

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of August 1, 2017

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 23, 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 /Settlement Agreement (EL16-120; ER17-2153)	Jul 26	Settling Parties submit Offer of Settlement
		Jul 28	Settling Parties re-submit Offer of Settlement under different eTariff codes; comment date Aug 17; reply comment date Aug 28
		Jul 27-Jul 31	Calpine, ConEd, Entergy, Eversource, Exelon, HQUS, NEPGA, NESCOE, NRG, RESA intervene
		Jul 31	Chief Judge orders that all parties granted intervention in EL16-120 are deemed to have intervened in ER17-2153
4	Base ROE Complaint IV (2016) (EL16-64)	Jun 27	Settlement Judge Long recommends termination of settlement judge procedures
		Jun 29	Chief Judge Cintron denies TOs' Jun 12 motion for reconsideration of her May 26 Order confirming her May 18 bench rulings
		Jun 30	Chief Judge terminates settlement judge procedures, hearings to continue as scheduled
		Jul 5	TOs seek interlocutory appeal of the Chief Judge's Jun 29 order
		Jul 10	EMCOS, Complainant-Aligned Parties oppose TOs' Jul 5 appeal
		Jul 12	Chairman LaFleur, acting as motions Commissioner, declines to refer to the full Commission the TOs' Jul 5 interlocutory appeal
5	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Jul 31	TOs file Supplemental Answering Testimony and Exhibits
		Jul 7	Settlement conference held; Judge Dring schedules 9th settlement conference for Sep 22

II. Rate, ICR, FCA, Cost Recovery Filings



* 7	FCA12 De-List Bids Filing (ER17-2110)	Jul 19	ISO-NE submits filing describing Permanent and Retirement De-List Bids that were submitted on or prior to the Existing Capacity Retirement Deadline for FCA12; comment date Aug 9
		Jul 25	Public Citizen intervenes
* 7	NESCOE 5-year (2018-2022) <i>Pro Forma</i> Budget (ER17-2062)	Jul 7	NESCOE files 5-year <i>pro forma</i> budget covering 2018-2022 period
		Jul 13	NEPOOL intervenes
		Jul 18	NEPOOL files comments supporting the budget
		Jul 21	National Grid intervenes
8	Opinion 531-A Compliance Filing Undo: TOs (ER15-414)	Jun 26	EMCOS and Consumer Aligned Parties protest TOs' filing to 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
		Jul 11	TOs answers Jun 26 protests
* 8	2017/18 Power Year Transmission Rate Filing (ER09-1532; RT04-2)	Jul 28	PTO AC submits informational filing identifying adjustments to regional transmission service charges for the Jun 1, 2016 to May 31, 2017 period; this filing will not be noticed for public comment

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

* 8	PRD: Full Integration Conforming Changes (ER17-2164)	Jul 27	ISO-NE and NEPOOL jointly file a final package of Tariff revisions required to implement the full integration of PRD into the New England Markets on Jun 1, 2018; comment date Aug 17
		Jul 28	NRG intervenes
8	5-Min. RQM Settlement Enhancement (ER17-1706)	Jul 7	FERC accepts changes, eff. Aug 1
9	Fast-Start Interim Cap Revision (ER17-1542)	Jun 30	FERC accepts changes implementing a \$1,000/MWh Energy Market offer cap on offers from fast-start resources in the Real-Time Energy Market eff. through the implementation of <i>Order 831</i> Tariff changes

IV. OATT Amendments / TOAs / Coordination Agreements

* 13	Tariff Section II.44 Conforming Change (ER17-2118)	Jul 21	ISO-NE and NEPOOL file change to Tariff Section II.44(1)(a) to align that Section with the DAM scheduling deadline established in the Market Rules; comment date Aug 11
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V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

13	Schedule 21-NSTAR: Dartmouth Power LSA (ER17-1713)	Jun 29	FERC accepts Local Service Agreement (LSA) by and among NSTAR, Dartmouth Power and ISO-NE for Firm and Non-Firm Local Point-To-Point Service under Sched. 21-NSTAR, eff. Jul 31
13	Schedule 21-CMP: Saddleback Ridge/Canton Mountain LGIAs (ER17-1668)	Jul 13	FERC accepts Revised Saddleback LGIA and Original Canton LGIA, eff. May 4 and 24, respectively
13	Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.)	Jun 29	Settlement Judge Dring schedules 4th settlement conf. for Sep 6
*	Schedule 21-FG&E Annual Informational Filing (ER09-1498)	Jul 25	FG&E submits annual update to its Revenue Requirement recovered through the ISO Tariff and Schedule 21-FG&E for the Jun 1, 2017 – May 31, 2018 period
* 14	Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)	Jun 30	NSTAR submits CWIP supplement to May 31 annual informational filing
* 14	Schedule 21-CMP Annual Informational Filing (ER09-938)	Jun 29	CMP files updated formula rates reflecting actual 2016 cost data and estimated 2017 cost data

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

15	Capital Projects Report - 2017 Q1 (ER17-1595)	Jun 30	FERC accepts 2017 Q1 Report
* 15	LFTR Implementation: 35 th Quarterly Status Report (ER07-476)	Jul 14	ISO-NE files its 35th quarterly report

