

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of June 22, 2017

The following activity, as more fully described in the attached litigation report, has occurred since the report dated May 3, 2017 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

2	NEPGA PER Complaint (EL16-120)	Jun 19	Settlement Judge Young issues 3rd 60-day status report; Settlement Term Sheet to be considered at Jun 27 session (Item # 1A)
3	Base ROE Complaint IV (2016) (EL16-64)	May 18	<i>en banc</i> oral argument before Chief Judge Cintron and Trial Judge Glazer
		May 26	Chief Judge Cintron issues order confirming bench rulings
		Jun 12	TO's move for reconsideration or interlocutory appeal of May 26 order
		Jun 15	EMCOS' file supplemental direct testimony and exhibits
		Jun 22	Complainants oppose TOs' Jun 12 motion
5	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	May 9	Settlement conference held
		May 10	Judge Dring schedules Jul 7 settlement conference
		Jun 6	Judge Dring issues 9th status report recommending that settlement judge procedures be continued

II. Rate, ICR, FCA, Cost Recovery Filings

* 7	Opinion 531-A Compliance Filing Undo: TOs (ER15-414)	Jun 5	New England TOs submit filing to undo their <i>Opinion 531-A</i> compliance filing and restore rates to the <i>status quo ante</i> as a result of the mandate of the DC Circuit's <i>Emera Maine v. FERC</i> decision; comment date Jun 26
		Jun 13	NEPOOL intervenes
7	ISO Securities: Authorization for Future Drawdowns (ES17-15)	May 9	FERC continues authorization, through May 31, 2019, for ISO drawdowns under its \$20 million Revolving Credit Line and \$4 million line of credit supporting the Payment Default Shortfall Fund

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

* 7	5-Min. RQM Settlement Enhancement (ER17-1706)	May 30	ISO-NE and NEPOOL jointly file changes to permit the use of 5-minute revenue quality meter data in Real-Time Energy Market settlement
		Jun 9-20	Dominion, Eversource, National Grid intervene
* 8	Waiver Request: Dispatchable Resources RTU Req. (McCallum Enterprises) (ER17-1615)	May 11	McCallum submits waiver request
		May 31	ISO-NE opposes waiver request
		Jun 1	CL&P asks that it not be held liable if the waiver request is denied
		Jun 9	McCallum answers ISO-NE protest
		Jun 12	ISO-NE opposes CL&P's Jun 1 request
* 8	<i>Order 831</i> (Modified Energy Market Offer Caps) Revisions (ER15-1565)	May 8	ISO-NE and NEPOOL jointly file Tariff revisions in response to requirements of <i>Order 831</i> , requesting Oct 1, 2019 effective date
		May 18-30	ConEd, Dominion, EPSA, National Grid, NRG intervene
* 8	Fast-Start Interim Cap Revision (ER17-1542)	May 4	ISO-NE and NEPOOL jointly file changes implementing a \$1,000/MWh Energy Market offer cap on offers from fast-start resources in the Real-Time Energy Market through implementation of <i>Order 831</i> Tariff changes
		May 12-24	National Grid, Dominion, ConEd, NRG, Eversource intervene

IV. OATT Amendments / TOAs / Coordination Agreements

- * 12 Emergency Energy Pricing Revisions (ER17-1625)
 - May 18 ISO-NE and NEPOOL jointly file emergency energy pricing revisions to the NE/NY Coordination Agreement and HQTE Emergency Energy Pricing Term Sheet
 - May 22-25 ConEd, National Grid, intervene
 - Jun 16 FERC accepts revisions, eff. Aug 1, 2017

V. Financial Assurance/Billing Policy Amendments

- 12 FTR Balance of Planning Period Financial Assurance Changes (ER17-1441)
 - May 11 DC Energy protests proposed standard deviation approach
 - May 26 ISO-NE moves to withdraw filing and terminate proceeding; NEPOOL supports ISO-NE motion

VI. Schedule 20/21/22/23 Changes

- * 12 Schedule 21-NSTAR: Dartmouth Power LSA (ER17-1713)
 - May 31 ISO-NE and NSTAR file a Local Service Agreement (LSA) by and among NSTAR, Dartmouth Power and ISO-NE for Firm and Non-Firm Local Point-To-Point Service under Schedule 21-NSTAR
 - Jun 6 Dartmouth Power intervenes
- * 13 Schedule 21-CMP: Saddleback Ridge/Canton Mountain LGIAs (ER17-1668)
 - May 23 CMP files Revised Saddleback LGIA and Original Canton LGIA
- * 14 Schedule 21-VTransco: Revised Depreciation Rates (ER17-1589)
 - May 12 VTransco files revised depreciation rates used to calculate transmission revenue requirements
 - Jun 14 FERC accepts revised depreciation rates, eff. Jul 1
- * 14 Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)
 - May 31 NSTAR submits an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period Jan 1, 2016 through Dec 31, 2016
- * 14 Schedule 21-VEC and 20-VEC: Annual Informational Filing (ER10-1181)
 - May 1 VEC submits its annual update to its Schedule 21-VEC and 20-VEC formula rates covering the Jul 1, 2017 – Jun 30, 2018 period
 - May 8 VEC submits errata to May 1 filing
- * 14 Schedule 21-EM Annual Informational Filing (ER15-1434)
 - Jun 6 Emera Maine submits annual update to its local transmission service rates

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- * 15 Capital Projects Report - 2017 Q1 (ER17-1595)
 - May 12 ISO-NE files 2017 Q1 Report
 - May 23 NEPOOL submits comments supporting filing
 - Jun 2 Eversource intervenes
- * 15 2016 IMM Annual Markets Report (ZZ17-4)
 - May 30 IMM files annual report covering calendar year 2016
- * 15 IMM Quarterly Markets Reports - 2017 Winter (ZZ16-4)
 - May 5 IMM files 2017 Winter Report
- * 16 ISO-NE FERC Form 3Q (2017/Q1) (not docketed)
 - May 24 ISO submits quarterly financial report for 2017 Q1
- * 16 ISO-NE FERC Form 714 (not docketed)
 - Jun 2 ISO-NE submits revised FERC Form 714

IX. Membership Filings

* 16	June 2017 Membership Filing (ER17-1744)	Jun 1	<i>New Members:</i> Orbit Energy Rhode Island; Rinar Power; and Torofino Trading; <i>Withdrawals:</i> First Wind Energy Marketing and Longfellow Wind; <i>Name Changes:</i> Dominion Energy Generation Marketing, Inc.; Dominion Energy Nuclear Connecticut, Inc.; and J. Aron & Company, LLC
16	May 2017 Membership Filing (ER17-1506)	May 25	FERC accepts new members: Block Island Power Co.; Georges River Energy; Ohmconnect; Rensselaer Generating; Roseton Generating; VECO Power Trading; withdrawal of Union Leader; and Name Change of Great River Hydro, LLC (f/k/a TransCanada Hydro Northeast, Inc.)
16	April 2017 Membership Filing (ER17-1364)	May 11	FERC accepts membership of GridAmerica Holdings Inc. and the name changes of ENGIE Energy Marketing NA, Inc. and Verso Energy Services LLC
16	Suspension Notices (not docketed)	May 15	ISO files notice of suspension of BNP Paribas Energy Trading GP from New England Markets

X. Misc. - ERO Rules, Filings; Reliability Standards*No Activity to Report***XI. Misc. - of Regional Interest**

* 19	203 Application: PSNH/FPL Energy Wyman IV (EC17-132)	Jun 21	PSNH requests authorization to sell its 3.14% ownership interest in Wyman Station Unit 4 to FPL
19	203 Application: GMP/VT Transco (Highgate) (EC17-86)	May 19	FERC authorizes GMP to sell its Highgate ownership share to VTransco and VTransco to acquire that share, as well as certain shares of other Highgate joint owners
19	203 Application: Green Mountain Power/ENEL Hydros (EC17-76)	May 9	FERC authorizes GMP's acquisition of 8.39 MW of hydroelectric generation facilities from subsidiaries of Enel Green Power North America, Inc.
19	203 Application: Helix Generation/TransCanada (EC17-38)	Jun 12	Helix Generation submits notice that its acquisition of a number of TransCanada assets, including TransCanada's non-hydro generating assets in New England, was consummated on Jun 2
* 20	Maine Power Express Negotiated Rates Determination Request (ER16-1619)	May 26	MPX requests determination that it is authorized to sell the Maine Power Express merchant transmission project's capacity pursuant to the Mar 30, 2017 Massachusetts RFP
* 20	SGIA: PSNH/Sugar River (ER17-1566; ER17-1564)	May 8 Jun 15	Eversource files Sugar River SGIA FERC accepts SGIA
20	D&E Agreement: PSNH/Essential Power Newington (ER17-1495)	Jun 8	FERC accepts Agreement, eff. Jun 28
21	Cost Reimbursement Agreement: NEP/Wynn MA (ER17-1431)	Jun 7	FERC accepts Agreement, eff. Mar 24
21	IAs: WMECO/Nautilus Hydros (ER17-1340 et al.)	May 11	FERC accepts TGIAs, eff. Mar 29
21	IA: WMECO/Essential Power (ER17-1322)	May 11	FERC accepts IA, eff. Mar 29

21	Emera MPD OATT Changes (ER15-1429; EL16-13, ER12-1650)	May 23 Jun 22	Settlement Judge Dring issues 9th status report recommending settlement judge procedures be continued Parties file uncontested Settlement Agreement; comment date Jul 12, reply comment date Jul 24
* 23	NEP Integrated Facilities Agreement Annual Informational True-Up Filing (ER10-523)	Jun 15	NEP submits Annual True-Up Filing reconciling actual monthly billings under its Integrated Facilities Agreement with its FERC Form 1 data

XII. Misc. - Administrative & Rulemaking Proceedings ▼

24	State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM (AD17-11)	May 23 Jun 21- 32	FERC issues notice inviting post-conference comments Post-conference comments filed by more than 70 parties; reply comments due Jul 7
24	BPS Reliability Technical Conference (AD17-8)	May 19 Jun 9 Jun 22	FERC issues supplemental notice of tech. conf. Speakers (Ohio PUC Chairman, LPPC rep) file written remarks FERC holds tech. conf.
26	NOI: FERC's Policy for Recovery of Income Tax Costs & ROE Policies (PL17-1)	May 12, 26	Reply comments received from 18 parties, including from AGA, Dominion, EEI, INGAA, and LSPower
27	NOPR: Uplift Cost Allocation and Transparency in RTO/ISO Markets (RM17-2)	May 9, 24	Appian Way Energy Partners, Financial Marketers Coalition file reply comments

XIII. Natural Gas Proceedings ▼

* 30	Technical Conference: Natural Gas Index Liquidity, Price Discovery & Price Formation (AD17-12)	May 10 Jun 13 Jun 21	FERC issues notice of Jun 29 tech. conf. FERC issues supplemental notice of Jun 29 tech. conf. FERC issues 2d supplemental notice of Jun 29 tech. conf.
32	New England Pipeline Proceedings Atlantic Bridge Project (CP16-9)		FERC grants authorization to proceed as requested on Apr 7/13

XIV. State Proceedings & Federal Legislative Proceedings ▼

No Activity Reported

XV. Federal Courts ▼

34	Demand Curve Changes (17-1110)	May 8 Jun 2 Jun 6	Petitioners file statement of issues; parties file other initial procedural submissions Clerk grants NEPOOL, NESCOE, CT PURA, CPV interventions Clerk orders the parties to submit proposed briefing formats by Jul 7
34	FCA10 Results (16-1408) and FCA9 Results (16-1068)	May 15 Jun 5 Jun 21	Respondents file brief; FERC files amended certified index to record Petitioners file reply brief Petitioners file joint appendix
35	Order 1000 Compliance Filings (15-1139)	Jun 14	DC Circuit issues mandate to FERC
35	Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**)	Jun 8	DC Circuit issues mandate to FERC

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: June 23, 2017

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 June 22, 2017. If you have questions, please contact us.¹

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

The participants active in Settlement have reached what appears to be a consensus agreement in principle, reflected in Settlement Term Sheet circulated confidentially to members and alternates on June 19. The Settlement Term Sheet will be discussed in Executive Session at the beginning of the Summer Meeting (Agenda Item #1A). Settlement Judge Young noted in his June 19 Report his expectation that the Term Sheet will be converted into a formal offer of settlement and filed within the next few weeks. Judge Young will then certify the Settlement Agreement to the Commission if the offer of settlement is uncontested. Timing, and additional process moving forward, is described in materials circulated to Participants and will be discussed during the Summer Meeting.

