

<sup>145</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.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121\*\*) (consolidated)**  
**Underlying FERC Proceeding: EL11-66<sup>146</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>147</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>148</sup> and the TOs<sup>149</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 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. On October 3, the Court scheduled this case for oral argument on December 6, 2016, at 9:30 a.m. The composition of the argument panel will usually be revealed 30 days prior to the date of oral argument.

- **FCM Pricing Rules Complaints (15-1071\*\*, 16-1042) (consol.)**  
**Underlying FERC Proceeding: EL14-7,<sup>150</sup> EL15-23<sup>151</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. PSEG submitted its Intervenor for Petitioner Brief on July 7. FERC's Respondent Brief was filed on August 15. A Joint Intervenor for Respondent Brief was filed on September 6 by NESCOE, NECPUC, CT PURA, and CT OCC. NEPGA filed its Reply Brief on September 20. On October 7, PSEG advised that it would not be filing a Reply Brief. On October 11, the parties filed a joint appendix. Final Briefs are to be filed on October 25.

<sup>146</sup> 150 FERC ¶ 61,165 (Mar. 3, 2015); 149 FERC ¶ 61,032 (Oct. 16, 2014); 147 FERC ¶ 61,234 (June 19, 2014).

<sup>147</sup> "EMCOS" are Taunton, Reading, Hingham, and Braintree.

<sup>148</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>149</sup> In this case, TOs are CMP, Emera Maine, Eversource, National Grid, NHT, UI, and Vermont Transco.

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

<sup>151</sup> 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

- **FCA8 Results (14-1244, 14-1246 (consolidated))**  
**Underlying FERC Proceeding: ER14-1409<sup>152</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>153</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 Intervenors for Respondent (EPSA, GenOn Energy Management, HQUS, NRG, and NEPGA). Since the last Report, on August 16, Public Citizen filed a letter advising the Court of additional authority supporting its arguments. That letter was opposed by FERC and EPSA on August 23 and 24, respectively. Oral argument was held before Judges Brown, Srinivasan and Wilkins on September 6, 2016. This matter is pending before the Court.

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

Entergy<sup>154</sup> filed, on February 27, 2015, in the United States District Court for the Northern District of New York ("NDNY"), a Complaint that seeks a declaratory judgment that the NYPSC Commissioners' order ("Order") approving an agreement to keep NRG's 435 MW Dunkirk facility in the NYISO market, "repowered" as a natural gas-fired (rather than coal-fired) plant (the "Term Sheet")<sup>155</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>156</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

<sup>152</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>153</sup> For purposes of this proceeding, "Connecticut" means the CT AG, CT PURA and CT OCC.

<sup>154</sup> Plaintiffs are Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"); Entergy Nuclear Power Marketing, LLC ("ENPM"); and Entergy Nuclear Operations, Inc. ("ENOI").

<sup>155</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>156</sup> *Hughes v. Talen Energy Marketing LLC*, 578 U.S. \_\_\_\_ (2016) ("*Hughes*").

to reporting to this Court, advising the Court that it had contemporaneously solicited comments in in NYPSC Case 12-E-0577.<sup>157</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. On September 22, the deadline for completion of mediation was extended to November 1, 2016.

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<sup>157</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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