IX. Membership Filings

* 16	August 2017 Membership Filing (ER17-2184)	Jul 31	<i>New Members:</i> Cianbro Energy, Maple Energy, South Jersey Energy ISO3, and CWP Energy; and <i>Withdrawal:</i> Anbaric Management
* 16	July 2017 Membership Filing (ER17-2039)	Jun 30	<i>New Members:</i> MPower Energy; Renaissance Power & Gas; Environmental Defense Fund; and <i>Withdrawal:</i> Brayton Point
16	June 2017 Membership Filing (ER17-1744)	Jun 30	<i>FERC accepts New Members:</i> Orbit Energy Rhode Island; Rinar Power; and Torofino Trading; <i>Withdrawals:</i> First Wind Energy Marketing and Longfellow Wind; and <i>Name Changes:</i> Dominion Energy Generation Marketing, Inc.; Dominion Energy Nuclear Connecticut, Inc.; and J. Aron & Company, LLC

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

* 18	Rules of Procedure Changes (Sections 600 and 900) (RR17-6)	Jun 26 Jul 17	NERC files changes to Rules of Procedure System Operators (AESO, IESO, CAISO, ISO-NE, PJM) protest changes
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XI. Misc. - of Regional Interest

* 18	203 Application: Dynege (Dighton/Milford)/Marco DM Holdings (EC17-146)	Aug 1	Dighton, Milford and Marco request authorization for a transaction whereby Marco will acquire 100% of the ownership interests in Dighton and Milford; comment date Aug 22
* 19	203 Application: NAPG/Mercuria (EC17-144)	Jul 31	Noble Americas Power & Gas and Mercuria request authorization for a transaction whereby Mercuria will acquire 100% of the ownership interests in NAPG; comment date Aug 21
* 20	IA: CMP/Bucksport (ER17-2198)	Jul 31	CMP files Amended Bucksport IA; comment date Aug 21
20	D&E Agreement: NSTAR/Essential Power Newington (ER17-1915)	Jun 27	NTAR files agreement
20	LGIA Cancellation: Superseded CL&P/Milford LGIA (ER17-1779)	Jul 20	FERC accepts cancellation of superseded LGIA
21	Emera MPD OATT Changes (ER15-1429; EL16-13, ER12-1650)	Jul 12 Jul 26 Jul 27	FERC Staff files comments identifying 8 transparency deficiencies but not opposing certification or approval of Jun 22 Settlement Settlement Judge Dring certifies Settlement to the Commission Chief Judge terminates settlement judge procedures
* 22	FERC Enforcement Action: Staff Notices of Alleged Violations (ATC) (not docketed)	Jul 13	FERC issues notice that, between 2006 and 2014, American Transmission Company violated FPA Sections 203 and 205

XII. Misc. - Administrative & Rulemaking Proceedings

23	State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM (AD17-11)	Jun 30 Jul 11-14	Reply comments deadline extended to Jul 14 Over 30 parties file reply comments
24	BPS Reliability Technical Conference (AD17-8)	Jun 30 Jul 24	EDF files post-tech. conf. comments FERC posts tech. conf. transcript

XIII. Natural Gas Proceedings

29	Technical Conference: Natural Gas Index Liquidity, Price Discovery & Price Formation (AD17-12)	Jun 29 Jul 7 Jul 24 Jul 31	FERC holds Jun 29 tech. conf. FERC posts speaker materials of Euan Craik, Argus Media FERC posts tech. conf. transcript AGA, INGAA, PJM IMM, Rice Energy Marketing, Tenaska Marketing Ventures file comments
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MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: August 2, 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 August 1, 2017. If you have questions, please contact us.¹

I. Complaints/Section 206 Proceedings
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- **NEPGA PER Complaint / Settlement Agreement (EL16-120; ER17-2153)**

On July 28, 2017,² the Settling Parties³ submitted an Offer of Settlement and settlement materials (“PER Settlement”) to resolve the issue set for hearing and settlement judge procedures by the Commission in this proceeding. Under the PER Settlement, the ISO will calculate Adjusted Hourly Strike Price as the sum of the daily Strike Price (as calculated under the existing Tariff) and a newly-defined Hourly PER Adjustment. The Hourly PER Adjustment will be equal to the average over each hour of a newly-defined Five-Minute PER Strike Price Adjustment. The Five-Minute Strike Price Adjustment⁴ will be equal to any positive difference between a five-minute Thirty Minute Operating Reserves Clearing Price or Ten-Minute Non-Spinning Reserves Clearing Price that exceeds the maximum allowable reserves clearing prices for those reserves products (i.e., the Reserve Constraint Penalty Factors) in effect before December 2014. The PER Settlement does not resolve the issues of the applicability of the Strike Price methodology to FCA9 (which will be subject to comment in response to the PER Settlement Agreement) or whether capacity suppliers will receive any refunds for PER Events that occurred in August 2016 (currently the subject of, and to be decided through, a pending request for clarification and/or rehearing as noted below). Those issues remain to be resolved by the Commission when and as appropriate. The term sheet that formed the basis for the PER Settlement was supported by the Participants Committee at the June 27 session of the Summer Meeting. ***Initial comments on the PER Settlement must be filed on or before August 17, 2017; reply comments, August 27, 2017.*** On July 31, Chief Judge Cintron issued an order that, “in the interest of administrative

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 The Settlement was initially filed on July 26 under different eTariff codes and subsequently withdrawn in favor of the July 28 filing. The Docket Number (ER17-2153) remained the same.

³ PER “Settling Parties” are: NEPGA, NESCOE, the Retail Energy Supply Association (“RESA”), NEPOOL, Exelon, H.Q. Energy Services (U.S.) (“HQUS”), Eversource, Dominion, Entergy, NRG, and Cogentrix. Intervenors in the proceeding not opposing the Settlement (“Non-Opposing Intervenors”) are: the ISO, PSEG, Consolidated Edison Energy, Inc. (“ConEd”), Verso Corp., GenOn Energy Management LLC, National Grid, NextEra, the New Hampshire Electric Coop. (“NHEC”), and Calpine.