As previously reported, the FERC, on January 19, (i) granted in part NEPGA’s complaint² and (ii) set in part for hearing and settlement judge procedures the question of the appropriate method of calculating the PER Strike Price under Market Rule 1 section III.13.7.2.7.1.1.1.³ In granting NEPGA’s complaint in part, the FERC found that “for the period at issue in NEPGA’s complaint (September 30, 2016 – May 31, 2018), the PER mechanism has become unjust and unreasonable as a result of the interaction between the PER mechanism and the higher Reserve Constraint Penalty Factors.”⁴ Accordingly, the FERC required the ISO to revise the method by which it calculates the PER Strike Price as set forth in Tariff section III.13.7.2.7.1.1.1. But, finding NEPGA’s request that the PER Strike Price be increased by \$250 per MWh “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”, the FERC set the question of for hearing and settlement judge procedures under section 206 of the FPA.⁵ The FERC established a refund effective date of September 30, 2016 (the date of the complaint). In establishing a September 30, 2016 effective date, the FERC clarified that “any changes to the calculation of the PER Strike Price under ISO-NE Tariff section

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

² NEPGA’s complaint asked 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.

³ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017).

⁴ *Id.* at P 48.

⁵ *Id.* at P 57.

III.13.7.2.7.1.1.1 would be prospective only from September 30, 2016, as required by FPA section 206, and would not impact the application of any PER Adjustment occurring before September 30, 2016.”⁶ On February 15, NEPGA requested clarification of the *PER Complaint Order* with respect to the PER Adjustment payments charged to NEPGA’s members on capacity invoices issued after the refund effective date. Specifically, NEPGA asked for clarification that when the FERC “determines refunds, it will direct the ISO to refund to capacity suppliers the difference between: (i) the PER Adjustment payments charged to capacity suppliers after the September 30, 2016 refund effective date, and (ii) the PER Adjustment payments that would have been charged to capacity suppliers if the PER Adjustment were calculated using a just and reasonable PER Strike Price.” On March 3, NESCOE and RESA answered NEPGA’s rehearing request. NEPGA answered those answers on March 17. The FERC issued a tolling order on March 16, 2017, affording it additional time to consider NEPGA’s request for rehearing, which remains pending.

Settlement Judge Procedures. On January 25, Chief Cintron designated Judge H. Peter Young as the Settlement Judge in these proceedings. As noted above, in his third status report, Judge Young reported that the participants reached what appears to be a consensus agreement in principle, reflected in a joint Term Sheet that comprehensively addresses all issues set for hearing in this proceeding. Judge Young expects to certifying the Settlement Agreement to the Commission before his next report would be due, assuming the offer of settlement is uncontested.

If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), Jamie Blackburn (202-218-3905; jblackburn@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On September 20, 2016, the FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint.⁷ As previously reported, EMCOS⁸ filed the 4th ROE complaint on April 29, 2016. The Complaint asked the FERC to reduce the TOs’ current 10.57% return on equity (“Base ROE”) to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. 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.”⁹ 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.”¹⁰ Further, the FERC rejected arguments as to the propriety of

⁶ *Id.* at P 61.

⁷ *Belmont Mun. Light Dept. et al. v. Central Me. Power Co. et al.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) (“*Base ROE Complaint IV Order*”).

⁸ “EMCOS” are: Belmont Mun. Light Dept., Braintree Elec. Light Dept., Concord Mun. Light Plant, Georgetown Mun. Light Dept., Groveland Elec. Light Dept., Hingham Mun. Lighting Plant, Littleton Elec. Light & Water Dept., Middleborough Gas & Elec. Dept., Middleton Elec. Light Dept., Reading Mun. Light Dept. (“Reading”), Rowley Mun. Lighting Plant, Taunton Mun. Lighting Plant, and Wellesley Mun. Light Plant.

⁹ *Base ROE Complaint IV Order* at P 37.

¹⁰ *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.¹¹ 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."¹² 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, 2018.¹³ Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The FERC issued a tolling order on November 21, 2016, affording it additional time to consider the requests for rehearing, which remain pending.

Settlement Judge Procedures. On October 4, Chief Judge Cintron designated Judge Jennifer Long as the Settlement Judge. Settlement conferences have thus far been held on November 8 and December 20, 2016. Following requests of the parties (related to the *Emera Maine* proceeding (DC Cir. Case No. 15-1118), a third settlement conference was re-scheduled to May 3, 2017, and then subsequently cancelled. The TOs have indicated that settlement discussions will not be fruitful until the Commission addresses certain issues remanded to the Commission by the Court in the *Base ROE Complaint I Decision*. A further settlement conference has not been scheduled.

Concurrent Hearing Procedures. On December 21, 2016, in response to a request of the parties and supported by Settlement Judge Long, Chief Judge Cintron designated Steven A. Glazer as presiding judge for hearings in this matter, so that hearing procedures can proceed *concurrently* with settlement judge procedures still underway before Judge Long. Absent a settlement, these hearing procedures will be conducted under the FERC's "Track II" procedural time standards, which requires that an initial decision be issued within 47 weeks, or by November 15, 2017. Judge Glazer scheduled a preliminary conference for January 17, 2017, noting that hearing has been set for August 2, 2017 (with September 27, 2017 as the deadline for reply briefs). At the January 17 conference, Participants proposed the remaining procedural schedule, which was adopted by Judge Glazer in an order issued January 23. In addition, Judge Glazer has issued orders adopting rules for the conduct of the hearing (December 21, 2016) and the discovery plan (January 17). Direct and Answering Testimony and Exhibits have been filed. Hearings were scheduled for August 2-8, with an initial decision to be issued on or before November 15, 2017.

Oral argument, conducted *en banc* before Chief Judge Cintron and Presiding Judge Glazer, address the impacts of the DC Circuit's April 14, 2017 *Emera Maine* decision on the Base ROE Complaint I orders (*see* Section XV below), was held on May 18, 2017. These proceedings will continue.

Additional Developments Since the Last Report. Of note since the last Report, following the *en banc* oral argument before Judges Cintron and Glazer on May 18, the Chief Judge ruled from the bench that (i) the request to hold this proceeding in abeyance or recommend to the Commission that it be dismissed is denied, (ii) the proceeding will continue pursuant to a revised procedural schedule, and (iii) the participants were to submit by May 25, 2017, a revised procedural schedule consistent with the sequencing proposed by the TOs Answer and Motion. On June 12, the TOs moved for reconsideration of the Chief Judge's May 26 order confirming her rulings and adopting a revised procedural schedule, or in the alternative, that the Chief Judge grant the NETOs' request to seek an interlocutory appeal of the May 26 order, which was challenged by Complainants, and remains pending before the Chief Judge. And, on June 15, EMCOS' filed its supplemental direct testimony and exhibits (with summaries). The next procedural deadline calls for Respondents and Supporting Parties' Supplemental Answering Testimony and Exhibits (with summaries) to be filed on July 31, 2017.

¹¹ 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.

¹² *Base ROE Complaint IV Order* at P 40.

¹³ *Id.* at P 44.

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@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”).¹⁴ The FERC also found that the RNS and LNS rates themselves “appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful” because (i) “the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “could result in an over-recovery of costs” due to the “the timing and synchronization of the RNS and LNS rates”.¹⁵ 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.¹⁶ Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.¹⁷ The FERC-established refund date is January 4, 2016.¹⁸

Settlement Judge Procedures. As previously reported, John P. Dring was designated the Settlement Judge in these proceedings. Five settlement conferences were held in 2016: January 19, March 24, April 28, August 30, and November 18 (telephonically). Two settlement conferences have thus far been held in 2017: April 5 and May 9, 2017. An eighth settlement conference has been scheduled for July 7, 2017. Judge Dring’s most recent status report was issued on June 6, indicating that the parties continue to circulate materials, participate in substantive settlement discussions, and make progress toward settlement. Accordingly, he recommended that the settlement procedures be continued. The Transmission Committee is being kept apprised, as appropriate, of settlement efforts. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

Judge Sterner’s findings and Initial Decision, and pleadings in response thereto, remain pending before the FERC. As previously reported, the FERC, in response to second (EL13-33)¹⁹ and third (EL14-86)²⁰ 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

¹⁴ *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).

¹⁵ *Id.* at P 8.

¹⁶ *Id.* at P 11.

¹⁷ *Id.*

¹⁸ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

¹⁹ 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%.

²⁰ 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.

15-month refund period of December 27, 2012 through March 27, 2014;²¹ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²² 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.”²³ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²⁴ 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 2015, 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.²⁵ 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, remain 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) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- **Exelon Request for Additional Cost Recovery (ER17-933)**

As previously reported, the Director of Office of Energy Market Regulation (“OEMR”)–East, pursuant to the FERC’s February 3 *Absence of a Quorum Delegation Order* (*see* Section XII, AD17-10 below), issued an order on March 30, 2017, accepting Exelon’s Cost Recovery Filing for filing, suspended for a nominal period, to become effective March 30, 2017, subject to refund and further Commission order. As a practical matter, however, the letter order merely punted to a later date a final FERC decision on this matter. The letter order stated that “preliminary analysis indicates that Exelon’s filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful ... Protests and comments will be addressed in a further Commission order as appropriate.”

Recall that, on February 3, pursuant to Section III.A.15 of Appendix A to Market Rule 1,²⁶ Exelon Generation Company (“Exelon”) requested that the FERC authorize recovery of \$1,495,171 of actual fuel

²¹ *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).

²² *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).

²³ *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).

²⁴ *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).

²⁵ *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*”).

²⁶ Under Appendix A Section III.A.15, a Market Participant has the right to make a Section 205 filing seeking additional cost recovery if, as a result of mitigation applied under Appendix A or the Energy Offer Cap, it will not

costs for Mystic Generating Station Units 8 and 9 (“Mystic 8 and 9”) that were not recovered due to market power mitigation applied during the months of October and November 2016, as well as associated regulatory costs (estimated by Exelon to be roughly \$60,000). Comments on Exelon’s request were due on or before February 24. The ISO answered the Exelon request on February 24, requesting that the FERC “reject [Exelon]’s request for additional cost recovery for October 1, 3 and 4, and, to the extent it accepts the remainder of [Exelon]’s Cost Recovery Request, affirm that the amount recovered is justified by the IMM’s correct application of the ISO Tariff provisions for calculating cost-based Reference Levels.” On March 13, Exelon and NEPGA (which also moved to intervene out-of-time) answered the ISO’s February 24 answer. Exelon asked that the FERC strike the portions of the IMM’s pleading related to issues Exelon is not seeking/contesting -- Exelon’s recovery of additional fuel costs incurred under a Shoulder Period Agreement with ENGIE and the IMM’s request that the FERC “find that the IMM has properly applied the ISO Tariff in establishing the Reference Levels for the Mystic 8 and 9 units . . .” NEPGA, which also moved to intervene out-of-time, also asked the FERC to deny the IMM’s requested Reference Level finding. Additional parties to the proceeding include NEPOOL and Direct Energy Business. On March 29, the IMM responded to the March 13 Exelon and NEPGA answers.