⁴ Five-Minute PER Strike Price Adjustment will be calculated according to the following formula: Five-Minute PER Strike Price Adjustment = MAX (Thirty Minute Operating Reserves Clearing Price - \$500/MWh, 0) + MAX (Ten Minute Non-Spinning Reserves Clearing Price – Thirty Minute Operating Reserves Clearing Price - \$850/MWh, 0).

efficiency,” all parties granted intervention in EL16-120 “are deemed to have intervened in Docket No. ER17-2153-000”.⁵

As previously reported, the FERC, on January 19, (i) granted in part NEPGA’s complaint⁶ 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.13.7.2.7.1.1.1.⁷ 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.”⁸ 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.⁹ 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 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.”¹⁰ 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. As reported previously, Judge H. Peter Young is the Settlement Judge in these proceedings. In his most recent status report, Judge Young reported his expectation that he would certify a 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).

⁵ Prior to Chief Judge Cintron’s order, the following parties filed doc-less interventions in ER17-2153: Calpine, ConEd, Entergy, Eversource, Exelon, HQUS, NEPGA, NESCOE, NRG/GenOn, and RESA.

⁶ 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.

⁷ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017).

⁸ *Id.* at P 48.

⁹ *Id.* at P 57.

¹⁰ *Id.* at P 61.

- **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.¹¹ As previously reported, EMCOS¹² 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 discounted cash flow ("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."¹³ 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."¹⁴ Further, the FERC rejected arguments as to the propriety of 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.¹⁵ 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."¹⁶ 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, 2018.¹⁷ 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 June 27, 2017, Settlement Judge Long recommended termination of settlement judge procedures, reporting that the parties did not appear to be amenable to settlement and had reached an impasse. On June 30, Chief Judge Cintron terminated settlement judge procedures; with hearings to continue as scheduled and reported below.

¹¹ *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*").

¹² "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.

¹³ *Base ROE Complaint IV Order* at P 37.

¹⁴ *Id.* at P 38.

¹⁵ 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.

¹⁶ *Base ROE Complaint IV Order* at P 40.

¹⁷ *Id.* at P 44.

Hearings. 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 could proceed *concurrently* with settlement judge procedures (now terminated). The hearings 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. Direct and Answering Testimony and Exhibits have been filed. Hearings are scheduled for August 2-8, with an initial decision to be issued on or before November 15, 2017.

Oral argument, conducted on May 18, 2017 *en banc* before Chief Judge Cintron and Presiding Judge Glazer, addressed the impacts of the DC Circuit's April 14, 2017 *Emera Maine* decision on the Base ROE Complaint I orders (*see* Section XV below). At the conclusion of the May 18 *en banc* oral argument, Chief Judge Cintron ruled from the bench that (i) the request to hold this proceeding in abeyance or recommend to the Commission that it be dismissed was denied, (ii) the proceeding would 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. She confirmed those rulings in a May 26 order, which also adopted a revised procedural schedule. On June 12, the TOs moved for reconsideration of the May 26 order, or in the alternative, that the Chief Judge grant the NETOs' request to seek an interlocutory appeal of the May 26 order. The TOs' motion was challenged by Complainants. On June 29, the Chief Judge denied the June 12 motion. On July 5, the TOs sought interlocutory appeal of the Chief Judge's June 29 order, which Complainants opposed, and Chairman LaFleur, acting as motions Commissioner, declined to refer to the full Commission.

Since the last Report, TOs filed Supplemental Answering Testimony and Exhibits (with summaries) on July 31, 2017.

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").¹⁸ 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".¹⁹ 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.²⁰ Hearings are being held in abeyance pending the outcome of settlement judge procedures underway.²¹ The FERC-established refund date is January 4, 2016.²²

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,

¹⁸ *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).

¹⁹ *Id.* at P 8.

²⁰ *Id.* at P 11.

²¹ *Id.*

²² The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

August 30, and November 18 (telephonically). Three settlement conferences have thus far been held in 2017: April 5, May 9 and July 7, 2017. A ninth settlement conference has been scheduled for September 22, 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)²³ and third (EL14-86)²⁴ complaints regarding the TOs' 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;²⁵ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²⁶ 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."²⁷ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²⁸ 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 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.²⁹ 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

²³ The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOs' 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

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

²⁵ *Environment Northeast, 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).

²⁶ *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).

²⁷ *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).

²⁸ *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).

²⁹ *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").

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

- **FCA12 De-List Bids Filing (ER17-2110)**

Pursuant to Market Rule 1 § 13.8.1(a), the ISO submitted on July 19 a filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the FCA12 Existing Capacity Retirement Deadline. The ISO reported that the Existing Capacity Retirement Deadline for FCA12 was March 24, 2017 and it received one Permanent De-List and 23 Retirement De-List Bids for resources located in each of the eight Load Zones, with an aggregate MWs of capacity of 511.104 MWs. Four of the 24 Bids were for resources under 20 MW, and from four suppliers that were not Affiliates of the remaining two suppliers that submitted the remaining 20 bids. The IMM was not required to perform a review of those 4 bids. The IMM did review the remaining two suppliers' 20 Bids for 502.579 MWs of capacity. The IMM's determination regarding these 20 bids is described in the version of the filing that was filed confidentially as required under §13.8.1(a) of Market Rule 1. Comments on this filing are due on or before August 9. Thus far, a doc-less intervention has been filed by Public Citizen. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **NESCOE 5-year (2018-2022) Pro Forma Budget (ER17-2062)**

On July 6, 2017, NESCOE filed its 5-year *pro forma* budget covering years 2018 - 2022 (the "5-year *Pro Forma* Budget") in accordance with the Memorandum of Understanding ("MOU") among the ISO, NEPOOL and NESCOE. The 5-year *Pro Forma* Budget was supported by the Participants Committee at the Summer Meeting June 27 session. Comments on this filing were due on or before July 27. NEPOOL filed comments supporting the filing on July 18. A doc-less intervention was filed by National Grid. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 1,³⁰ Exelon Generation Company ("Exelon") requested that the FERC authorize recovery of \$1,495,171 of actual fuel 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

³⁰ 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 recover the fuel and variable operating and maintenance ("O&M") costs of a Resource for all or part of one or more Operating Days.

[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)***

As previously reported, the TOs submitted, on June 5, 2017, 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. On June 26, both EMCOS and Consumer Aligned Parties protested the filing. On July 11, the TOs answered those protests. This matter is pending before the FERC. 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).

- **2017/18 Power Year Transmission Rate Filing (ER09-1532; RT04-2)**

On July 28, 2017, the Participating Transmission Owners ("PTOs") Administrative Committee ("PTO AC") submitted a filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2017 through May 31, 2018. The filing reflected the charges to be assessed under annual transmission formula rates, reflecting actual 2016 cost data, Forecasted Annual Transmission Revenue Requirements associated with projected PTF additions for the 2017 Forecast Period, and the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of \$111.96 /kW-year effective June 1, 2017, an increase of \$7.86 /kW-year from the charges that went into effect on June 1, 2016. In addition, the annual update to the Schedule 1 formula rate results in a charge of \$1.81 kW-year, a \$0.01/kW-year increase over the Schedule 1 charge that last went into effect on June 1, 2016. This filing was reviewed at the July 18 session of the Reliability/Transmission Committee summer meeting. The filing will not be noticed for public comment. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **PRD: Full Integration Conforming Changes (ER17-2164)**

On July 27, 2017, the ISO and NEPOOL jointly filed a final package of Tariff revisions required to implement the full integration of price-responsive demand ("PRD") into New England's Energy, Ancillary Services, and capacity markets on June 1, 2018 ("PRD Revisions"). Accordingly, a June 1, 2018 effective date was requested. The PRD Revisions were supported unanimously by the Participants Committee at the Summer Meeting's June 27 session (Item #8). Comments on this filing are due on or before August 17. Thus far, a doc-less intervention was filed by NRG. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

On July 7, the FERC accepted changes that permit the use of 5-minute revenue quality meter ("RQM") data in Real-Time Energy Market settlement (the "5-Min RQM Settlement Enhancement"). As previously reported, the 5-Min RQM Settlement Enhancement added 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. The 5-Min RQM Settlement Enhancement was accepted effective August 1, 2017, as requested. Unless the July 7 order is challenged, this proceeding will be concluded. 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.” McCallum answered the ISO’s protest on June 9, re-iterating its points made in the initial May 9 request, and the ISO’s answer to CL&P’s motion on June 22. 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 (ER17-1565)**

Tariff changes in response to the requirements of *Order 831* (“*Order 831* Revisions”) jointly filed by the ISO and NEPOOL on May 8, 2017 remain pending. As previously reported, 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 June 30, the FERC accepted changes that 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). As previously reported, 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*. The Fast-Start Interim Cap Revision was accepted effective as of July 3, 2017, as requested. Unless the June 30 order is challenged, this proceeding will be

concluded. 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, 2017 filing of updated FCM Cost of New Entry ("CONE"), Net CONE and Offer Review Trigger Price ("ORTP") values remains before the FERC, awaiting a FERC quorum and an ISO-NE amendment-type filing re-starting the 60-day statutory clock. 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 Cogentrix³¹ (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.

Amendment-Type Filing Deferring Statutory Deadline. 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*³² remains subject to a request for rehearing by Indicated NYTOs.³³ 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

³¹ 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.

³² *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*.

³³ "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.

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 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.”³⁴ 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.”³⁵ 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.³⁶ The order accepted NYISO’s proposed locality exchange factor methodology to be implemented immediately but rejected NYISO’s proposed one-year transitional mechanism.³⁷ 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.”³⁸ 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.”³⁹ 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.⁴⁰ 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).

³⁴ *Id.* at P 31.

³⁵ *Id.*

³⁶ *NY Indep. Sys. Op., Inc.*, 158 FERC ¶ 61,064 (Jan. 27, 2017), *reh’g requested*.

³⁷ *Id.* at P 20.

³⁸ *Id.* at P 35.

³⁹ *Id.* at P 55.

⁴⁰ *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*⁴¹ 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,”⁴² which were filed with and later accepted by the FERC.⁴³ 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.⁴⁴ 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.⁴⁵ 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).

⁴¹ *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.

⁴² *Id.* at P 62.

⁴³ *ISO New England Inc.*, 15 FERC ¶ 61,067 (July 27, 2016) (“*Resource Retirement Reforms Compliance Order*”).

⁴⁴ *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).

⁴⁵ *2013/14 Winter Reliability Program Remand Order* at P 17.

IV. OATT Amendments / TOAs / Coordination Agreements

- **Tariff Section II.44 Conforming Change (ER17-2118)**

On July 21, the ISO and NEPOOL jointly filed a change to Tariff Section II.44(1)(a) to align that Section with the DAM scheduling deadline established in the Market Rules. The Tariff change was unanimously supported by the Participants Committee at its April 7, 2017 meeting. Comments on this filing are due on or before August 11, 2017. If you have any questions concerning this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

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

On June 29, the FERC accepted 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. The LSA resolves 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. The LSA was accepted July 31, 2017, as requested, was not challenged and is final and unappealable. This proceeding is now concluded. 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 July 13, the FERC accepted 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. The LGIAs were accepted, effective as of May 4 (Saddleback) and March 27 (Canton), respectively. Unless the July 13 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).