This matter remains subject to further FERC proceedings and/or action. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **TOs *Opinion 531-A Compliance Filing Undo (ER15-414-002)***

On June 5, 2017, the New England TOs submitted tariff changes (to both the regional and local rates in the ISO OATT) to document the reinstatement of their transmission rates under the OATT to the *status quo ante* as a result of the DC Circuit’s mandate in *Emera Maine v. FERC*, Case No. 15-118 *et al.* While the TOs asked for a June 6, 2017 effective date, the TOs also stated that they do not intend to commence billing under the reinstated rates until 60 days after the FERC has a quorum. Comments on this filing are due on or before June 26. On June 13, NEPOOL submitted a doc-less intervention. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **ISO Securities: Authorization for Future Drawdowns (ES17-15)**

On May 9, the FERC continued its authorization through May 31, 2019 for ISO drawdowns under the ISO’s previously authorized \$20 million Revolving Credit Line and \$4 million line of credit supporting the Payment Default Shortfall Fund.²⁷ If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

- **5-Minute RQM Settlement Enhancement (ER17-1706)**

On May 30, 2017, the ISO and NEPOOL jointly filed changes to permit the use of 5-minute revenue quality meter (“RQM”) data in Real-Time Energy Market settlement (the “5-Min RQM Settlement Enhancement”). The 5-Min RQM Settlement Enhancement adds to the settlement rules the option to use five-minute RQM data in the settlement calculations, instead of hourly profiled values, if such data is available. An August 1, 2017 effective date was requested. The 5-Min RQM Settlement Enhancement was supported unanimously by the Participants Committee by way of the May 5 Consent Agenda (Item #2). Comments on this filing were due on or before June 20; none were filed. Doc-less interventions were filed by Dominion, National

recover the fuel and variable operating and maintenance (“O&M”) costs of a Resource for all or part of one or more Operating Days.

²⁷ See *ISO New England Inc.*, 139 FERC ¶ 62,248 (June 22, 2012) (initially authorizing borrowings through June 30, 2014); *ISO New England Inc.*, 147 FERC ¶ 62,091 (May 6, 2014) (continuing authorization through June 30, 2015); *ISO New England Inc.*, 151 FERC ¶ 62,185 (June 15, 2015) (continuing authorization through June 30, 2017); *ISO New England Inc.*, 159 FERC ¶ 62,143 (May 9, 2017) (continuing authorization through May 31, 2019).

Grid and Eversource. 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).

- **Waiver Request: Dispatchable Resources RTU Requirement (McCallum Enterprises) (ER17-1615)**

On May 9, McCallum Enterprises, owner of the 7 MW Derby Hydroelectric Project in Shelton and Derby, Connecticut, asked the FERC for a waiver of the portion of Market Rule Section 1.11.3 that requires McCallum to install a remote terminal unit (“RTU”) and the necessary circuitry to make the Derby Project electronically dispatchable (“Waiver Request”). McCallum asserts that, based on the specific facts related to the Derby Project, it is both unreasonable and unnecessary for it to be required to incur the expenses associated with an RTU and 24x7x365 staff monitoring. It asks that it be allowed to continue to utilize a telephone-based dispatch system. On May 31, the ISO opposed the Waiver Request. In opposing the request, the ISO asserted that McCallum has at least two other available options to meet the Resource Dispatchability Requirements, the Waiver Request is contrary to both the price formation and reliability objectives of the Resource Dispatchability Rules, would provide an unjustified preference over similarly situated resources, and would not be consistent with OP-14 requirements that a Designated Entity be available 24x7x365 to receive dispatch instructions. CL&P, which is the Lead Market Participant for the Project, intervened and asked that it “not be held liable for compliance with the market rule should the waiver request be declined.” In a June 12 answer, the ISO opposed CL&P’s request, noting that, “as the Lead Market Participant for the Derby Dam facility, and under the terms of the Market Participant Service Agreement executed by it, CL&P is responsible for compliance with all ISO-NE Tariff requirements applicable to the Derby Dam facility—including compliance with the new Resource Dispatchability rules.” On June 9, McCallum answered the ISO’s protest, re-iterating its points made in the initial May 9 request. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Order 831 (Modified Energy Market Offer Caps) Revisions (ER15-1565)**

On May 8, 2017, the ISO and NEPOOL jointly filed Tariff changes in response to the requirements of *Order 831* (“*Order 831* Revisions”). The *Order 831* Revisions cap incremental energy offers at the higher of \$1,000/MWh or a resource’s verified cost-based incremental energy offer (with a hard cap of \$2,000/MWh on incremental energy offers used in pricing calculations), provide for make whole payments to recover costs that cannot be verified until after the offer clears and the resource is dispatched, and apply offer cap requirements on a resource-neutral basis. In addition, the *Order 831* Revisions include a number of ancillary changes required in order for the offer capping rules to function seamlessly within the market or that are needed because of their relationship to the offer capping rules. An October 1, 2019 effective date was requested (which the ISO stated accounts for the time required to design, develop, implement and test the software and process changes required to implement the *Order 831* Revisions and the need to complete other high-priority projects ahead of the development of *Order 831* Revision-implementing software changes). The *Order 831* Revisions were supported unanimously by the Participants Committee by way of the May 5 Consent Agenda (Item #1). Comments on this filing were due on or before May 30; none were filed. Doc-less interventions were filed by ConEd, Dominion, EPSA, National Grid, and NRG. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Fast-Start Interim Cap Revision (ER17-1542)**

On May 4, 2017, the ISO and NEPOOL jointly filed changes to implement a \$1,000/MWh energy market offer cap on offers from fast-start resources in the Real-Time Energy Market (the “Fast-Start Interim Cap Revision”), to be in place until *Order 831* Tariff revisions are implemented (currently planned for Fall 2019). The Fast-Start Interim Cap Revision applies the existing Energy Offer Cap of \$1,000/MWh in the Real-Time Energy Market to the adjusted offers of Rapid Response Pricing Assets, ensuring parallel treatment of fast-start resources with other resources participating in the Energy Market until the offer cap rules are replaced by the implementation of the offer caps required under *Order 831*. A July 3, 2017 effective date was requested. The Fast-Start Interim Cap Revision was supported unanimously by the Participants Committee by way of the April 7 Consent Agenda (Item #7). Comments on this filing were due on or before May 25; none were filed. Doc-less interventions were filed by ConEd, Dominion, National Grid, NRG, and Eversource. 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).

- **CONE & ORTP Updates (ER17-795)**

The ISO's January 13 filing of updated FCM Cost of New Entry ("CONE"), Net CONE and Offer Review Trigger Price ("ORTP") values remains pending. With respect to CONE and Net CONE, the ISO will use a gas-fired simple cycle combustion-turbine ("CT") as the reference technology for the updated values, \$11.35 and \$8.04, respectively. The ISO will use a Capacity factor of 32%, resulting in a \$11.02 ORTP for on-shore wind resources. The ISO requested a March 15, 2017 effective date for the new values to coincide with the beginning of the administrative cycle for FCA12. The CONE & ORTP Updates were not supported by the Participants Committee when considered at the January 6 meeting. Comments on this filing were due on or before February 3. Doc-less interventions were filed by Avangrid, Brookfield, Calpine, ConEd, Dominion, Eversource, Exelon, FirstLight, LSPower, National Grid, NextEra, NRG, PSEG, and Cogentrix²⁸ (out-of-time). Comments were filed by NEPOOL (identifying concerns and alternatives presented and reviewed in the course of the stakeholder process preceding the filing) and NESCOE (supporting the CONE/Net CONE values as overall reasonable updates reflecting changed market outcomes and market designs). NEPGA filed a protest (challenging the ISO's proposal to base Net CONE for FCA12 on a greenfield simple-cycle combustion turbine). The ISO answered the NEPGA protest on February 17. NEPGA answered the ISO's February 17 answer on March 6 and the ISO answered NEPGA's March 6 answer on March 21.

On March 6, the ISO submitted, in light of the contested nature of this proceeding and the lack of a FERC quorum, an amendment-type filing to extend indefinitely the date by which the FERC would otherwise have been required to act on the January 13 filing or have the filing become effective by operation of law. The ISO committed to submit a further amendment-type filing, triggering a new 60-day statutory action date, "at the appropriate time" (presumably once the FERC has a quorum). In the meantime, the ISO stated that the proposed March 15, 2017 effective date for the CONE and ORTP Updates remains unchanged and will be used for the administration of FCA12. Comments on the ISO's March 6 filing were due on or before March 27. NEPOOL filed limited comments seeking acknowledgement in any final order that the ISO's actions not be construed to have any precedential effect in future contested Section 205 proceedings where the FERC does have a quorum.

This matter will remain pending before the FERC until such time as the ISO makes its further filing re-starting the 60-day clock. Until then, if you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

The FERC's *FCM Enhancements Order*²⁹ remains subject to a request for rehearing by Indicated NYTOs.³⁰ As previously reported, the FERC accepted 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 included 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

²⁸ Cogentrix Energy Power Management, LLC ("Cogentrix") intervened on behalf of its Participant affiliates Rhode Island State Energy Center, LP, Essential Power Newington, LLC, and Essential Power Massachusetts.

²⁹ *ISO New England Inc. and New England Power Pool Participants Comm. and NY Indep. Sys. Op., Inc.*, 157 FERC ¶ 61,025 (Oct. 18, 2016) ("*FCM Enhancements Order*"), *reh'g requested*.

³⁰ "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.

resource that has voluntarily withdrawn from the FCM resource development process. The FCM Enhancements were accepted, effective as of October 19, 2016, as requested.

In accepting the FCM Enhancements, the FERC noted that “protestors do not challenge the justness and reasonableness of the specific tariff revisions ... the concerns raised by NYISO are not the result of ISO-NE’s proposed tariff revisions, but result from NYISO’s treatment of generators that export capacity from within a constrained locality under its current market rules.”³¹ Accordingly, the FERC was “not persuaded that the potential behavior of New York suppliers provides a sufficient basis to reject ISO-NE’s filing in this case, and deferring the effective date of an otherwise just and reasonable proposal would be inconsistent with the notice provision in section 205 of the FPA.”³² The FERC did acknowledge NYISO’s concerns about a potential flaw in its market rules, and encouraged NYISO stakeholders to timely complete discussions underway to address that flaw.

As noted above, on November 17, 2016, Indicated TOs’ requested rehearing of the *FCM Enhancements Order*. On December 19, 2016, the FERC issued a tolling order affording it additional time to consider Indicated TOs’ rehearing request, which remains pending before the FERC.

NYISO Tariff Revisions in Response to FCM Enhancements (ER17-446). Rehearing remains pending of the FERC’s January 27, 2017 order conditionally accepting in part, and rejecting, in part, NYISO tariff revisions proposed in response to the acceptance of the FCM Enhancements, to correct a pricing inefficiency in NYISO’s Installed Capacity (“ICAP”) market design related to capacity exports from certain zones in the New York Control Area.³³ The order accepted NYISO’s proposed locality exchange factor methodology to be implemented immediately but rejected NYISO’s proposed one-year transitional mechanism.³⁴ In accepting the immediate implementation of NYISO’s Locality Exchange Factor methodology, the FERC found the proposed methodology “just and reasonable because it corrects a pricing inefficiency in NYISO’s ICAP market design. NYISO’s proposed methodology will now recognize that an exporting generator continues to operate within its Locality, which would be reflected in the ICAP Spot Market Auction clearing prices by accounting for the portion of exported capacity that can be replaced by capacity located in Rest of State. Therefore, NYISO’s proposal will ensure that prices within the Localities reflect actual market conditions and prices.”³⁵ In rejecting the transition mechanism, the FERC found that “that the mechanism lacks analytical basis and will delay efficient market signals ... because it could overstate the extent to which the capacity export will unencumber NYISO’s transmission capability into Southeast New York.”³⁶ NYISO was directed to submit, and submitted on February 6 and corrected on February 10, a compliance filing removing the one-year transition mechanism provisions.³⁷ NRG requested rehearing of the January 27 order on February 24. The FERC issued a tolling order on March 27, 2017, affording it additional time to consider NRG’s request for rehearing, which remains pending before the FERC.