- **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,⁴⁶ 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

⁴⁶ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*June 2 Order*”).

judge procedures.⁴⁷ 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.⁴⁸ 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.⁴⁹ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁵⁰

Settlement Judge Procedures. ALJ John Dring is the settlement judge for these proceedings. There have been three settlement conferences: June 29, October 25, and December 1, 2016. A fourth settlement conference is scheduled for September 6. In a July 26 status report, Judge Dring indicated that, although his previous report indicated that the parties had reached a settlement in principal, the parties informed him that that settlement would not cover this proceeding. Nonetheless, Judge Dring found that the parties are making progress towards settlement, and 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-FG&E Annual Informational Filing (ER09-1498)**

On July 25, 2017 Fitchburg Gas & Electric (“FG&E”) submitted its data and schedules used to calculate its annual transmission revenue requirement for Non-PTF Local Network Transmission Service, Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service as set forth in Schedule 21-FG&E covering the June 1, 2017– May 31, 2018 period. FG&E reported that its annual revenue requirement reflected in FG&E's rates effective June 1, 2017, is \$1,491,456. 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 CWIP Supplement (ER09-1243; ER07-549)**

On June 30, 2017, NSTAR supplemented its May 31 annual informational filing with a “CWIP Supplement” in accordance with Section 4.1(i) and (ix) of Schedule 21-NSTAR as added and supplemented by Article 4.2 of the 2008 Settlement. The CWIP Supplement was provided primarily on a project-specific basis, and included NSTAR’s 2017 long-range construction forecast. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On June 29, CMP submitted its annual update to the formula rates contained in Schedule 21-CMP. CMP indicated that the informational filing reflected actual cost data for the 2016 calendar year plus estimated cost data for the 2017 calendar year associated with CMP’s forecasted transmission plant additions and MPRP CWIP as well as the annual true-up and associated interest. CMP referred to Section 10.2 of Schedule 21-CMP for specific procedures for review and challenges to the informational report. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

⁴⁷ *Id.* at P 24.

⁴⁸ *Id.* at PP 25-26.

⁴⁹ *Id.* at P 27.

⁵⁰ *Id.* at P 21; Ordering Paragraph (B).

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*⁵¹ and *531-B*⁵² also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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

- | | | |
|-----------------------|-----------------|-----------------------|
| ◆ Central Maine Power | ◆ National Grid | ◆ United Illuminating |
| ◆ Emera Maine | ◆ NHT | ◆ 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 June 30, the FERC accepted the ISO's Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2017 (the "Report"). As previously reported, Report highlights included 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). Unless the June 30 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **LFTR Implementation: 35th Quarterly Status Report (ER07-476; RM06-08)**

The ISO filed the thirty-fifth of its quarterly status reports regarding LFTR implementation on July 14, 2017. The ISO again reported its plan to focus on implementation of the monthly reconfiguration auctions (accepted in ER12-2122). The ISO reported that it had filed, but subsequently withdrew (ER17-1441), a financial assurance design for monthly reconfiguration auctions, and is currently revisiting that methodology (specifically, whether the initially filed methodology required an inappropriately high amount of financial assurance related to annual FTRs). The ISO stated that it would file a revised financial assurance design with the FERC after the modified design after the completion of the stakeholder process and thereafter renew efforts to address LFTR financial assurance issues leveraging that design. As in previous reports, the ISO described the 18-month implementation process that will follow once the LFTR financial assurance issues are resolved. These status reports are not noticed for public comment and no comments have been filed.

⁵¹ *Martha Coakley, Mass. Att'y Gen. et al.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁵² *Martha Coakley, Mass. Att'y Gen. et al.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

IX. Membership Filings

- **August 2017 Membership Filing (ER17-2184)**

On July 31, NEPOOL requested that the FERC accept (i) the memberships of Cianbro Energy (AR Sector Large Renewable Generation Group Seat); Maple Energy (Provisional Member Group Seat); South Jersey Energy ISO3, LLC (Related Person of South Jersey Energy Companies, Supplier Sector); and CWP Energy inc. (Related Person to McGill-St. Laurent, Supplier Sector); and (ii) the termination of the Participant status of Anbaric Management (Provisional Group Member). Comments on the August Membership filing are due on or before August 21.

- **July 2017 Membership Filing (ER17-2039)**

On June 30, NEPOOL requested that the FERC accept (i) the memberships of MPower Energy (Supplier Sector), Renaissance Power & Gas (Supplier Sector); and Environmental Defense Fund (End User Sector); and (ii) the termination of the Participant status of Brayton Point Energy (Dynergy Related Person (Supplier Sector), who will remain in Pool). The July Membership filing is pending before the FERC.

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

On June 30, the FERC accepted (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).

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").⁵³ 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, 2017,⁵⁴ and were filed by 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").⁵⁵ 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, 2016,⁵⁶ 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, NOPR⁵⁷ 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 Standards⁵⁸ to exclusively focus

⁵³ *Remedial Action Schemes Rel. Standard*, 158 FERC ¶ 61,042 (Jan. 19, 2017) ("*RAS Changes NOPR*").

⁵⁴ The *RAS Changes NOPR* was published in the *Fed. Reg.* on Feb. 8, 2017 (Vol. 82, No. 25) pp. 9,702-9,706.