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

³¹ *Id.* at P 31.

³² *Id.*

³³ *NY Indep. Sys. Op., Inc.*, 158 FERC ¶ 61,064 (Jan. 27, 2017), *reh’g requested*.

³⁴ *Id.* at P 20.

³⁵ *Id.* at P 35.

³⁶ *Id.* at P 55.

³⁷ *Id.* at P 61.

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

The NEPGA, NextEra and Exelon request for rehearing of the FERC's *Resource Retirement Reforms Order*³⁸ remains pending. 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,"³⁹ which were filed with and later accepted by the FERC.⁴⁰ NEPGA, Exelon and NextEra jointly requested rehearing of the *Resource Retirement Reforms Order*. On June 13, 2016, 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).

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

Still pending before the FERC is the ISO's compliance filing in response to the FERC's August 8, 2016 remand order.⁴¹ 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 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.⁴² The ISO submitted its compliance filing on January 23, 2017, reporting the IMM's conclusion that "the auction was not structurally competitive and a 'small proportion' of the total cost of the program may be the result of the exercise of market power" but that the "vast majority of supply was offered at prices that appear reasonable and that, for a number of reasons, it is difficult to assess the impact of market power on cost." Based on the IMM and additional analysis, the ISO recommended that "there is insufficient demonstration of market power to warrant modification of program." In February 13 comments, both TransCanada and the MA AG protested the ISO's conclusion and recommendation that modification of the program was unwarranted. TransCanada requested that FERC establish a settlement proceeding where market participants could "exchange confidential information to determine what the rates should be" and refunds and "such other relief as may be warranted" provided. On February 28, the ISO answered the TransCanada and MA AG protests. On March 10, TransCanada answered the ISO's February 28 answer. This matter is again pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

³⁸ *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.

³⁹ *Id.* at P 62.

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

⁴¹ *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("*2013/14 Winter Reliability Program Remand Order*"). As previously reported, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable), and directing the FERC to either offer a reasoned justification for the order in ER13-2266 or revise its disposition to ensure that the Program rates are just and reasonable. *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

⁴² *2013/14 Winter Reliability Program Remand Order* at P 17.

IV. OATT Amendments / TOAs / Coordination Agreements

- **Emergency Energy Pricing Revisions (ER17-1625)**

On June 16, the FERC accepted changes to the ISO-NE/New York Independent System Operator, Inc. (“NYISO”) Coordination Agreement (“NE/NY Coordination Agreement”) and the term sheet indicating the Pricing of Sales of Emergency Energy (“EE”) by ISO-NE to Hydro-Quebec Transenergie (“HQTE”) (the “EE Pricing Revisions”), jointly filed by the ISO and NEPOOL on May 18, 2017. Specifically, the EE Pricing Revisions made four changes to the NE/NY Coordination Agreement and HQTE EE Pricing Term Sheet: (i) updates to the pricing terms for the sale of Emergency Energy between Control Areas to reflect sub-hourly settlement rules; (ii) placed a \$0.00/MWh floor on sales of Emergency Energy; (iii) made non-substantive clarifications to the HQTE EE Pricing Schedule; and (iv) changes to the NE/NY Coordination Agreement definition of “Transfer Limit” and confidential information provisions in Section 6.5. The EE Pricing Revisions were accepted effective as of August 1, 2017, as requested. Unless the June 16 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **FTR Balance of Planning Period Financial Assurance Changes (ER17-1441)**

As previously reported, the ISO and NEPOOL jointly filed, on April 20, changes to the Financial Assurance Policy (“FAP”) to account for upcoming changes in the FTR auction structure (“FTR BoPP FAP Changes”). The changes were supported unanimously by the Participants Committee at its December 2, 2016 annual meeting. Comments on the April 20 filing were due on or before May 11 and, on that day, DC Energy filed comments supporting most of the changes, but protesting the replacement of the proxy price approach for its FTR awards (“Hold Collateral”) and FTR bids (“Bid Collateral”) collateral calculation with a standard deviation approach. DC Energy stated that the “proposed standard deviation approach creates unsustainably high, unjust, unreasonable and unduly discriminatory collateral requirements for market participants to bid for FTR positions, and then to hold awarded FTR positions” in the New England Market.

Following a review of the DC Energy protest, the ISO concluded that DC Energy may have been correct that the design as filed on April 20 could have resulted in an inappropriately high amount of FTR-related financial assurance. Accordingly, the ISO stated that the FAP changes warranted additional analysis and consideration with stakeholders and within the stakeholder process, and moved to withdraw its filing and terminate the proceeding. The ISO indicated a goal of re-filing the provisions with the FERC as soon as practicable, taking into consideration other ongoing and upcoming initiatives. NEPOOL supported the ISO motion to withdraw the filing and terminate the proceeding under the unique circumstances presented, in order to ensure that any further FAP modifications are considered through, and receive the full benefit of, the complete NEPOOL Participant Processes prior to FERC consideration. A memo from the ISO describing the timing of BoPP FAP changes going forward and BoPP implementation (now planned for August or September of 2018 following implementation of PRD and PFP) was circulated to the Participants Committee and Budget & Finance Subcommittee on June 23 under separate cover. Reporting on this issue is concluded for now and will pick back up when the further changes are filed with, and a new proceeding opened by, the FERC. If you have any questions, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-NSTAR: Dartmouth Power LSA (ER17-1713)**

On May 31, 2017, the ISO and NSTAR filed a Local Service Agreement (“LSA”) by and among NSTAR, Dartmouth Power Associates, LP (“Dartmouth Power”), and the ISO for Firm and Non-Firm Local Point-To-Point Service under Schedule 21-NSTAR to resolve long-standing disagreements between NSTAR and Dartmouth Power regarding Dartmouth Power’s use of NSTAR’s local facilities for “wheeling-out” power to the Administered Transmission System. A July 31, 2017 effective date was requested. Comments on this filing were due on or before June 21, 2017; 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; 860-275-0533).

- **Schedule 21-CMP: Saddleback Ridge/Canton Mountain LGIAs (ER17-1668)**

On May 23, 2017, CMP filed two, non-conforming Large Generation Interconnection Agreements (“LGIAs”), one a Revised Saddleback LGIA; the other, an Original Canton LGIA. The Agreements are non-conforming in that Saddleback and Canton interconnect to the Administered Transmission System through certain jointly-owned, rather than sole use, facilities. Effective dates of May 4 (Saddleback) and March 27 (Canton) were requested. Comments on this filing were due on or before June 13, 2017; 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; 860-275-0533).

- **Schedule 21-VTransco: Revised Depreciation Rates (ER17-1589)**

On June 14, the FERC accepted revised depreciation rates filed by Vermont Transco LLC (“VTransco”) on May 12, which are used to calculate VTransco’s annual transmission revenue requirements for Pool Transmission Facilities (“PTF”) and non-PTF Transmission Service under the ISO Tariff and to Schedule 21- VTransco. VTransco states that the revised depreciation rates produce savings of approximately \$3 million for VTransco customers. The revised depreciation rates were accepted effective as of July 1, 2017, as requested. Unless the June 14 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).

- **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,⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁴⁷

⁴³ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*June 2 Order*”).

⁴⁴ *Id.* at P 24.

⁴⁵ *Id.* at PP 25-26.

⁴⁶ *Id.* at P 27.

⁴⁷ *Id.* at P 21; Ordering Paragraph (B).

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, October 25. A third settlement conference, scheduled for November 22, 2016, was cancelled and subsequently held on December 1. In a March 16 status report, Judge Dring indicated that the parties had reached a settlement in principal and were memorializing their agreement. He reported that the parties intend to file that agreement in late April or early May. He recommended that settlement procedures be continued. If you have any questions concerning these matters, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-EM Annual Informational Filing (ER15-1434)**

On June 6, 2017, Emera Maine submitted an annual informational filing to update its local transmission service charges under Schedule 21-EM. Included in this filing is a populated version of Attachment P-EM that sets forth the rates that went into effect on June 1, 2017. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-VEC and 20-VEC Annual Informational Filing (ER10-1181)**

On May 1, 2017, as corrected on May 8, VEC submitted its annual update to the formula rates contained in Schedules 21-VEC and 20-VEC covering the July 1, 2017 – June 30, 2018 period. VEC indicated that it was not proposing any changes to the underlying formulas. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On May 31, 2017, NSTAR submitted an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period January 1, 2016 through December 31, 2016. NSTAR stated that the filing complies with the requirements of Section 4 and Attachment D of Schedule 21-NSTAR, as well as the Settlement Agreement approved previously by the FERC.⁴⁸ The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments
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No Activity to Report

VIII. Regional Reports

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

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

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*⁴⁹ and *531-B*⁵⁰ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁴⁸ See *NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

⁴⁹ *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁵⁰ *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

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

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

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

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

- **Capital Projects Report - 2017 Q1 (ER17-1595)**

On May 12, the ISO filed its Capital Projects Report and Unamortized Cost Schedule covering the first quarter (“Q1”) of calendar year 2017 (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 include the following new projects: (i) FCM – Pay For Performance (\$2,493,400); (ii) Situational Awareness – Video Wall Expansion Phase II (\$984,000); (iii) BoPP – Financial Assurance (\$800,200); and (iv) Streamlining Asset Registration – Relationship Management (\$240,000). Projects with significant changes include: (i) Energy Management Platform 3.1 Upgrade and Customs Reductions (2017 budget decrease of \$760,000, with total project costs of \$280,300); nGem Software Development (\$700,000 increase); and (iii) CIMNET Simultaneous Feasibility Test w/Data Transfer Enhancements (\$400,000 increase). Comments on this filing were due on or before June 2; NEPOOL filed comments on May 23 supporting the Q1 Report. Eversource filed a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **IMM Quarterly Markets Reports - 2017 Winter (ZZ17-4)**

On May 23, the Internal Market Monitor (“IMM”) filed with the FERC its report for the Winter quarter (Dec 2016 – Feb 2017) of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. The Winter Report was discussed with Participants at the May 10 Markets Committee meeting. These filings are not noticed for public comment by the FERC.

- **2016 IMM Annual Markets Report (ZZ17-4)**

On May 30, the ISO’s IMM filed its 2016 Annual Markets Report, which covers the 2016 calendar year period.⁵¹ The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for many years in a row, that the New England Market operated competitively in 2016. The capacity market procured additional new capacity in FCA10 and FCA11 at competitive prices. The Day-Ahead and Real-Time Energy Markets performed well, with electricity prices closely reflecting changes in underlying primary fuel prices. There were few periods in the Real-Time Energy Market when relative shortage impacted price, and overall price-cost markups in the Day-Ahead Energy Market were within reason. Other highlights included:

- ▶ 2015 Total wholesale costs (\$7.6 billion) were 18% less than in 2015, with the decrease driven primarily by lower natural gas prices (down 34% from 2015) and energy costs (down 30% from 2015), particularly in the first quarter (\$2 billion in lower costs over the same quarter in 2015).
- ▶ Low capacity market prices, ranging from \$2.95/kW-mo. to \$4.50/kW-mo. have also influenced total wholesale costs, and this influence will continue until the 2017/18 FCA8 Capacity Commitment Period, when capacity market prices will increase.

⁵¹ Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

In light of its review, the IMM made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2017. These recommendations will be discussed in more detail at the Participants Committee June 27-29 Summer Meeting.

- **ISO-NE FERC Form 3Q (2017/Q1) (not docketed)**

On May 24, the ISO submitted its 2017/Q1 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

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

On June 2, the ISO submitted a revised Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2016. Through its Form 714 filing, the ISO reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. These filings are not noticed for comment.

IX. Membership Filings

- **June 2017 Membership Filing (ER17-1744)**

On June 1, NEPOOL requested that the FERC accept (i) the memberships of Orbit Energy Rhode Island, LLC (AR Sector, RG Sub-Sector, Small RG Group Member), Rinar Power LLC (Data-Only Participant); and Torofino Trading, LLC (Supplier Sector); (ii) termination of the Participant status of First Wind Energy Marketing and Longfellow Wind, LLC (TerraForm/SunEdison Related Persons (AR Sector), who will remain in Pool), effective May 1, 2017; and (iii) name changes of Dominion Energy Generation Marketing, Inc. (f/k/a Dominion Energy Marketing, Inc.); Dominion Energy Nuclear Connecticut, Inc. (f/k/a Dominion Nuclear Connecticut, Inc.); and J. Aron & Company, LLC (f/k/a J. Aron & Company). The June Membership filing is pending before the FERC.

- **May 2017 Membership Filing (ER17-1506)**

On May 25, the FERC accepted (i) the memberships of Block Island Power Company (Supplier Sector); Georges River Energy, LLC (Provisional Member Group Seat); Ohmconnect, Inc. (AR Sector, LR Sub-Sector); Rensselaer Generating, LLC and Roseton Generating, LLC [Related Persons to Castleton Commodities (Supplier Sector)]; and VECO Power Trading, LLC [Related Person to DC Energy (Supplier Sector)]; (ii) termination of the Participant status of Union Leader Corporation (MPEU, End User Sector), effective April 1, 2017; and (iii) Great River Hydro, LLC's name change (f/k/a TransCanada Hydro Northeast, Inc.).

- **April 2017 Membership Filing (ER17-1364)**

On May 11, the FERC accepted (i) the membership of GridAmerica Holdings Inc. (National Grid Related Person); and (ii) the name changes of ENGIE Energy Marketing NA, Inc. (f/k/a GDF SUEZ Energy Marketing NA, Inc.) and Verso Energy Services LLC (f/k/a Verso Maine Energy LLC).

- **Suspension Notices (not docketed)**

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

***Date of Suspension/ Participant Name
FERC Notice***

May 9/15 BNP Paribas Energy Trading GP

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

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

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

- **Revised Reliability Standard: CIP-003-7 (RM17-11)**

On March 3, NERC filed for approval changes to Reliability Standard CIP-003 (Cyber Security - Security Management Controls), approval of the associated implementation plan, VRFs, VSLs, and revised NERC Glossary definitions of "Removable Media" and "Transient Cyber Asset", and the retirement of the currently-effective version of CIP-003 and the NERC Glossary definitions of "Low Impact External Routable Connectivity" and "Low Impact BES Cyber System Electronic Access Point". The CIP-003 Changes) (i) clarify the electronic access control requirements applicable to low impact BES Cyber Systems; (ii) add requirements related to the protection of transient electronic devices used for low impact BES Cyber Systems; and (iii) require Responsible Entities to have a documented cyber security policy related to declaring and responding to CIP Exceptional Circumstances for low impact BES Cyber Systems. The proposed implementation plan provides that the CIP-003-Changes become effective on the first day of the first calendar quarter that is 18 calendar months after the effective date of the FERC's order approving the CIP-003 Changes. As of the date of this Report, the FERC has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **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 still has not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **NOPR: Revised Reliability Standard: PRC-012-2 (RM16-20)**

On January 19, 2017, the FERC issued a NOPR proposing to approve Reliability Standard PRC-012-2 (Remedial Action Schemes), its associated implementation plan, VRFs, VSLs, and effective date, and retirement of PRC-015-1 and PRC-016-1 (together, the "RAS Changes").⁵² In addition, the FERC proposes to withdraw pending Standards PRC-012-1, PRC-013-1, and PRC-014-1. The RAS Changes are designed to ensure that remedial action schemes do not introduce unintentional or unacceptable reliability risks to the BES. NERC requested that the RAS Changes become effective on the first day of the first calendar quarter that is 36 months after the effective date of an order approving the Standard, pursuant to the Implementation Plans included with the Changes. Comments on the *RAS Changes NOPR* were due on or before April 10, 2017,⁵³ and were filed by

⁵² *Remedial Action Schemes Rel. Standard*, 158 FERC ¶ 61,042 (Jan. 19, 2017) ("*RAS Changes NOPR*").

⁵³ The *RAS Changes NOPR* was published in the *Fed. Reg.* on Feb. 8, 2017 (Vol. 82, No. 25) pp. 9,702-9,706.

NERC, NESCOE, ISO-NE/IESO/NYISO, MISO, Bonneville, EEI, and ITC. This matter is pending before the FERC.

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

On September 22, 2016, 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”).⁵⁴ 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 approving the Standard, pursuant to the Implementation Plans included with the Changes. Comments on the *Frequency Control Changes NOPR* were due on or before November 28, 2016,⁵⁵ and were filed by NERC, EEI, Bonneville, Idaho Power and J. Appelbaum.

On March 7, the FERC issued a data request seeking additional information about the current back-up power supply practices of a representative sample of entities potentially affected by the Frequency Control Changes. NERC filed its response to the FERC’s data request on April 6. This matter is pending before the FERC.

- **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, NOPR⁵⁶ 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 Standards⁵⁷ 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, 2014,⁵⁸ 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

⁵⁴ *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Rel. Standards*, 156 FERC ¶ 61,210 (Sep. 22, 2016) (“*Frequency Control Changes NOPR*”).

⁵⁵ The *Frequency Control Changes NOPR* was published in the *Fed. Reg.* on Sep. 28, 2016 (Vol. 81, No. 188) pp. 66,555-66,562.

⁵⁶ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) (“*ATC NOPR*”).

⁵⁷ 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.

⁵⁸ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

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.

- **Annual NERC CMEP Filing (RR15-2)**

On February 22, NERC submitted a compliance filing reviewing the progress of its risk-based Compliance Monitoring and Enforcement Program (“CMEP”) program. In this filing, NERC identified and proposed two enhancements to the risk-based CMEP: (1) providing minimal risk Compliance Exceptions (“CEs”) identified through self-logging to FERC non-publicly; and (2) expanding the use of CEs to include certain moderate risk noncompliance currently processed through Find, Fix, Track and Report (“FFT”). Comments on this filing were submitted by the ISO/RTO Council (“IRC”), AEP, EEL, PPL, and jointly by the American Public Power Association (“APPA”), the Electricity Consumers Resource Council (“ELCON”), the National Rural Electric Cooperative Association (“NRECA”), and the Transmission Access Policy Study Group (“TAPS”). This filing is pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: PSNH /FPL Wyman 4 (EC17-132)**

On June 21, Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or “Seller”) and FPL Energy Wyman IV LLC (“Wyman IV” or “Buyer” and together with PSNH, the “Applicants”) requested that the FERC authorize a transaction in which PSNH will sell its 3.14% ownership interest in W.F. Wyman Station – Unit 4 (“Wyman 4”) and associated jurisdictional facilities to Wyman IV (the “Transaction”). Comments on the Application are due on or before July [], 2017.

- **203 Application: Green Mountain Power/VT Transco (Highgate) (EC17-86)**

On May 19, the FERC authorized Green Mountain Power (“GMP”) to sell its undivided ownership share in the Highgate Transmission Facility to and Vermont Transco (“VT Transco”) and VTransco to acquire GMP’s undivided ownership share, as well as certain undivided ownership shares of other joint owners of the Highgate Transmission Facility.⁵⁹ Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

- **203 Application: Green Mountain Power/ENEL Hydros (EC17-76)**

On May 9, the FERC authorized GMP’s acquisition of the following small hydroelectric generation facilities (each a QF, collectively 8.39 MW of total generating capacity) from subsidiaries of Enel Green Power North America, Inc.: Hoague-Sprague, Kelley’s Falls, Lower Valley, Glen, Rollinsford, South Berwick, Somersworth, and Woodsville.⁶⁰ Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

- **203 Application: Helix Generation/TransCanada (EC17-38)**

On March 31, 2017, the FERC authorized a transaction whereby Helix Generation, LLC (“Helix”), an affiliate of LSPower, will indirectly acquire all of the interests in a number of TransCanada-owned projects, including TransCanada’s non-hydro generating assets in New England (i.e. the Kibby wind project and Ocean State facility).⁶¹ Among other conditions, the *Helix/TransCanada Order* required notice within 10 days of the consummation of the transaction. Helix filed that Report on June 12, indicating that the Transaction closed on June 2, 2017. As a result of that transaction, TransCanada no longer owns any generation in New England and will become a member of the Supplier Sector. Reporting on this proceeding is concluded.

⁵⁹ *Green Mountain Power Corp. and Vermont Transco, LLC*, 159 FERC ¶ 62,191 (May 19, 2017).

⁶⁰ *Green Mountain Power Corp.*, 159 FERC ¶ 62,144 (May 9, 2017).

⁶¹ *Helix Generation, LLC et al.*, 158 FERC ¶ 62,268 (Mar. 31, 2017) (“*Helix/TransCanada Order*”).

- **203 Application: NSTAR/WMECO Merger (EC17-62)**

On March 2, 2017, the FERC authorized Eversource's internal reorganization under which Western Massachusetts Electric Company ("WMECO") will merge with and into NSTAR Electric Company ("NSTAR"), with NSTAR as the surviving entity.⁶² Applicants committed to hold harmless transmission and wholesale customers from transaction-related costs for five years to the extent that such costs exceed savings related to the merger. Among other conditions, the *NSTAR/WMECO Merger Order* required Eversource to notify the FERC within 10 days of the consummation of the merger, which was expected to occur on January 1, 2018.

- **MOPR-Related Proceedings (PJM, NYISO) (EL16-49; EL13-62)**

In two proceedings which, unless narrowly limited solely to the unique facts of the directly applicable markets (PJM in EL16-49; NYISO in EL13-62), could impact the New England market through FERC jurisdictional or other determinations, NEPOOL filed limited comments requesting that any Commission action or decision be limited narrowly to the facts and circumstances as presented in the applicable market. NEPOOL urged that any changes that may be ordered by the Commission in the proceedings not circumscribe the results of NEPOOL's stakeholder process or predetermine the outcome of that process through dicta or a ruling concerning different markets with different history and different rules. NEPOOL's comments were filed on January 24 in the NYISO proceeding; January 30 in the PJM proceeding, and are pending before the FERC. If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Maine Power Express Negotiated Rates Determination Request (ER16-1619)**

On May 26, Maine Power Express LLC ("MPX") filed a motion asking the FERC to determine that its July 1, 2016 order,⁶³ authorizing MPX to sell transmission rights at negotiated rates, permits MPX to sell the Maine Power Express merchant transmission project's⁶⁴ capacity pursuant to the recently-issued March 30, 2017 Massachusetts RFP. MPX requested expedited treatment of and a shortened comment period for its request, given the July 27 RFP bid deadline. As of the date of this Report, a comment date has not been set. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **SGIA: PSNH/Sugar River (ER17-1566; ER17-1564)**

On June 15, the FERC accepted a two-party Interconnection Agreement ("SGIA") between PSNH and Sugar River Power, LLC ("Sugar River"), filed May 8, that governs the renewed interconnection of Sugar River's 1.4 MW hydro generating facility in Claremont, New Hampshire. The SGIA replaces the original interconnection agreement, which is being cancelled (ER17-1564), and is a two-party agreement because the facility is interconnecting to PSNH's distribution system and not to the ISO Administered Transmission System. Unless the June 15 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: PSNH/Essential Power Newington (ER17-1495)**

On June 8, the FERC accepted an Agreement for Design, Engineering and Construction services between PSNH and Essential Power Newington (the "D&E Agreement"). The purpose of the D&E Agreement is to set forth the terms and conditions under which PSNH would undertake certain design, engineering and construction activities on the Interconnection Facilities that have been identified as required under the LGIA in connection with Essential Power's planned capacity increase (to 674 MW) at the facility. The D&E Agreement was accepted for filing effective as of June 28, 2017. Unless the June 8 order is

⁶² *NSTAR Elec. Co. and W. Mass. Elec. Co.*, 158 FERC ¶ 62,155 (Mar. 2, 2017) ("*NSTAR/WMECO Merger Order*").