⁵⁵ *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Rel. Standards*, 156 FERC ¶ 61,210 (Sep. 22, 2016) ("*Frequency Control Changes NOPR*").

⁵⁶ The *Frequency Control Changes NOPR* was published in the *Fed. Reg.* on Sep. 28, 2016 (Vol. 81, No. 188) pp. 66,555-66,562.

⁵⁷ *Modeling, Data, and Analysis Rel. Standards*, 147 FERC ¶ 61,208 (June 19, 2014) ("*ATC NOPR*").

⁵⁸ 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.

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, 2014,⁵⁹ and were filed by NERC, Bonneville, Duke, MISO, and NAESB. On December 19, 2014, NAESB supplemented its comments with a report on its efforts to develop WEQ Business Practice Standards that will support and coordinate with the MOD Standards proposed in this proceeding. NASEB issued a report on September 25, 2015, informing the FERC that the NAESB standards development process has been completed and NAESB will file the new suite of business practice standards as part of Version 003.1 of the NAESB WEQ Business Practice Standards in October 2015. As noted above, the ATC NOPR remains pending before the FERC.

- **Rules of Procedure Changes (RR17-6)**

On June 26, 2017, NERC filed for approval revisions to Sections 600 (Personnel Certification Program) and 900 (Training and Education) of the NERC Rules of Procedure ("ROP"). The purpose of the revisions is to (i) clarify the scope of the Personnel Certification Program, the Training and Education Program and the Continuing Education Program; and (ii) streamline and align the language of the ROP with current practices of those programs. NERC stated that the changes are part of its first comprehensive review to modernize and align the language of the ROP with current NERC practices. NERC requested that the proposed revisions be made effective upon FERC approval. Comments on this filing were due on or before July 17, 2017 and were filed jointly by the Alberta Electric System Operator ("AESO"), The California Independent System Operator ("CAISO"), The Independent Electricity System Operator ("IESO"), ISO-NE and PJM ("System Operators"). System Operators, while agreeing that changes to Sections 600 and 900 are needed, nevertheless disagreed with the proposed changes as written and the rationale for making those changes in the first instance. This matter is 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's"). Comments on this filing were submitted by the ISO/RTO Council ("IRC"), AEP, EEI, 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: Dynegy (Dighton/Milford)/Marco DM Holdings (EC17-146)**

On August 1, Dighton Power, LLC ("Dighton"), Milford Power, LLC ("Milford"), and Marco DM Holdings, L.L.C. ("Marco") requested FERC authorization for a transaction in which Marco will acquire 100% of the equity interests in Dighton and Milford (each, wholly owned subsidiaries of Dynegy). The transaction implements the FERC's requirement in EC16-93-001, approving Dynegy Inc.'s acquisition of GDF Suez Energy

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

North America, Inc., that Dynegy divest at least 224 MW in the Southeast New England capacity zone.⁶⁰ Comments on the application are due on or before August 22.

- **203 Application: NAPG/Mercuria (EC17-144)**

On July 31, Noble Americas Gas & Power Corp. (“NAPG”) and Mercuria Energy America, Inc. (“Mercuria”) requested FERC authorization for a transaction in which Mercuria will acquire 100% of the equity interests in NAPG. Comments on the application are due on or before August 21.

- **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 were due on or before July 12, 2017; none were filed. This matter is pending before the FERC.

- **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.⁶¹ 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.⁶² 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: 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.⁶³ 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

⁶⁰ *Atlas Power Finance, LLC*, 158 FERC ¶ 61,122, at P 28 (2017).

⁶¹ *Green Mountain Power Corp. and Vermont Transco, LLC*, 159 FERC ¶ 62,191 (May 19, 2017).

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

⁶³ *NSTAR Elec. Co. and W. Mass. Elec. Co.*, 158 FERC ¶ 62,155 (Mar. 2, 2017) (“*NSTAR/WMECO Merger Order*”).

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; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **IA: CMP/Bucksport (ER17-2198)**

On July 31, 2017, CMP filed a First Amendment to the Bucksport Generation LLC Interconnection Agreement in order to extend the term of the Agreement until September 28, 2031 (the initial Agreement expired on April 17, 2017), with automatic renewals for each successive one-year period thereafter absent termination by a party, and to add termination procedures and termination costs provisions that are consistent with the provisions contained in the ISO Tariff's Schedule 22 *pro forma* LGIA. The Amended Agreement will replace the initial Agreement in its entirety. An August 1, 2017 effective date was requested. Comments on this filing are due on or before August 21, 2017. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: NSTAR/Essential Power Newington (ER17-1915)**

On June 27, NSTAR filed a Design and Engineering Agreement ("D&E Agreement") between NSTAR and Essential Power Newington (designated as service agreement IA-NSTAR-34) that sets forth the terms and conditions under which NSTAR will undertake certain design and engineering activities on its transmission system⁶⁴ in connection with Essential Power Newington's FCA11 New Capacity Qualification Determination Notification ("QDN"). NSTAR requested that the D&E Agreement be accepted for filing as of August 26, 2017. Comments on this filing were due on or before July 18, 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).

- **LGIA Cancellation: Superseded CL&P/Milford LGIA (ER17-1779)**

On July 20, the FERC accepted the cancellation of a 2008 LGIA between CL&P and Milford Power that covers Milford's 647 MW combined cycle Large Generating Facility in Milford, Connecticut. The 2008 LGIA was superseded by a *pro forma*, 3-party (including ISO-NE) LGIA, necessitated by Milford's request to increase the facility's Capacity Network Resource ("CNR") rating. The cancellation was accepted effective as of April 22, 2017, the effective date of the 3-party LGIA. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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,⁶⁵ authorizing MPX to sell transmission rights at negotiated rates, permits MPX to sell the Maine Power Express merchant transmission project's⁶⁶ capacity pursuant to the 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 (which has since passed). 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).