⁶³ *Maine Power Express*, 156 FERC ¶61,002 (July 1, 2016).

⁶⁴ The Maine Power Express project is a proposed 315-mile, 1,000 MW HVDC completely underground merchant transmission project that will originate in Haynesville, Maine, and terminate at a new DC/AC converter station in Boston connected with the Eversource transmission system. MPX anticipates that the Project will be operational in 2021.

challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Cost Reimbursement Agreement: NEP/Wynn, MA LLC (ER17-1431)**

On June 7, the FERC accepted a Cost Reimbursement Agreement between New England Power Company (“NEP”) and Wynn MA, LLC (the “Agreement”). The purpose of the Agreement is to reimburse NEP for the actual costs and expenses associated with NEP’s relocation a portion of NEP’s existing P-168 115 kV underground and overhead transmission line and related transition structure located in Everett, Massachusetts, in connection with Wynn’s planned development and construction of a resort facility at that location. The Agreement was accepted for filing as of March 24, 2017. Unless the June 7 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IAs: WMECO/Nautilus Hydros (ER17-1340 et al.)**

On May 11, the FERC accepted filed five two-party Interconnection Agreements (“TGIAs”) between WMECO (“Eversource”) and Nautilus Hydro, LLC (“Nautilus”). The TGIAs govern the continuing interconnection of the following hydro facilities: Dwight Hydro (1.7 MW); Gardners Falls (3.7 MW); Indian Orchard (3.7 MW); Puss Bridge (4.1 MW); and Red Bridge (4.5 MW). Since the TGIAs continue the existing interconnection arrangements between Eversource and the hydro facilities, previously covered by an Interconnection and Operating Agreement (“IOA”) with Essential Power Massachusetts (“Essential Power”), without modification to the any of facilities’ capability or operating characteristics, new 3-party party Interconnection Agreements (“IAs”) that would have included the ISO were not required. The TGIAs were accepted effective as of March 29, 2017, as requested. The May 11 orders were not challenged and are final and unappealable. If you have any questions concerning these matters, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA: WMECO/Essential Power (ER17-1322)**

On May 11, the FERC accepted an amended IA between WMECO and Essential Power that removed the hydro facilities transferred to Nautilus (*see* ER17-1340 et al. immediately above) and amended provisions that remain applicable to certain Essential Power fossil-fueled assets (West Springfield, Doreen Street and Woodland Road). The amended IA was accepted effective as of March 29, 2017. The May 11 order was not challenged and is final and unappealable. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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.⁶⁵ 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

⁶⁵ *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

Customer Group”⁶⁶ 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 judge procedures.⁶⁷ 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 January 6, 2017, the FERC denied rehearing and Emera Maine’s alternative request for consolidation with the ongoing proceedings in Docket Nos. EC10-67-002, *et al.*⁶⁸

Hearing and Settlement Judge Procedures. The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and continues to hold hearings in abeyance pending the outcome of settlement judge procedures. As previously reported, Chief Judge Cintron substituted ALJ Dring in place of ALJ Johnson in mid-September as the settlement judge for these proceedings. Settlement conferences before Judge Johnson were held on January 5, March 3, and April 26, 2016 and on October 25 and December 1 before Judge Dring. Since the last Report, Judge Dring issued on May 23 a ninth status report (i) again indicating that the parties have reached a settlement in principal and are memorializing their agreement, and (ii) recommending that settlement judge procedures be continued.

Settlement Agreement. On June 22, Emera Maine submitted an uncontested Joint Offer of Settlement (“Offer of Settlement”) between itself, Houlton Water Company, Van Buren Light and Power District, Eastern Maine Electric Coop., ReEnergy Biomass Operations, the MPUC, and Maine OPA (collectively, the “Settling Intervenor”). If approved, the Offer of Settlement will resolve all issues pending in these proceedings. This settlement does not resolve the matters set for hearing and settlement judge procedures in *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (2016). Comments on the Offer of Settlement must be filed on or before July 12, 2017; Reply Comments, July 24, 2017.

⁶⁶ 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”).

⁶⁷ *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh’g denied*, 158 FERC ¶ 61,012 (Jan. 6, 2017).

⁶⁸ *Emera Maine*, 158 FERC ¶ 61,012 (Jan. 6, 2017) (“*January 6 Order*”).

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

- **NEP Integrated Facilities Agreement Annual Informational True-Up Filing (ER10-523)**

On June 15, 2017, New England Power submitted its annual informational filing showing the true-up adjustment (to be applied to NEP's monthly IFA billings in July 2017) resulting from a reconciliation of its actual monthly billings under its Integrated Facilities Agreement provisions to the same formula rate calculation based on quarterly 2016 FERC Form 1 data. NEP also submitted a five-year forecast of transmission capital additions, including an estimate of the impact that such additions would have on the ultimate customers of NEP's distribution affiliates, Massachusetts Electric Company, Nantucket Electric Company and The Narragansett Electric Company. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FERC Enforcement Action: Staff Notices of Alleged Violations (IN__ - __)**

Westar Energy. On March 30, 2017, the FERC issued a notice that Staff of the Office of Enforcement ("OE") has preliminarily determined that Westar Energy, Inc. ("Westar Energy") violated various provisions of the Southwestern Power Pool ("SPP") Tariff. Specifically, Staff has preliminarily determined that Westar Energy included incorrect cost inputs in its mitigated energy offer curves and failed to timely update other cost inputs, as required by the Tariff.

Recall that Notices of Alleged Violations ("NoVs") are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff's conclusions regarding the subject's conduct.⁶⁹ NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

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

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

Unlike a staff NOV, 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 Audit of ISO-NE (PA16-6)**

The FERC's audit of ISO-NE docketed in this proceeding is on-going. As previously reported, the FERC informed ISO-NE on November 24, 2015 that it would 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 July 10, 2013 period through the present.

⁶⁹ See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh'g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

XII. Misc. - Administrative & Rulemaking Proceedings

- **State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM (AD17-11)**

As previously reported, the FERC held a 2-day technical conference (on May 1-2) to foster further discussion regarding the development of regional solutions in the Eastern RTOs/ISOs that reconcile the competitive market framework with the increasing interest by states to support particular resources or resource attributes. FERC staff sought to “discuss long-term expectations regarding the relative roles of wholesale markets and state policies in the Eastern RTOs/ISOs in shaping the quantity and composition of resources needed to cost-effectively meet future reliability and operational needs”. A more detailed summary of the technical conference was circulated with the last Report. Pre-conference comments from the conference’s speakers, panelists and other interested parties are available in the FERC’s eLibrary and through the tech conference’s calendar entry. Those interested were invited to submit post-conference comments on or before June 22. Comments were received from over 70 parties, and will be briefly summarized at the Summer Meeting. Reply comments, not exceeding 10 pages, are due July 7.

- **Agency Operations in the Absence of a FERC Quorum (AD17-10)**

On February 3, the FERC issued an order delegating additional authority to agency staff to continue certain agency operations in the absence of a quorum of FERC Commissioners.⁷⁰ The *Absence of a Quorum Delegation Order* also affirmed that all pre-existing delegations of authority by the FERC to its staff continue to be effective. The *Absence of a Quorum Delegation Order* took effect February 4, 2017, and the additional authority granted to agency staff will last until the earlier of FERC action lifting the *Order* or 14 days following the date a quorum is re-established. The specific delegation of agency authority permits (i) the Director of OEMR to accept and suspend rate filings, and make them effective subject to refund and further order of the FERC, or accept and suspend them, make them effective subject to refund, and set them for hearing and settlement judge procedures (for initial rates or rate decreases submitted under section 205 of the FPA, for which suspension and refund protection are unavailable, FERC staff was granted authority under section 206 to institute proceedings in order to protect the interests of customers);⁷¹ (ii) FERC staff to extend the time for action on matters where it is permitted by statute; and (iii) the Director of OEMR to take appropriate action on uncontested waiver and settlement filings. Although the *Delegation Order* was initially challenged by the Wyoming Pipeline Authority (“WPA”), the WPA withdrew its challenge and, with no other party challenging it, the *Delegation Order* is final, unappealable, and continues in effect.

- **BPS Reliability Technical Conference (AD17-8)**

On June 22, the FERC held a technical conference that discussed policy issues related to the reliability of the Bulk-Power System (“BPS”). Panel presentations covered the following topics: (i) an overview on the state of reliability; (ii) international perspectives; (iii) the potential for long-term and large-scale disruptions to the BPS; and (iv) grid security. Written comments were filed ahead of the conference by the Chairman of the Ohio Public Utilities Commission and by a representative of the Large Public Power Council. Speaker materials are posted on the FERC’s eLibrary.

- **Electric Storage Resource Utilization in RTO/ISO Markets (AD16-25)**

On November 9, 2016, the FERC held a technical conference to discuss the utilization of electric storage resources as transmission assets compensated through RTO/ISO transmission rates, for grid support services that are compensated in other ways, and for multiple services. On November 14, the FERC invited all those interested to file, on or before December 14, 2016, post-technical conference comments on the topics discussed in the November 1 Supplemental Notice of Technical Conference. Comments were filed by over

⁷⁰ Agency Operations in the Absence of a Quorum, 158 FERC ¶ 61,135 (Feb. 3, 2017) (“*Absence of a Quorum Delegation Order*”).

⁷¹ The acceptance for filing and suspension and making effective subject to refund and to further FERC order of these filings is without prejudice to any further action of the FERC with respect to these filings once the FERC again has a quorum.

45 parties, including Avangrid, Brookfield, EEI, Energy Storage Association, Exelon, FirstLight, NEPGA, NextEra, PSEG, Solar City/Tesla, and UCS. 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 Associations⁷² and the New Jersey BPU, the deadline for comments was extended to October 3, 2016 and comments were filed by over 60 parties, including: NEPOOL, 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; the PJM IMM on August 21. 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 notice inviting post-technical conference comments addressing (1) the use of the "one-mile rule" to determine the size of an entity seeking certification as a small power production qualifying facility ("QP"); and (2) minimum standards for PURPA-purchase contracts. Comments were due on or before November 7, 2016 and were filed by over 40 parties, including AWEA, Covanta, CT PURA/MA AG, Duke, EDP, EEI, ELCON, NARUC, and NRECA.

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

As previously reported, the FERC directed each RTO/ISO to publicly provide, and the RTO/ISO's provided, information related to five price formation issues:⁷³ (1) pricing of fast-start resources; (2) commitments to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency. The FERC indicated it would use the reports and comments filed in response thereto to determine what further action is appropriate. NOPRs addressing fast-start pricing (RM17-3) and uplift allocation (RM17-2) have already been issued.

⁷² The "Utility Trade Associations" are APPA, EEI, Large Public Power Council, NRECA, and TAPS.

⁷³ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

- **NOI: FERC's Policy for Recovery of Income Tax Costs & ROE Policies (PL17-1)**

On December 15, 2016, the FERC issued a notice of inquiry (“NOI”) seeking comments regarding how to address any double recovery resulting from the FERC’s current income tax allowance and ROE policies.⁷⁴ The NOI follows the D.C. Circuit’s *United Airlines*⁷⁵ holding that the FERC failed to demonstrate that there is no double recovery of taxes for a partnership pipeline as a result of the income tax allowance and ROE determined pursuant to the DCF methodology, and remanding the decisions to the FERC to develop a mechanism “for which the Commission can demonstrate that there is no double recovery” of partnership income tax costs”.⁷⁶ In response to requests for an extension of the comment and reply comment deadlines, and objections to those requests, the FERC extended the comment and reply comment deadlines to March 8 and April 7, 2017, respectively. Comments were submitted by over 25 parties, including a particularly ebullient pleading by a former general counsel of FERC’s predecessor, the Federal Power Commission. As noted immediately above, reply comments were due on or before April 7. 18 sets of reply comments were received, including reply comments from AGA, Dominion, EEI, INGAA, and LSPower. Since the last Report, additional reply and answering comments were submitted by INGAA, United Airlines Petitioners and Natural Gas Indicated Shippers. This matter is pending before the FERC.

- **NOPR: LGIA/LGIP Reforms (RM17-8)**

As previously reported, the FERC issued a NOPR⁷⁷ on December 15, 2016 proposing reforms designed to improve certainty,⁷⁸ promote more informed interconnection,⁷⁹ and enhance interconnection processes.⁸⁰ Based, in part, on input received in response to AWEA’s petition for changes to the *pro forma*

⁷⁴ *Inquiry Regarding the FERC’s Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2017).

⁷⁵ *United Airlines Inc., et al. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (“*United Airlines*”).

⁷⁶ *Id.* at 137.

⁷⁷ *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016) (“*LGIP/LGIA Reforms NOPR*”). The *LGIP/LGIA Reforms NOPR* was published in the *Fed. Reg.* on Jan. 13, 2017 (Vol. 82, No. 9 pp. 4,464-4,501).

⁷⁸ To accomplish this goal, the FERC proposes to: (1) revise the *pro forma* LGIP to require transmission providers that conduct cluster studies to move toward a scheduled, periodic restudy process; (2) remove from the *pro forma* LGIA the limitation that interconnection customers may only exercise the option to build transmission provider’s interconnection facilities and standalone network upgrades if the transmission owner cannot meet the dates proposed by the interconnection customer; (3) modify the *pro forma* LGIA to require mutual agreement between the transmission owner and interconnection customer for the transmission owner to opt to initially self-fund the costs of the construction of network upgrades; and (4) require that the RTO/ISO establish dispute resolution procedures for interconnection disputes. The Commission also seeks comment on the extent to which a cap on the network upgrade costs for which interconnection customers are responsible can mitigate the potential for serial restudies without inappropriately shifting cost responsibility. *Id.* at P 6.

⁷⁹ The FERC proposes to: (1) require transmission providers to outline and make public a method for determining contingent facilities in their LGIPs and LGIAs based upon guiding principles in the Proposed Rule; (2) require transmission providers to list in their LGIPs and on their OASIS sites the specific study processes and assumptions for forming the networking models used for interconnection studies; (3) require congestion and curtailment information to be posted in one location on each transmission provider’s OASIS site; (4) revise the definition of “Generating Facility” in the *pro forma* LGIP and LGIA to explicitly include electric storage resources; and (5) create a system of reporting requirements for aggregate interconnection study performance. The FERC also seeks comment on proposals or additional steps that the Commission could take to improve the resolution of issues that arise when affected systems are impacted by a proposed interconnection. *Id.* at P 7.

⁸⁰ The FERC proposes to: (1) allow interconnection customers to limit their requested level of interconnection service below their generating facility capacity; (2) require transmission providers to allow for provisional agreements so that interconnection customers can operate on a limited basis prior to completion of the full interconnection process; (3) require transmission providers to create a process for interconnection customers to utilize surplus interconnection service at existing interconnection points; (4) require transmission providers to set forth a separate procedure to allow

LGIP/LGIA, and the FERC's May 13, 2016 technical conference to explore generator interconnection issues (as reported previously under Docket Nos. RM16-12; RM15-21), the FERC has identified proposed reforms which it states could remedy potential shortcomings in the existing interconnection processes. The FERC also seeks comment on whether any of its proposed reforms should be applied to the *pro forma* SGIP/SGIA.⁸¹ Following a request from the IRC, supported by NEPOOL and a coalition of trade associations (APPA, LPPA, NRECA), for a 30-day extension of the comment deadline granted by the FERC on February 23, comments on the *LGIP/LGIA Reforms NOPR* were due April 13, 2017. 60 sets of comments and answers were submitted, including comments by: NEPOOL (approved at the April 7 Participants Committee meeting), ISO-NE, Avangrid, EDF Renewable, EDP Renewables, Eversource, Exelon, Invenegy, National Grid, NextEra, APPA/LPPC/NRECA, AWEA, EEI, ELCON, ESA, and Public Interest Organizations. This matter is pending before the FERC.

- **NOPR: Fast-Start Pricing in RTO/ISO Markets (RM17-3)**

On December 15, the FERC issued a NOPR proposing to require each RTO and ISO to incorporate market rules that meet certain requirements when pricing fast-start resources.⁸² The FERC stated that these reforms should lead to prices that more transparently reflect the marginal cost of serving load, which will reduce uplift costs and thereby improve price signals to support efficient investments. Specifically, the FERC proposes to require that each RTO/ISO incorporate the following five requirements for its fast-start pricing:

1. an RTO/ISO must apply fast-start pricing to any resource committed by the RTO/ISO that is able to start up within 10 minutes or less, has a minimum run time of one hour or less, and that submits economic energy offers to the market;
2. when an RTO/ISO makes a decision to commit a fast-start resource, it should incorporate commitment costs, i.e., start-up and no-load costs, of fast-start resources in energy and operating reserve prices, but must do so only during the fast-start resource's minimum run time;
3. an RTO/ISO must modify its fast-start pricing to relax the economic minimum operating limit of fast-start resources and treat them as dispatchable from zero to the economic maximum operating limit for the purpose of calculating prices;
4. if an RTO/ISO allows offline fast-start resources to set prices for addressing certain system needs, the resource must be feasible and economic; and
5. an RTO/ISO must incorporate fast-start pricing in both the Day-Ahead and Real-Time markets.

Comments on the *Fast-Start Pricing NOPR* were due on or before February 28, 2017⁸³ and were filed by numerous parties, including NEPOOL, ISO-NE and EEI. Reply comments were filed by MISO and the PJM IMM. The *Fast-Start Pricing NOPR* is pending before the FERC.

- **NOPR: Uplift Cost Allocation and Transparency in RTO/ISO Markets (RM17-2)**

On January 19, the FERC issued a NOPR proposing to require each RTO and ISO that currently allocates the costs of Real-Time uplift due to deviations to do so only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.⁸⁴ In addition, the FERC

transmission providers to assess and, if necessary, study an interconnection customer's technology changes (e.g., incorporation of a newer turbine model) without a change to the interconnection customer's queue position; and (5) require transmission providers to evaluate their methods for modeling electric storage resources for interconnection studies and report to the Commission why and how their existing practices are or are not sufficient. *Id.* at P 8.

⁸¹ *Id.* at P 11.

⁸² *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 157 FERC ¶ 61,213 (Dec. 15, 2016) ("*Fast-Start Pricing NOPR*").

⁸³ The *Fast-Start Pricing NOPR* was published in the *Fed. Reg.* on Dec. 30, 2016 (Vol. 81, No. 251 pp. 96,391-96,404).

⁸⁴ *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 158 FERC ¶ 61,047 (Jan. 19, 2017) ("*Uplift/Transparency NOPR*").

proposed to revise its regulations to enhance transparency by requiring that each RTO/ISO post uplift costs paid (dollars) and operator-initiated commitments (MWs) on its website; and define in its tariff its transmission constraint penalty factors, as well as the circumstances under which those penalty factors can set LMPs, and any procedure for changing those factors. Comments on the *Uplift/Transparency NOPR* were due on or before April 10, 2017⁸⁵ and were filed by over 40 parties, including: ISO-NE, Brookfield, Calpine, DC Energy, Direct, Exelon, Potomac Economics, Saracen, EEI, APPA/NRECA, AWEA, ELCON, EPSA, Financial Marketers Coalition, and the IRC. Since the last Report, reply comments were filed by Appian Way Energy Partners and Financial Marketers Coalition. This matter is pending before the FERC.

- **NOPR: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)**

On November 23, the FERC issued a NOPR proposing to require each RTO and ISO to revise its tariff “to (1) establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, accommodates their participation in the organized wholesale electric markets and (2) define distributed energy resource aggregators as a type of market participant that can participate in the organized wholesale electric markets under the participation model that best accommodates the physical and operational characteristics of its distributed energy resource aggregation.”⁸⁶ Comments on the *Storage NOPR* were ultimately due on or before February 13, 2017, and were filed by over 100 parties, including: NEPOOL, ISO-NE, APPA/ NRECA, Avangrid, AWEA, Brookfield, CT DEEP, CT PURA, Dominion, DTE, EEI, ELCON, EPSA, EPRI, ESA, Exelon, FirstLight, Genbright, IPKeys, MA DPU, MIT, MMWEC, NARUC, NERC, NESCOE, NextEra, NRG, SEIA, UCS. Since the last Report, comments were filed by the Harvard Environmental Policy Initiative. This matter is pending before the FERC.

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

The FERC’s *Data Collection NOPR* remains pending. As previously reported, the FERC issued a July 21, 2016 NOPR, which superseded 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.⁸⁷ 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, 2016⁸⁸ and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

Technical Workshops. The FERC held two technical workshops. The first technical workshop was held on August 11 and focused on the *Data Collection NOPR*’s draft data dictionary. The second technical workshop was held on December 7, 2016 and focused on the submittal process, with case studies serving as a

⁸⁵ The *Uplift/Transparency NOPR* was published in the *Fed. Reg.* on Feb. 7, 2017 (Vol. 82, No. 24 pp. 9,539-9,555).

⁸⁶ *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) (“*Storage NOPR*”).

⁸⁷ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

⁸⁸ The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

platform for discussion of (i) the steps to submit data; (ii) data review and validation processes; and (iii) the notifications to be provided through the data validation and receipt process. Staff also provided a high-level update on proposed technical refinements to the data dictionary based on input received during the first workshop and additional outreach.

- **Order 833: Critical Energy/Electric Infrastructure Information (CEII) Procedures (RM16-15)**

The FERC issued *Order 833*⁸⁹ on November 16, 2016. *Order 833* amended FERC 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 amend other regulations that pertain to CEII. The amended procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures. *Order 833* became effective February 21, 2017.⁹⁰ On December 19, 2016, EEI requested rehearing of *Order 833*. The FERC issued a tolling order on January 17, affording it additional time to consider the EEI request for rehearing, which remains pending.

- **NOPR: Primary Frequency Response - Essential Reliability Services and the Evolving Bulk-Power System (RM16-6)**

On November 17, 2016, the FERC issued a NOPR proposing to require all newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install and enable primary frequency response capability as a condition of interconnection.⁹¹ To implement these requirements, the Commission proposes to revise the *pro forma* LGIA and the *pro forma* SGIA. The *Primary Frequency Response NOPR* follows the FERC's *Frequency Response NOP*⁹² from early 2016. Comments on the *Primary Frequency Response NOPR* were due on or before January 24, 2017⁹³ and were filed by over 30 parties, including AWEA, EEI, ELCON, EPSA, ESA, First Solar, the IRC, NRECA, and UCS. Supplemental comments were filed by ELCON. This matter is pending before the FERC.

- **Order 831: Price Caps in RTO/ISO Markets (RM16-5)**

On November 17, 2016, the FERC issued *Order 831*⁹⁴ requiring each RTO/ISO: (i) to cap each resource's incremental energy offer at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer; and (ii) cap verified cost-based incremental energy offers at \$2,000/MWh when calculating locational marginal prices ("LMP"). In addition, the FERC clarified that the verification process for cost-based incremental offers above \$1,000/MWh should ensure that a resource's cost-based incremental energy offer reasonably reflects that resource's actual or expected costs. *Order 831* modified the FERC's *Offer Cap NOPR* by including a \$2,000/MWh hard cap for the purposes of calculating LMPs. *Order 831* became effective February 21, 2017.⁹⁵ Market Rule changes implementing *Order 831* are required to be filed

⁸⁹ *Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information; Availability of Certain North American Electric Reliability Corporation Databases to the Commission*, Order No. 833, 157 FERC ¶ 61,123 (Nov. 17, 2016) ("*Order 833*").