⁶⁴ Specifically, NSTAR has agreed to make changes to the Zone 2 timer on both primary (P1) and backup (P2) relays at its Mystic Substation that are associated with NSTAR Line 423-515.

⁶⁵ *Maine Power Express*, 156 FERC ¶61,002 (July 1, 2016).

⁶⁶ 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.

- **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.⁶⁷ However, the FERC found, ultimately, that the changes to the MPD OATT had not been shown to be just and reasonable, may be unjust and unreasonable, instituted a Section 206 proceeding (in EL16-13) to examine the provisions, and set the matter for a trial-type evidentiary hearing, to be held in abeyance pending the outcome of settlement judge procedures (*see below*).

Background (ER15-1429). Emera Maine, as successor to Maine Public Service Company (“Maine Public”), provides open access to Emera Maine’s transmission facilities in northern Maine (the “MPD Transmission System”) pursuant to the MPD OATT. Emera Maine stated that the changes to the MPD OATT were needed to ensure that, in light of the filing by Emera of consolidated FERC Form 1 data (data comprising both the former Bangor Hydro and Maine Public systems), charges for service under the MPD OATT reflect only the costs of service over the MPD Transmission System. Emera Maine also proposed additional, limited changes to the MPD OATT. A June 1, 2015 effective date was requested. The “Maine Customer Group”⁶⁸ 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.⁶⁹ 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

⁶⁷ *Emera Maine*, 153 FERC ¶ 61,283 (Dec. 7, 2015).

⁶⁸ 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”).

⁶⁹ *Emera Maine*, 155 FERC ¶ 61,233 (June 2, 2016), *reh’g denied*, 158 FERC ¶ 61,012 (Jan. 6, 2017).

denied rehearing and Emera Maine's alternative request for consolidation with the ongoing proceedings in Docket Nos. EC10-67-002, *et al.*⁷⁰

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 Intervenors"). 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). FERC Staff filed its comments on the Offer of Settlement on July 12, 2017. In its comments, Staff did not oppose the settlement and advised of its belief "the proposed Settlement, in the aggregate, is fair, reasonable, and in the public interest". Although Staff denied "eight ways in which it believes the formula rate is insufficiently transparent," Staff stated it "does not oppose certification of the Settlement by the Settlement Judge and subsequent approval by the Commission." Reply Comments were due July 24, 2017; none were filed. On July 26, Judge Dring certified the Settlement to the Commission.⁷¹ Accordingly, on July 27, Chief Judge Cintron terminated settlement judge procedures, subject to final action by the Commission, and cancelled the hearings ordered by the Commission. The Settlement is now pending before the Commission.

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

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

ATC. On July 13, the FERC issued a notice that Staff of the Office of Enforcement ("OE") has preliminarily determined that, between 2006 and 2014, American Transmission Company, LLC ("ATC") violated FPA Sections 203 (by failing to seek pre-approval from the FERC before acquiring 22 jurisdictional facilities) and 205 (by failing to timely file with the FERC as required 42 jurisdictional agreements).

Westar Energy. On March 30, 2017, the FERC issued a notice that 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.⁷² 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.

⁷⁰ *Emera Maine*, 158 FERC ¶ 61,012 (Jan. 6, 2017) ("*January 6 Order*").

⁷¹ *Emera Maine*, 160 FERC ¶ 63,008 (Jul. 26, 2017).

⁷² *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).

- **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.

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 were briefly summarized at the Summer Meeting. Reply comments, not exceeding 10 pages, were due, following a one-week extension granted by the FERC, on July 14, and were filed by over 30 parties. This matter is pending before the FERC.

- **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.⁷³ 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

⁷³ Agency Operations in the Absence of a Quorum, 158 FERC ¶ 61,135 (Feb. 3, 2017) (“*Absence of a Quorum Delegation Order*”).

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);⁷⁴ (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, as well as a transcript of the technical conference, are posted on the FERC’s eLibrary. Since the last report, on June 20, Environmental Defense Fund filed post-technical conference comments. This matter is pending before the FERC.

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

As previously reported, the FERC held a technical conference on November 9, 2016 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 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. Post-technical conference 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 filed by, among others, NYISO, PJM, the PJM IMM, AWEA, EEI, EPSA,

⁷⁴ 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.

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. 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 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:⁷⁵ (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 and transparency (RM17-2) have already been issued.

- **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.⁷⁶ The NOI followed the D.C. Circuit's *United Airlines*⁷⁷ 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".⁷⁸ Comments and reply comments were submitted by over 25 and 18 parties, respectively. This matter is pending before the FERC.

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

As previously reported, the FERC issued a NOPR⁷⁹ on December 15, 2016 proposing reforms designed to improve certainty,⁸⁰ promote more informed interconnection,⁸¹ and enhance interconnection

⁷⁵ *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (Nov. 20, 2015).

⁷⁶ *Inquiry Regarding the FERC's Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2017).

⁷⁷ *United Airlines Inc., et al. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) ("*United Airlines*").

⁷⁸ *Id.* at 137.

⁷⁹ *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).

⁸⁰ 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

processes.⁸² Based, in part, on input received in response to AWEA's petition for changes to the *pro forma* 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 identified proposed reforms which it states could remedy potential shortcomings in the existing interconnection processes. The FERC also sought comment on whether any of its proposed reforms should be applied to the *pro forma* SGIP/SGIA.⁸³ 60 sets of comments on and answer to the *LGIP/LGIA Reforms NOPR* 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.⁸⁴ The FERC stated that the reforms should lead to prices that more transparently reflect the marginal cost of serving load, which would 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;

interconnection customers are responsible can mitigate the potential for serial restudies without inappropriately shifting cost responsibility. *Id.* at P 6.