⁹⁰ *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

⁹¹ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016) ("*Primary Frequency Response NOPR*").

⁹² *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOP*").

⁹³ The *Primary Frequency Response NOPR* was published in the *Fed. Reg.* on Nov. 25, 2016 (Vol. 81, No. 227) pp. 85,176-85,190.

⁹⁴ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (Nov. 17, 2016) ("*Order 831*"), *reh'g requested*.

⁹⁵ *Order 831* was published in the *Fed. Reg.* on Dec. 5, 2016 (Vol. 81, No. 233) pp. 87,770-87,800.

within 75 days of that effective date, or by May 8, 2017.⁹⁶ (Support for ISO-NE's proposed compliance changes is on the May 5 Consent Agenda, Item # 1.) On December 19, 2017, American Municipal Power Inc. ("AMP") and APPA, Exelon, NYISO, and TAPS requested rehearing and/or clarification of *Order 831*. The FERC issued a tolling order on January 17, affording it additional time to consider the requests for rehearing, which remain pending. On January 4, the PJM Market Monitor opposed Exelon's motion for clarification and/or rehearing. On January 13, MISO submitted comments supporting NYISO request for rehearing. New England's Tariff revisions in response to requirements of *Order 831*, requesting Oct 1, 2019 effective date, were filed on May 8.

XIII. Natural Gas Proceedings

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

- **Technical Conference: Natural Gas Index Liquidity, Price Discovery & Price Formation (AD17-12)**

On May 10, the FERC announced that it would hold a June 29 technical conference on developments in natural gas index liquidity and transparency. The FERC notice explained that the purpose of this technical conference is to understand the state of liquidity in the physical natural gas markets, to explore current trends in physical natural gas trading and price reporting and how the use of natural gas indices have evolved over time, to obtain industry's views on the current level of confidence in natural gas indices and price formation, and finally, to consider whether there is a need to improve natural gas market liquidity and price reporting and, if so, how. A revised agenda and list of panel participants for this conference can be found in the supplemental notice issued June 21. The conference is free of charge and open to the public. Those attending are encouraged to register. The FERC indicated that it would accept post technical conference comments up to 30 days after the technical conference. Such comments must be filed on or before July 31, 2017.

- **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.⁹⁷ As previously reported, Algonquin stated that the modifications were consistent with the FERC's current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies ("LDCs") from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC's initiatives related to gas-electric coordination. On May 9, 2016, the FERC held a technical conference to examine "concerns raised regarding the basis and need for the waiver." 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

⁹⁶ The 75-day period ends on Saturday, May 6. Pursuant to Rule 2007 of the FERC's Rules of Practice & Procedure, if the last day of a time period falls on a weekend, the time period does not end until the close of the next day on which the FERC remains open. See 18 CFR 385.2007(a)(2).

⁹⁷ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

released capacity to carry out the EDC's obligations under the state-regulated electric reliability program.⁹⁸ 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.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ 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. Algonquin Gas Transmission, National Grid Electric Distribution Companies, and Sequent Energy Management and Tenaska Marketing Ventures filed answers to the requests for clarification on October 17. Those requests are pending before the FERC.

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.

- **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*¹⁰² 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").¹⁰³ 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."¹⁰⁴ 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

⁹⁸ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

⁹⁹ *Id.* at P 27.

¹⁰⁰ *Id.* at P 34.

¹⁰¹ *Id.* at P 35

¹⁰² *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹⁰³ *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹⁰⁴ *BP Penalties Order* at P 3.

order establishing a hearing in this proceeding.¹⁰⁵ 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.¹⁰⁶

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁰⁷ 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 2012.¹⁰⁸

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:

- ***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.

¹⁰⁵ *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).

¹⁰⁶ *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

¹⁰⁷ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁰⁸ The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company's related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

- ▶ 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.
 - ▶ Certificate of public convenience and necessity granted Jan. 25, 2017.¹⁰⁹
 - ▶ Authorization to proceed with construction of certain Projects segments granted on Mar. 27 and Apr. 13, 2017.
 - ▶ Construction began May 1, 2017. Detailed information regarding construction activities will be provided in the weekly construction reports filed in this docket.
- **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.
 - ▶ Environmental Assessment (EA) issued on Oct. 23, 2015.
 - ▶ Certificate of public convenience and necessity granted Mar. 11, 2016.¹¹⁰
 - ▶ Construction began 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 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.

¹⁰⁹ Order Issuing Certificate and Authorizing Abandonment, *Algonquin Gas Transmission LLC and Maritimes & Northeast Pipeline, LLC*, 158 FERC ¶ 61,061 (Jan. 25, 2017), *reh'g requested*.

¹¹⁰ *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).

- On October 13, 2016, the FERC approved Constitution's request to proceed to remove the felled trees in Pennsylvania.

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).

- **Demand Curve Changes (17-1110**)**
Underlying FERC Proceedings: ER14-1639¹¹¹
Petitioners: NextEra, NRG, PSEG

On April 3, 2017, NextEra, NRG and PSEG ("Petitioners") again petitioned the DC Circuit Court of Appeals for review of the FERC's Demand Curve orders, which, as previously reported, had been remanded back to the FERC at the FERC's request following the first appeal by Petitioners. Petitioners' statement of issues and other initial procedural submissions, as well as the FERC's initial submissions, were filed May 8. The Clerk granted on June 2 the interventions filed by NEPOOL, NESCOE, CT PURA, and CPV, and order the parties by July 7 to submit proposed briefing formats.

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**
Underlying FERC Proceedings: ER16-1041¹¹² ER15-1137¹¹³
Petitioners: UWUA Local 464 and Robert Clark

UWUA Local 464 and Robert Clark ("Petitioners") filed petitions for review of the FERC's orders on the FCA10 and FCA9 Results Filings, consolidated by the Court on January 31, 2017. Other than Final Briefs, which are due June 26, 2017, all briefing is completed.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**
Underlying FERC Proceeding: ER14-1050;¹¹⁴ EL14-52;115 EL15-25¹¹⁶
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. On February 24, 2016, the Court granted NEPGA's motion to consolidate this proceeding with 16-1024. Briefing was completed on November 28, 2016 and this matter remains pending before the DC Circuit.

¹¹¹ 147 FERC ¶ 61,173 (May 30, 2014) (*Demand Curve Order*); 150 FERC ¶ 61,065 (Jan. 30, 2015) (*Demand Curve Clarification Order*); 155 FERC ¶ 61,023 (Apr. 8, 2016) (*Demand Curve Remand Order*); 158 FERC ¶ 61,138 (Feb. 3, 2017) (*Demand Curve Remand Rehearing Order*).

¹¹² 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).

¹¹³ 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

¹¹⁴ 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

¹¹⁵ 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

¹¹⁶ 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹¹⁷
Appellants: New England Transmission Owners

As previously reported, 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 August 14, 2015, the TOs 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 the TOs' motion to hold the case in abeyance, subject to submission of status reports every 90 days. The most recent status report, the seventh such report filed, was filed on May 15, 2017. In that report, the parties again indicated, ultimately, that the proceedings upon which the TOs based their request for abeyance of this appeal remain ongoing. This case continues to be held in abeyance.

- **Order 1000 Compliance Filings (15-1139, 15-1141**) (consolidated)**
Underlying FERC Proceedings: ER13-193; ER13-196¹¹⁸

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

On April 18, the DC Circuit denied the petitions for review filed by NETOs¹¹⁹ and NESCOE *et al.*¹²⁰ As previously reported, NETOs sought review of the FERC's *Order 1000* compliance filing orders largely on the grounds that FERC's determination that the right of first refusal must be removed from the TOA contravened the *Mobile-Sierra* Doctrine) and NESCOE (asserting the FERC went beyond *Order 1000* and impermissibly altered the balance of responsibility and power as between state governments and the ISO). Following briefing and oral argument before a Judges Brown, Wilkins and Edwards, the Court denied those petitions, finding that (i) the FERC's orders contain the requisite "particularized" analysis to overcome the *Mobile-Sierra* presumption that the filed rate established from a freely negotiated contract is just and reasonable, and (ii) there was no inconsistency or expansion of *Order 1000* and "the division of roles between ISO-NE and the states poses no jurisdictional problem" (recalling the Court's previous rejection of the argument that "the regional planning 'mandate infringes on the States' traditional regulation of transmission planning, siting, and construction").¹²¹ The Court mandate (instructions to the FERC) was issued on June 14.

- **Base ROE Complaint I (2011) (15-1118, 15-1119, 15-1121**) (consolidated)**
Underlying FERC Proceeding: EL11-66¹²²
Appellants: NETOs

On April 14, 2017, the DC Circuit granted the petitions for review of the FERC's orders in the Base ROE Complaint I proceedings, vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order.¹²³ The Court agreed with both the TOs (that the FERC did not meet the Section 206 obligation to first find the existing rate unlawful before setting the new rate) and "Customers" (that the 10.57% ROE was not based on reasoned decision-making, and was a departure from past precedent of setting the ROE at the midpoint of the zone of reasonableness). As was noted earlier in this Report, the *Base ROE Complaint I Decision* has implications for the subsequent ROE proceedings. A more detailed memo that summarizes

¹¹⁷ 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

¹¹⁸ 150 FERC ¶ 61,209 (Mar. 19, 2015); 143 FERC ¶ 61,150 (May 17, 2013).

¹¹⁹ "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.

¹²⁰ *Emera Maine et al. v. FERC*, Case No. 15-1139 (decided Apr. 18, 2017).

¹²¹ Slip op. at p. 21, citing *S.C. Pub. Serv. Auth. v. FERC* ("South Carolina"), 762 F.3d 41, 72 (D.C. Cir. 2014) (*per curiam*).

¹²² 150 FERC ¶ 61,165 (Mar. 3, 2015); 149 FERC ¶ 61,032 (Oct. 16, 2014); 147 FERC ¶ 61,234 (June 19, 2014).

¹²³ *Emera Maine et al. v. FERC*, 2017 U.S. App. LEXIS 6406 (D.C. Cir. April 14, 2017) ("*Base ROE Complaint I Decision*").

comprehensively the status of each of the ROE proceedings was provided following the last Report. The DC Circuit issued its mandate on June 8, 2017.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹²⁴ EL15-23¹²⁵
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. On May 22, the Court granted NEPGA's motion to hold the case in abeyance pending a decision in EL15-23 and, following the FERC's decision in EL15-23 and Exelon's appeal of that case (16-1042), Exelon's motion to consolidate this proceeding with 16-1042. All briefing in the consolidated proceeding has now been completed and this matter is now before the Court.

- **Allco Finance Limited v. Klee et al. (Commissioners, CT DEEP and CT PURA) (2d Cir. 16-2946)**

In this proceeding, an appeal from an unsuccessful challenge of Connecticut's actions under the 2015 multi-state clean energy RFP ("Clean Energy RFP") in Connecticut District Court, Allco continues its challenges to Connecticut's actions under the Clean Energy RFP. Allco asserts that Connecticut's actions are inconsistent with PURPA and constitutional principles recently addressed by the Supreme Court in *Hughes v Talen Energy Marketing* and summarized in prior Reports. As reported at the November Participants Committee meeting, the Second Circuit Court of Appeals on November 2 granted Allco's motion for an emergency injunction. The emergency injunction enjoined Connecticut (but not Massachusetts or Rhode Island) from "awarding, entering into, executing, or approving any wholesale electricity contracts in connection with the [Clean Energy RFP] during the pendency of this appeal." The injunction did "not apply retroactively to any wholesale electricity contract that has been entered into, executed, and approved" as of November 2, 2016. Briefs and Amicus Briefs were filed. Oral argument was held on December 9, 2016. On December 12, 2016 the Court vacated the November 2 injunction, indicating that an opinion would follow in due course. That opinion has not yet been issued.

¹²⁴ 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

¹²⁵ 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

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