⁸¹ 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.

⁸² 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 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.

⁸³ *Id.* at P 11.

⁸⁴ *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*").

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 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, 2017, 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.⁸⁵ In addition, the FERC 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 and reply comments on the *Uplift/Transparency NOPR* were filed by over 40 parties, including: ISO-NE, Brookfield, Calpine, DC Energy, Direct, Exelon, Potomac Economics, Saracen, EEI, APPA/NRECA, Appian Way Energy Partners, AWEA, ELCON, EPSA, Financial Marketers Coalition, and the IRC. This matter is pending before the FERC.

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

On November 23, 2016, 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 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

⁸⁵ *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*”).

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*”).

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.

- **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 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*⁹³ 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, 2017.⁹⁴ Market Rule changes implementing *Order 831* are required to be filed

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

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 *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*.

⁹⁴ *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, 2017.⁹⁵ (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 an October 1, 2019 effective date, were filed on May 8 and remain pending before the FERC (*see* ER17-1565, Section III above).

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)**

The FERC held a technical conference on June 29 on developments in natural gas index liquidity and transparency. The purpose of the technical conference was 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. Post-technical conference comments were filed on July 31 by AGA, INGAA, the PJM IMM, Rice Energy Marketing, and Tenaska Marketing Ventures. A transcript of the technical conference is available on the FERC’s eLibrary. This matter is pending before the FERC.

- **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.⁹⁶ 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

⁹⁵ 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).

⁹⁶ *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.⁹⁷ 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.⁹⁸ 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.⁹⁹ 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.¹⁰⁰ 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*¹⁰¹ 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").¹⁰² 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."¹⁰³ 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

⁹⁷ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) ("*Algonquin Order Following Technical Conference*")

⁹⁸ *Id.* at P 27.

⁹⁹ *Id.* at P 34.

¹⁰⁰ *Id.* at P 35

¹⁰¹ *BP America Inc., et al.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹⁰² *BP America Inc., et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹⁰³ *BP Penalties Order* at P 3.

order establishing a hearing in this proceeding.¹⁰⁴ 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.¹⁰⁵

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁰⁶ 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 2012.¹⁰⁷

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.

Staff Notices of Alleged Violations (IN__ - __)

Rover. On July 13, 2017, the FERC issued a notice that Staff has preliminarily determined that, between February 2015 and September 2016, Rover Pipeline, LLC and Energy Transfer Partners, L.P. (collectively, "Rover") violated Section 7 of the Natural Gas Act by failing to fully and forthrightly disclose all relevant information to the FERC in Rover's application for a Certificate of Public Convenience and Necessity and attendant filings in Docket No. CP15-93. Staff alleges that Rover falsely promised it would avoid adverse effects to a historic resource that it was simultaneously working to purchase and destroy, and subsequently made several

¹⁰⁴ *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).

¹⁰⁵ *BP America Inc. et al.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

¹⁰⁶ *Total Gas & Power North America, Inc., et al.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁰⁷ 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.

misstatements in its docketed responses to FERC questions about why it had purchased and demolished the resource.

National Energy & Trade, L.P. The FERC issued a second notice on August 3 that Staff has preliminarily determined that National Energy & Trade, L.P. (“National Energy”) violated the FERC’s Prohibition of Natural Gas Market Manipulation by fraudulently trading physical basis at (i) Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of its financial basis position (by selling physical basis at Tetco M3 at arbitrarily low prices early in the morning to benefit a large short financial basis position acquired before bidweek, a large part of which it repurchased after making its physical basis sales) and (ii) at Henry Hub during the April 2014 bidweek to increase the value of its financial exposure (by trading physical basis after the close of the NYMEX solely to benefit National Energy’s exposure to the Henry Hub Inside FERC index).

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.¹⁰⁸ 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.

- **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.
- ▶ 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

¹⁰⁸ 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).

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*.

- ▶ 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.
 - On October 13, 2016, the FERC approved Constitution’s request to proceed to remove the felled trees in Pennsylvania, which removal is currently on-going.

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

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).

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*).

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 ordered the parties by July 7 to submit proposed briefing schedule and formats. The parties submitted their proposal on July 7 and on July 10, the Clerk ordered that the following schedule would apply: Petitioners' Brief to be filed September 8; Respondent's Brief, November 7, 2017; Respondent-Intervenors' Brief(s), November 28, 2017; Petitioners' Reply Brief, December 28, 2017; Joint Deferred Appendix, January 11, 2018; and Final Briefs, January 18, 2018.

- **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. With Final Briefs submitted on June 26, 2017, all briefing is complete and this matter is before the Court.

- **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.

- **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

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).

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).

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.

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹²² EL15-23¹²³

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)**

On June 28, 2017, the Second Circuit Court of Appeals affirmed the Connecticut District Court's judgment with respect to Allco's challenges to Connecticut's actions under the 2015 multi-state clean energy RFP ("Clean Energy RFP").¹²⁴ The Second Circuit held that Allco failed to state a claim that either (i) Connecticut's Clean Energy RFP was preempted by federal law or that (ii) Connecticut's Renewable Portfolio Standard program violates the dormant Commerce Clause. Unless appealed to the Supreme Court, this matter will be concluded.

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

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

¹²⁴ *Allco Fin., Ltd. v. Klee*, 2017 U.S. App. LEXIS 11484 (Jun. 28, 2017).

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